4–3–97
Vol. 62 No. 64
Pages 15809–16052

federal register

Thursday
April 3, 1997

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–18]

RIN 0579–AA83

Karnal Bunt Regulatory Flexibility Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; regulatory flexibility analysis.

SUMMARY: We are publishing in this document the regulatory flexibility analysis prepared for an October 4, 1996, final rule that amended the Karnal bunt regulations established in a series of interim rules and that established criteria for levels of risk, the movement of regulated articles, and the planting of seed from Karnal bunt host crops. Because that final rule was published on an emergency basis, compliance with the regulatory flexibility analysis requirements of the Regulatory Flexibility Act was found to be impracticable, and completion of those requirements was delayed by the Administrator of the Animal and Plant Health Inspection Service. The required analysis has been completed and is, therefore, being made available to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The establishment of Karnal bunt in the United States would have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

On October 4, 1996, we published in the **Federal Register** (61 FR 52189–52213, Docket No. 96–016–14) a final rule that amended a series of interim rules establishing a program to control and eradicate Karnal bunt in the United States, and also made final a proposed rule establishing criteria for levels of risk for areas with regard to Karnal bunt and criteria for seed planting and movement of regulated articles based on those risk levels.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (the Act), agencies must prepare initial and final regulatory flexibility analyses concerning the economic impact of the regulatory action on small entities unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The criteria for initial and final regulatory flexibility analyses are set out in sections 603 and 604, respectively, of the Act. Section 608, paragraph (a), of the Act provides, however, that an agency head may waive or delay the completion of some or all of the requirements for the initial regulatory flexibility analysis if an emergency situation makes timely compliance with section 603 impracticable. Similarly, paragraph (b) of section 608 provides that an agency head may delay the completion of a final regulatory flexibility analysis for a period of not more than 180 days following the publication of a final rule in the **Federal Register** if the agency publishes in the **Federal Register** a written finding that the rule is being promulgated in response to an emergency that makes timely compliance with section 604 impracticable.

Because the October 4, 1996, final rule was published on an emergency basis in order to give affected growers the opportunity to make planting decisions for the 1996–97 crop season on a timely basis, the rule was published without the regulatory flexibility analysis. Instead, as provided by section 608 of the Act, the rule included a written finding that compliance with section 603 and timely compliance with section 604 of the Act was impracticable. We further stated that the rule may have a significant economic impact on a substantial number of small entities and, if that were the case, that we would discuss the issues raised in accordance with section 604 of the Act in a final regulatory flexibility analysis that would be published in a future **Federal Register**. We have now completed the required regulatory flexibility analysis, and it is set forth below.

I. Introduction

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this analysis examines the economic impact, costs, and benefits to small entities of the October 4, 1996, Karnal bunt final rule, as well as impacts attributable to the interim regulations.

On March 8, 1996, Karnal bunt was detected in Arizona during a seed certification inspection done by the Arizona Department of Agriculture. On March 20, 1996, the Secretary of Agriculture signed a ''Declaration of Extraordinary Emergency'' authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas. In an interim rule effective on March 25, 1996, and published in the **Federal Register** on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), the Animal and Plant Health Inspection Service (APHIS) established the Karnal bunt regulations (7 CFR 301.89–1 through 301.89–11), and quarantined all of Arizona and portions of New Mexico and Texas because of Karnal bunt. The regulations define regulated articles and restrict the movement of these regulated articles from the quarantined areas.

After the regulations were established, Karnal bunt was detected in seed lots that were either planted or stored in California. On April 12, 1996, the Secretary of Agriculture signed a ''Declaration of Extraordinary Emergency'' authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within California. In an interim rule effective on April 19, 1996, and published in the **Federal Register** on April 25, 1996, APHIS also regulated portions of California because of Karnal bunt (61 FR

18233–18235, Docket No. 96–016–5). In an interim rule effective on June 27, 1996, and published in the **Federal Register** on July 5, 1996 (61 FR 35107–35109, Docket No. 96–016–6), we removed certain areas in Arizona, New Mexico, and Texas from the list of areas regulated because of Karnal bunt. That list was amended in a technical amendment effective on July 9, 1996, and published in the **Federal Register** on July 15, 1996 (61 FR 36812–36813, Docket No. 96–016–8). In an interim rule effective June 27, 1996, and published in the **Federal Register** on July 5, 1996 (61 FR 35102–35107, Docket No. 96–016–7), we amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of actions taken by the Secretary to prevent the spread of Karnal bunt.

In a proposed rule published in the **Federal Register** on August 2, 1996 (61 FR 40354–40361, Docket No. 96–016–10), we proposed to amend the regulations to establish criteria for levels of risk for areas with regard to Karnal bunt and for the movement of regulated articles based on those risk levels, and to establish criteria for seed planting. A rule finalizing these provisions was published in the **Federal Register** on October 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14). Although that final rule did not change or make final the interim rule on compensation published in the **Federal Register** on July 5, 1996, this analysis necessarily addresses the role and impact of those interim compensation provisions, which remain in effect.

II. Need for Regulation

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*). Upon detection of Karnal bunt in Arizona, the imposition of Federal quarantine and emergency actions was a necessary, short-run, measure taken to prevent the interstate spread of the disease to other wheat producing areas in the country. The intent of the quarantine was to immediately contain the disease in the outbreak area, so that eradication could be eventually achieved. In dealing with a new disease outbreak, eradication is a reasonable first objective as long as national disease-prevalence data indicate that eradication remains a viable option. The establishment of Karnal bunt in the United States would have significant economic ramifications on the U.S. wheat export market, given that approximately 50 percent of exports are to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur. The benefits of the regulatory program can thus be viewed as the avoidance of potential losses to the wheat export market in the absence of regulation. The economic significance of the wheat industry required swift and coordinated action, which in this case was most efficiently achieved under Federal coordination.

Wheat intended for domestic processing and export is often blended at elevators to establish lots of uniform quality. Except for those occasions where a specific producer's wheat is processed separately under contract to a miller, the elevator's supply of wheat usually consists of a mix of many varieties from many producers and areas. For this reason, Federal oversight is needed to safeguard against cross-contamination and to instill confidence from both domestic and foreign buyers. Thus, it is conceivable that, without Federal intervention, individual States and importing countries would place their own, perhaps more severe, restrictions on wheat shipments.

The Karnal bunt quarantine that was initially established was necessarily broad due to the lack of data available at the time as to the extent of the infestation. The discovery of Karnal bunt and subsequent quarantine and emergency actions occurred after production and marketing decisions had been made. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain. The impact was particularly severe on the wheat industry in the affected area because much of the crop is grown under contract at specified amounts and prices.

In order to alleviate some of these hardships and to ensure full and effective compliance with the quarantine program, compensation to mitigate certain losses was offered to producers and other affected parties in a regulated area. The payment of compensation is in recognition of the fact that while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominantly on a small segment of the affected wheat industry within the regulated area.

As additional information from sampling and testing became available in subsequent months following the outbreak, the Agency was able to ease the quarantine in order to minimize disruption to affected entities. Those changes, which were detailed in the October 4, 1996, final rule, established various risk categories for wheat planting for the 1996–97 crop, relieving unnecessary restrictions as the regulatory actions that are imposed on each category are based on the level of risk.

Subsequent sections of this analysis are structured as follows: Section III addresses the benefits of regulation to provide a perspective against which the regulatory policies were formed. The impact on the affected industry of the disease and subsequent quarantine actions, along with compensation to mitigate losses, are discussed in section IV. Section V provides a projection of the impact in the regulated areas based on risk categories for wheat planting in 1996–97. Other alternatives to the rule are discussed in section VI. The characteristics of the small entities within the regulated areas that were impacted by the disease and the quarantine are described in section VII. A summary of the analysis is provided in section VIII.

III. Benefits of the Federal Quarantine Program

The disease Karnal bunt causes production losses to wheat in the form of yield reduction due to the infestation of kernels, and reduction in the quality of grain. Roughly 4 percent of wheat fields in Arizona, and 0.04 and 14 percent of fields in Imperial and Riverside counties in California, respectively, were found to be infected with Karnal bunt.

The most economically significant impact of the disease, however, is inarguably its effect on the export market. This is because about half of U.S. wheat exports are to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur.[1] Eliminating the quarantine currently in place would jeopardize trade with those countries. Benefits of Federal quarantine, therefore, can be regarded largely as the avoided losses to the export market.

A 50-percent reduction in U.S. wheat exports would likely reduce U.S. wheat prices by 30 percent, and lower net sector income by $2.7 billion. This estimate takes into account the dampening effect on domestic wheat prices, as wheat for export is diverted into the domestic consumption market, animal feed outlets, and ending stocks.

The reduction in U.S. wheat exports, however, would likely be less than 50 percent. First, not all countries that have restrictions against Karnal bunt would,

[1] About 1.2 billion bushels of wheat are exported from the U.S. annually, at a value of $4 billion.

in practice, strictly prohibit wheat imports from the United States. Second, while some markets would be captured by exports from countries that are free of Karnal bunt, U.S. wheat exports to countries that have no restrictions against Karnal bunt would likely increase. Lastly, substitution across domestic markets could provide added flexibility in meeting export demands. In the long run, the effects could be minimal depending on whether the market were to treat Karnal bunt as a quality issue and develop discounts for Karnal bunt.

Even a 10-percent reduction in wheat exports would have a significant effect on wheat sector income. It is estimated that a 10-percent decrease in U.S. wheat exports would cause a 22-cent per bushel drop in the wheat prices and a drop in wheat sector income of over $500 million. The effects of decreases in wheat exports of various percentages are presented in Table 1.

TABLE 1.—EFFECT OF A DECREASE IN WHEAT EXPORTS DUE TO KARNAL BUNT, 1997/98 CROP YYEAR

Item	Unit	Reduction in exports			
		0%	10%	25%	50%
Exports	mil. bu.	1,200	1,080	900	600
Total use	mil. bu.	2,462	2,394	2,295	2,138
Price	$/bu	3.85	3.63	3.29	2.68
Value of production	mil. dol.	9,543	8,898	8,146	6,637
Gross income [1]	mil. dol.	11,358	10,813	9,961	8,580
Variable expenses	mil. dol.	4,823	4,823	4,823	4,823
Net income	mil. dol.	6,536	5,990	5,138	3,758

[1] Includes market transition payments.

The 1996 Federal quarantine and emergency actions served to contain Karnal bunt in the initial outbreak area of the Southwest United States. The Federal program provided assurances to wheat importing countries that wheat from uninfected areas were monitored for Karnal bunt under the National Survey program, by sampling and testing of all wheat fields in the United States. Countries that are willing to accept wheat from the affected areas are also assured that grain from those areas are tested negative twice for the disease. Through these means, the Federal Karnal bunt program served to maintain and preserve the economic viability of the U.S. wheat export.

IV. Impact on the Affected Industry of Karnal Bunt and Regulatory Actions

The wheat industry within the regulated area is largely composed of businesses who can be considered as ''small'' according to guidelines established by the Small Business Administration (SBA). The characteristics of these firms as well as other small affected entities are provided in detail in section VII of the analysis. The following discussion on impacts is directly applicable to these entities.

The 1995–96 Karnal bunt regulations primarily affect persons or entities that produce wheat in a regulated area and/or move certain articles associated with wheat out of a regulated area. These articles are subject to certain regulatory actions to minimize the risk of spreading the causal agent of the disease to other uninfected areas. Regulated articles include:

1. Farm machinery and equipment used to produce wheat;
2. Conveyances from field to handler, such as farm trucks and wagons;
3. Grain elevators, equipment and structures at facilities that store and handle grain;
4. Conveyances from handler to other marketing channels, such as railroad cars;
5. Plant and plant parts, such as grain for milling, grain for seed, and straw;
6. Flour and milling byproducts;
7. Manure from animals fed wheat/wheat byproducts from quarantine area;
8. Used sacks;
9. Seed-conditioning equipment;
10. Byproducts of seed cleaning;
11. Soil-moving equipment;
12. Root crops with soil;
13. Soil.

As part of the Karnal bunt program, grain that tests positive for Karnal bunt is prohibited from moving out of the regulated areas. Other contaminated articles must be cleaned and sanitized before such movement. Millfeed must be treated to render inactive any disease causal agent before its addition into animal feed. Grain that tests negative may move under limited permit to approved mills. Commercial seed intended for planting is prohibited movement outside the regulated areas. Wheat seed to be planted within the regulated areas must be sampled and tested for Karnal bunt, and, for seed originating in a regulated area, treated prior to planting. Wheat growers in New Mexico and Texas whose wheat fields were planted with contaminated seed were ordered to destroy their crops.

These requirements have resulted in additional costs and claims of losses to affected individuals. Wheat producers and handlers claimed loss in market value of their grain; seed companies and researchers have claimed similar losses, including lost royalties due to the disruption in the development of seed varietals. Other types of claims made were for the cost of cleaning and disinfecting equipment and facilities, and damages to machinery caused by required treatment. Some of these claims are presented in Table 2.

TABLE 2.—IMPACT OF KARNAL BUNT QUARANTINE ACTIONS

Action	Regulated article	Affected entities	Numbers affected	Types of impacts due to KB and quarantine actions
Plow-down & Seed Plot Destruction.	• Fields planted with infected seed at pre-boot stage.	• Certain producers in Texas and New Mexico.	• 4100 acres ..... • 73 producers	• Loss in value of wheat crop destroyed.
	• Tools and Farm Equipment.	• Wheat producers in RA	• 145 growers	• Cost of cleaning.

TABLE 2.—IMPACT OF KARNAL BUNT QUARANTINE ACTIONS—Continued

Action	Regulated article	Affected entities	Numbers affected	Types of impacts due to KB and quarantine actions
	• Harvesters	• Farmer owned and custom combines.	• 389 combines	• Cost of cleaning.
	• Grain Trucks	• Grain haulers from field to grain elevators.	• 976 trucks	• Cost of cleaning.
Cleaning/Disinfection	• Grain storage and loadout facilities.	• Grain handling firms	• 17 elevators	• Cost of cleaning.
	• Harvesters	• Combine harvester owners.	• 36 to 40 combines	• Excess wear and tear on equipment.
	• Harvesters	• Combines involved in pre-harvest sampling.	• 5 to 10 combines	• Down-time on harvesters due to field testing.
	• Harvesters	• Custom combine companies.	• 5 companies	• Loss of income due to termination of contracts outside the RA.
	• Railcars	• Grain handling firms	• 10,880 cars (511 for positive grain).	• Cost of cleaning.
	• KB-positive milling wheat.	• Producers • Grain handling firms	• 145 growers • 6 handlers	• Loss in value of KB-positive wheat.
	• KB-negative milling wheat.	• Producers in RA • Handlers in RA	• 664 producers • 26.7 million bushels	• Loss in value of KB-negative wheat in RA.
	• Millfeed	• Millers, millfeed processors.	• 108 mills • 45,644 tons	• Millers reluctance to mill KB-negative wheat from RA.
	• Movement restrictions on wheat seed.	• Seed producers, researchers, and companies.	• 15 producers • 9 research firms • 20 seed marketers	• Loss in premiums. • Loss in market value. • Loss in royalties.
Restriction on Use or Marketings.	• Straw, Manure, Millfeed	• Straw producers and Handlers-Users of Straw. • Livestock producers using wheat or straw produced in the RA. • Flour millers • Millfeed processors/users.	• 25 growers • 3 contractors • 1 straw user, making of straw mats for erosion control. • 7 millers in 5 States • 2 millfeed processors	• Loss in income. • Increased cost of production.
	• Moratorium on wheat production on KB-positive fields.	• Producers with KB-positive properties.	• 109 growers • 13,674 acres	• Loss in income from wheat.
	• Soil on root crops grown on infected properties.	• Vegetable producers on KB-positive properties.	• Unknown number	• Increased cost of production.
	• Used seed sacks • Seed-conditioning equipment. • Byproducts of seed	• Seed research and marketing companies.	• 9 research firms • 20 seed marketers	• Increased cost of production.

Regulated area.

Estimated losses in value to the affected wheat industry in the Southwest, and compensation payments to mitigate some of these losses, are discussed below. The compensation committed to date for the 1995–96 crop year, published as an interim rule in the **Federal Register** on July 5, 1996, is as follows:

- Plow-down of infected fields in New Mexico and Texas;
- Loss in value of wheat testing positive for Karnal bunt for producers and handlers;
- Loss in value of wheat testing negative for Karnal bunt for producers;
- Cost of millfeed treatment;
- Cleaning and disinfecting of grain storage facilities.

1. Order To Plow Down Fields Planted With Infected Seed at Pre-Boot Stage

Most of the acreage ordered to be plowed down in April 1996 was farm production acreage located in four counties in New Mexico (Dona Ana, Hidalgo, Luna, and Sierra) and in two counties in Texas (El Paso and Hudspeth). This acreage amounted to approximately 4,100 acres. Other affected acreage were small seed experimental plots in Washington, California, and South Dakota that totaled perhaps 50 acres in all.

Many affected growers were able to plant immediately with vegetables and recover some losses by farming alternative crops on affected land. Fertilizer carry-over on destroyed wheat fields was possible for crops grown on affected fields. The impact on farm income that could have been derived from wheat, however, is uncertain, as it is unclear what the market returns to wheat grown on known affected fields would have been if the plow-down order had not occurred.

To offset for costs related to the plow-down, compensation was offered to 74 producers to cover the $25 per acre plowing cost plus the $275 per acre in average cost of production expenses (up until the time the crop was destroyed). In total, these producers received compensation of $1.23 million to cover operating costs incurred for growing wheat.

2. Cost of Sanitizing Grain Storage

Records of APHIS surveys in the regulated area indicate that 16 facilities have applied for the cost-share program. Compensation is committed to owners of contaminated grain storage facilities on a one-time only basis for up to 50

percent of the cost of decontamination, not to exceed $20,000. The total cost of cleaning facilities is estimated at $268,000, with an average compensation per facility of $8,375. Total cost of compensation, as of March 14, 1997, is estimated at $134,000.

3. Loss in Value of Wheat Testing Positive for Karnal Bunt

Wheat testing positive for Karnal bunt (either by pre-harvest sample or by testing at the elevator site) was required to go into sealed storage. This movement of wheat out of the regulated area was restricted (exiting only with a limited permit) and most went into local animal feed uses after treatment that rendered ineffective any Karnal bunt spore. This involved a heat-roll-flaking process commonly in use for small grains for feed formulas in California. Infected wheat lost value as it was diverted from its original purposes to the animal feed markets where it had to compete against lower-priced feed grains. Similar discounts would have likely existed in the absence of regulatory actions.[2] Program guidelines limited maximum compensation rates per bushel at $2.50; producers were asked to establish financial losses by calculating the difference between their contract price and actual prices received (if production was pre-contracted) or the difference between the estimated market value in May–June 1996 and their actual prices received (if production was not pre-contracted). Handlers were limited by the same maximum compensation amount, but determination of financial loss was based on the difference between their wheat purchase price and a $3.60 per bushel salvage value. They may have had additional costs to sort and treat their KB-positive wheat (after finding their KB-negative wheat was, in fact, KB-positive). Moreover, many handlers were reluctant to accept wheat from affected areas. This expedited procedure was offered to handlers in order to reduce administrative and recordkeeping costs by not addressing their losses on a contract-by-contract basis. It provided assistance that avoided a market collapse.

Eight percent of wheat production in the regulated area was found to be KB-positive. This level of production amounted to 2.32 million bushels of wheat taking a loss on average of $1.80 per bushel. It is estimated that at these rates, compensation would need to be $4.2 million in order to offset much of the loss in value of positive wheat to producers and handlers.

4. Loss in Value of Wheat Testing Negative for Karnal Bunt

At harvest, many wheat buyers refused to honor purchase contracts with producers for their grain, most of which had been tested negative for Karnal bunt by pre-harvest sample. These contracts had been agreed upon before the discovery of the disease and the declaration of quarantine. Also, wheat millers inside and outside the regulated areas became reluctant to buy wheat from grain handlers due to the increased cost of handling wheat from the regulated areas. Prices for wheat produced within the regulated areas, therefore, dropped regardless of its disease status.

For those growers who grew wheat under contract but who did not receive full contract price, compensation for loss in value of wheat testing negative for Karnal bunt is made based on the difference between the contracted price and the higher of the actual price received by the producer or the salvage value. (Salvage value was to equal whichever price was higher of the following: The average price paid in the region of the regulated area where the wheat was sold for the period between May 1 and June 30, 1996; or $3.60 per bushel.)

Compensation for growers of nonpropagative wheat not grown under contract is based on the difference between the estimated market price for the relevant class of wheat and the higher of the actual price received or its salvage value. (Salvage value was to be the same as above for contracted wheat.) The estimated market price is what the market price would have been if there were no quarantine for Karnal bunt, and is calculated for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

Ninety-two percent of the quantity produced for domestic milling (approximately 13 million bushels), plus the diverted quantity of KB-negative wheat that was originally intended to be exported (6 million bushels) could have experienced a price reduction. A portion of the remaining 7 million bushels intended for export that could not be sold at contract price could also experience a similar loss. The compensation formula for negative grain would suggest an average price drop of $1.10 per bushel. Thus, total losses due to the decline in market value of KB-negative wheat held by producers and handlers could total $28 million. This amount would be reduced by the amount of grain sold on contract which received full contract price. Producers would not have realized any losses on such production. Handlers may have incurred the full drop in value of their wheat sales depending on their previous contract prices. Given that information on contracts of individual producers and handlers is unknown, it is estimated that $28 million is the potential maximum amount of economic loss due to a drop in uninfected wheat grown in the regulated area.

5. Cost of Millfeed Treatment

Millfeed is a byproduct of wheat milling (the outer husk of the wheat kernel and other byproducts from milling). Approximately 25 percent of the raw wheat going into milling comes out as millfeed, while the remaining 75 percent is converted into flour. The sale of this milling byproduct contributes around 10 percent towards their gross income from milling. With the higher likelihood of Karnal bunt being present in the millfeed rather than the flour, restrictions were placed on the movement of millfeed produced from wheat grown in the regulated areas. These restrictions stated that millfeed, before their addition into animal feeds, were to be treated in order to render inactive any presence of Karnal bunt spores. For whole wheat kernels, this normally means that wheat undergo a heating-rolling-and-flaking process. Similar procedures, except for flaking, were assumed to be required in treating millfeed.

Many animal feed manufacturers commonly heat and treat ingredients in their feed products. The treatment requirements would not add any additional costs for them. For others, that restriction would place an additional processing cost of around $35 per ton to their operation. In order to encourage wheat marketings from the regulated areas and reassure millers that they would not incur any additional costs in handling uninfected wheat from a regulated area, a $35 per ton cost offset for heat treatment was offered to millers using KB-negative wheat produced in a regulated area. As of March 14, 1997, 108 requests have been made from millers in Minnesota, Missouri, Oregon, Wisconsin, and Virginia for a total of $1.6 million.

[2] Price discounts on both KB-positive and negative wheat could have been greater in the absence of regulatory action. While this may justify the regulatory action taken, the more convincing evidence is the large benefits of regulations to the greater part of the U.S. wheat industry outside of the regulated area.

6. Loss in Value of Seed

Under the 1996 quarantine and emergency actions, wheat seed produced in the regulated areas was prohibited from sale outside of the regulated areas. Wheat seed intended for planting within the regulated areas must be sampled and tested for Karnal bunt, and for seed originating in a regulated area, treated prior to planting. These restrictions are estimated to have a significant impact on the seed industry, largely due to the high value that is commanded by propagative seed. Seed companies contract with growers to produce seed wheat at about 30 to 50 cents per bushel premium over non-propagative wheat. This premium reflects the added precautions in production to ensure seed integrity and cleanliness. These companies were affected by the decline in market value resulting from the inability to move seed out of the regulated areas. It is estimated that 1.5 million bushels of wheat seed sustained loss in value of between $5 and 6 million. Seed developers, who earn returns on their investment in research and development of wheat varieties, also claim potential long-term losses in royalties; by receiving plant variety protection (or patent rights), seed developers then obtain royalties on future sales of wheat that are developed and sold for propagative purposes. Other economic losses suffered by the seed industry, but are difficult to quantify, include additional handling, storage, and finance costs on seed that could no longer be sold outside the regulated areas and costs to relocate wheat breeding operations outside of the regulated areas. It should be noted that, as stated in the interim rule of July 5, 1996, the Agency is developing a compensation plan for the loss in value of 1995–96 crop season seed. This plan will be published in a future edition of the **Federal Register**. A detailed discussion of impacts will be provided at that time.

7. Loss in Value of Straw

Many growers sell wheat straw to supplement their wheat grain income. Straw is sold for use at places such as racetracks, highway shoulders, feed yards, and parks for erosion control and to minimize muddy conditions. Wheat straw is listed in Karnal bunt regulations as a regulated article and is prohibited from being moved outside of the regulated areas. This has prevented many wheat straw producers from shipping their 1995–96 crop season straw to the intended markets. Some wheat straw was sold to alternative markets within the regulated areas for a lower price; other wheat straw was not able to be sold. These losses are estimated at about $200,000. Compensation for loss in income due to the restrictions placed on movement of straw is being considered.

8. Losses Related to Cleaning and Disinfecting Combine Harvesters and Other Losses

A number of claims have been raised by about 220 combine harvesters operating within the regulated areas, and those who travel outside of the regulated areas to harvest crops. These claims are related to the cleaning and disinfecting requirements of combine harvesters, which particularly affected custom harvesters who contracted with the Agency to do pre-harvest sampling for Karnal bunt. These claims involved: (1) Excess damage to machines caused by treatment protocols; (2) cleaning and disinfecting costs; (3) down time and extra operational costs associated with testing of samples and treatment protocols; and (4) loss of business as wheat producers inside and outside the regulated areas switched to custom harvesters that were not associated with the 1996 wheat harvest in the regulated areas. The most serious of these claims that can be directly attributed to the regulations involves the excess wear and tear due to the subsequent corrosion on combines that underwent extensive cleaning and disinfecting treatments according to protocol. The loss in value of these combines is estimated at $2 million. Compensation for this loss is being considered.

Other economic losses that have been claimed by affected individuals in the regulated areas but that are difficult to quantify include additional handling, storage, and finance charges incurred by handlers of nonpropagative wheat and various other claims by producers and handlers in the regulated areas such as cleaning and disinfecting railcars and trucks and buying wheat from alternate sources to fulfill contracts that originally stipulated wheat produced from the regulated area. The Agency continues to gather information for formulating compensation for seed producers, and other issues relating to compensation are also under consideration.

In sum, the impact on market value of the 1996 Federal quarantine in the southwestern United States is estimated to be $44 million. Roughly $35 million in compensation has been provided to cover for these losses (Table 3). The final amount of compensation for grain testing negative and for millfeed treatment will depend on the marketing distribution of the 1996 wheat crop and will be proportionately lower the greater the amount of wheat that is exported.

It is difficult to determine whether some of these losses would have been incurred in the absence of regulation. Indeed, it could be argued that losses without Federal intervention would have been higher in the regulated areas, particularly in the long run, as the market imposes its own restrictions by refusing to accept shipments due to the inability to assess risk. Compensation payments for loss in value, while not accounting for every loss or expense due to the disease or regulation, limited the adverse impact on wheat sector income of affected individuals within the regulated areas.

TABLE 3.—ESTIMATED LOSS IN VALUE DUE TO KARNAL BUNT REGULATIONS, AND COMPENSATION TO DATE, 1995–96 CROP YEAR

[IN MILLIONS OF DOLLARS]

Action	Estimated loss in value	Compensation to date
1. Plowdown of NM and TX fields planted with infected seed	$1.2	$1.2
2. Cost of sanitizing storage facilities	0.3	0.1
3. KB-positive grain diverted to animal feed market	4.2	4.2
4. KB-negative grain that experienced loss in value	28.0	28.0
5. Millfeed treatment of KB-negative grain	1.6	1.6
6. Loss in value of seed	6.0	(1)
7. Loss in value of straw	0.2	(1)
8. Loss related to cleaning and disinfecting of combine harvesters	2.0	(1)

TABLE 3.—ESTIMATED LOSS IN VALUE DUE TO KARNAL BUNT REGULATIONS, AND COMPENSATION TO DATE, 1995–96 CROP YEAR—Continued

[IN MILLIONS OF DOLLARS]

Action	Estimated loss in value	Compensation to date
Total	44.0	35.0

Pending.

V. Conditions for Wheat Production and Utilization in a Regulated Area for the 1996–97 Crop Year

Based upon survey data identifying the location of fields that have tested positive, the regulations in effect during the 1996 harvest were modified in 1997 for some areas within the initial quarantine. The final rule published on October 4, 1996, set forth criteria by which fields in regulated areas would be classified into two risk classes in the 1996–97 crop year. The effects of being classified in a particular category are outlined in Table 4.

In each regulated area, all or a portion of that regulated area is designated as either being a restricted area or a surveillance area. There are two differences between being designated a restricted area and a surveillance area. First, grain from a restricted area that tests negative for Karnal bunt may move under a limited permit from the regulated area to designated facilities under safeguard and sanitation conditions; grain from a surveillance area that tests negative for Karnal bunt may move under a certificate to any destination without restriction. Additionally, millfeed from grain produced in a restricted area is required to be treated, whereas millfeed from grain produced in a surveillance area is not required to be treated.

Each restricted and surveillance area is further divided into individual fields within the respective areas. Each field within a restricted area will fall into one of three categories: (1) A field in which preharvest samples tested positive; (2) a field planted with known contaminated seed in 1995; or (3) any other field within the restricted area. In a surveillance area, each field will be designated as (1) a field planted with known contaminated seed in 1995; or (2) any other field in the surveillance area. In a restricted area, in fields in which preharvest samples tested positive, no Karnal bunt host crops may be planted in the 1996–97 crop season. The same prohibition applies to fields in both restricted areas and surveillance areas which were planted with known contaminated seed in 1995. Also, as noted above, millfeed from grain from a field in the ''any other field'' category in a restricted area must be treated; millfeed from a surveillance area need not be treated.

TABLE 4.—CONDITIONS FOR WHEAT PRODUCTION AND UTILIZATION IN A REGULATED AREA

Definition	Host planting	Seed	Decontamination	Millfeed	Survey	Disposition of grain
Restricted Area Category:						
1. Fields in which preharvest samples tested positive.	No host planting in 1996–97 crop season.	N/A	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	N/A	N/A	N/A.
2. Fields planted with known contaminated seed in 1995.	No host planting in 1996–97 crop season.	N/A	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	N/A	N/A	N/A.
3. All other fields within restricted area.	No restrictions	Tested and, if from regulated area, treated prior to planting only within regulated area.	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	Required, unless destination State controls disposition/movement.	Double tested: Sampled in field at harvest; composite sample prior to Movement.	Movement of grain testing positive restricted; grain testing negative may move under limited permit to designated facilities under safeguard and sanitation conditions.
Surveillance Area:						
4. Fields planted with known contaminated seed in 1995.	No host planting in 1996–97 crop season.	N/A	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	N/A	N/A	N/A.

TABLE 4.—CONDITIONS FOR WHEAT PRODUCTION AND UTILIZATION IN A REGULATED AREA—Continued

Definition	Host planting	Seed	Decontamination	Millfeed	Survey	Disposition of grain
5. All other fields located in definable area where no fields in risk level 1 are located..	No restrictions	Tested and, if from regulated area, treated prior to planting only within regulated area.	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	Not required ...	Double tested: Sampled in field at harvest; composite sample prior to movement.	Movement of grain testing positive restricted; grain testing negative may move under certificate. Safeguard and sanitation of railcars not required.

The number of wheat acres that is estimated to fall into the various risk categories in the 1996–97 crop season is presented in Table 5. The amount of wheat acres in the regulated area is estimated to be greatly reduced from the previous years largely due to factors affecting the wheat industry as a whole (in particular, the projected decline in export demand for U.S. wheat). Wheat acres are estimated to decline by 36 percent in the regulated areas of Arizona, an average of 24 percent in the three affected counties of California, and 20 percent each in New Mexico and Texas.

TABLE 5.—PROJECTED 1997 REGULATED WHEAT ACREAGE, BY RISK CATEGORIES [1]

Risk category	Arizona	California			New Mexico	Texas	Total acres
		Imperial Valley	Bard/ Winterhaven	Blythe			
	Acres						
Restricted Area	9,200	.....	40	450	3,239	494	13,423
Surveillance Area	105,800	90,000	3,960	4,050	4,128	3,906	211,844
Total 1997 Regulated Area	115,000	90,000	4,000	4,500	7,367	4,400	225,267
1996 Regulated Area	180,000	106,592	8,909	14,000	9,209	5,494	324,204

[1] Estimates obtained from the Karnal Bunt Task Force, Arizona.

Overall, the impact of the Karnal bunt restrictions is likely to be lessened for many growers and other individuals, as a large portion of the regulated acres falls into the less restrictive surveillance category. Wheat production can still occur on fields in the regulated areas (in restricted category 3), on land which was not previously planted with wheat in 1996. Growers who choose to plant wheat in these areas are minimally restricted by regulations as grain that tests negative for Karnal bunt can move under limited permit to designated facilities.

Approximately 10,000 acres in risk categories 1 and 4 are prohibited from planting wheat. The value of wheat production that could have been harvested from these fields, calculated at an average price for durum wheat before the disease outbreak of $5.50 per bushel, would have been less than $6 million.[3] The impact on growers with fields in these categories, however, is uncertain. While the restrictions deny income that could be earned from wheat, they do not preclude the planting of other non-host crops, such as barley, alfalfa, cotton, and vegetables. In many of the infected areas, especially on irrigated operations, wheat is either double-cropped or grown on rotation with other non-host crops. The impact on producers in these risk categories would therefore be minimized with rotation. Barley would likely be grown on these fields: county crop budget data from Arizona indicate that, except for barley, the historical net returns obtained from wheat production are actually lower than the net returns for all other crops.[4]

The required millfeed treatment would also impose additional costs on the production of grain from the regulated areas. It is estimated that about 3.4 million bushels of grain would be subject to this restriction at a cost of roughly $1 million.[5]

It should be noted that changes in the compensation plan to remunerate for certain losses are being developed and will be published in a future edition of the **Federal Register**. Information received through public comments and other forums are invaluable in refining regulatory policies regarding Karnal bunt. With no prior experience in regulating the disease, the improvement of the Karnal bunt program requires ongoing input from the public. This process will enable the Agency to better protect the wheat growing areas of the United States, while causing the least possible disruption to the affected areas.

VI. Consideration of Alternatives to the Rule

A number of alternatives to the quarantine were considered by the Agency in controlling the disease outbreak. One alternative was to limit the scope of the 1996 quarantine by regulating only fields that tested positive for Karnal bunt. This option was rejected for the following reasons. Karnal bunt was originally detected in many certified wheat seed lots produced in Arizona, as well as in some grain in storage from a previous harvest. The information available to the Agency indicated that seed from the infected lots were planted widely in parts of Arizona and California, and in a few counties in Texas and New Mexico. This infected seed could not be traced to specific fields because the process of seed certification in Arizona allows seed from different fields to be commingled

[3] The estimate is based on an average yield of 100 bushels per acre for durum wheat produced in the desert Southwest.

[4] Other rotational crops include alfalfa hay, sudan hay, upland and pima cotton, safflower, and lettuce.

[5] This estimate is based on a heat treatment cost of $35 per ton.

in making a seed lot. Because Karnal bunt spores can remain viable in soil for as long as 4 to 5 years, and because wheat is planted in rotation in the Southwest, the actual infestation would not be apparent until fields came into rotation with wheat. Moreover, the detection of Karnal bunt spores in some grain in storage from the 1993 harvest indicated that the disease had been in present for at least several years. Given that there is currently no feasible soil test, the disease, in this situation, could only be detected as wheat is planted. The unknown extent of the infestation in Arizona and California necessitated broader control actions than those offered by quarantining infected fields. In New Mexico and Texas, where wheat acreage planted with suspect seed was limited and the wheat crop was immature, regulatory actions were directed at plow-down of those fields.

Another alternative available to the Agency would be not to quarantine. This alternative was rejected as it could not be justified given the risk of spread of Karnal bunt to uninfected areas and the potential for significant losses in the wheat export market. The quarantine actions to prevent disease spread serve to instill domestic and foreign consumer confidence in the integrity of U.S. wheat. The 1995–96 Karnal bunt program provided pre-harvest sampling of all wheat fields; compensation for losses as a result of Agency actions; and remuneration to offset part of the additional costs in handling and treating wheat produced in the regulated area (through a millfeed cost offset and a cost-share facility clean-up program with grain handlers). Without Federal intervention, it is conceivable that farm income of wheat producers both within the affected area, and outside the regulated area, would have been more negatively impacted.

When the treatment protocols for regulated articles were established, few options to the requirements were made available to affected wheat growers, handlers, and combine owners. These specific protocols were based on the best scientific information available on disease management in other countries affected by Karnal bunt. Furthermore, the decision to require millfeed treatment, as with other treatment requirements, was based on risk assessments that were conducted to determine the acceptable level of risk of the various modes of transportation of the disease. Compensation is thus being considered to offset unanticipated losses and damages caused by the regulatory requirements.

VII. Characteristics of Small Entities Within the Regulated Area

The Regulatory Flexibility Act requires that agencies assess the impact of regulations on small businesses, organizations, and governments. A majority of the firms in the affected area can be classified as small based on criteria established by the Small Business Administration (SBA). Much of the analysis on impacts discussed in the previous sections are therefore applicable to these firms. Unless otherwise noted, the SBA's characterization of a small business for the categories of interest in this analysis is a firm that employs at most 500 employees, or has sales of $5 million or less. The SBA defines a ''small'' wheat producer as having sales of less than $500,000.

In addition to private businesses that produce and handle grain in the regulated area, there were a number of other parties, such as governmental and quasi-governmental entities and industry organizations, that were also affected by the quarantine. For example, farm organizations that represented producer interests were impacted by the reduced activity due to a change in farm receipts. Local governments may also have experienced a change in the business activity level, and thus tax receipts, due to lower farmer spending. Seed certification boards are expected to see lower levels of seed certification as the demand for seed is reduced. State and county departments of agriculture could also have experienced increased financial burdens as regulatory responsibilities related to Karnal bunt surveillance and protocol monitoring increased on the local level. The magnitude of these effects, however, are not quantifiable. The information below describes the number of firms affected and provides insight into the impact on small entities due to Federal regulations.

Number of Producers and Acreage in Regulated Area (RA)

There were 5,657 farms in the counties of the RA as reported in 1992 with over 1,501,089 acres.[6] About ⅓ of the reported total acreage was irrigated. There were 598 wheat growers in the counties of the RA: 236 in California (out of 2,236 wheat growers in the State); 310 in Arizona; 40 in New Mexico (out of 892 in the State); and 12 in Texas (out of 14,877 in the State). Total wheat acreage reported in these counties in 1992 was 176,753 acres producing 13.3 million bushels. Wheat acreage represented less than 12 percent of total farm acreage.

[6] Source: 1992 Census of Agriculture.

Characteristics of Producers in the RA

Similar cotton and vegetable production data suggest that the primary source of income in these areas is derived from cotton and vegetable production. Cotton acreage in the counties of the RA was reported at 496,284 acres on 1,301 farms in 1992. Vegetables grown for harvest was reported on 509 farms with 202,694 acres. The acreage and number of producers growing wheat, cotton, and other crops vary from year to year depending on rotations, price and weather expectations, and other factors. Wheat is often a rotation crop in cotton and vegetable crop production providing a more stable income while ''resting the soil'' and providing weed control. Common rotations call for wheat in one year in three. Data for the Pacific region indicate that the previous crop on 57 percent of the wheat acres in 1989 had crops other than wheat.[7] Forty-percent had wheat, while 2 percent had corn and 1 percent had sorghum as the previous crop.

Of the total 598 wheat farms in the counties of the RA, 577 (or 96.5 percent) were growing wheat on irrigated fields. Of the 598 wheat producers in the RA, 86 percent of producers harvested 499 acres or less of wheat. These 514 wheat producers are assumed to be classified in the SBA business classification as being ''small entities.'' It is assumed that the other 84 growers are excluded from this business classification. Wheat growers in the RA typically lack on-farm storage.

Acreage Affected

By 1995/96, the amount of planted wheat acreage in the counties of interest had increased; the total number of growers in the RA was reported at 882 growers (455 in Arizona, 354 in California, 72 in New Mexico, and 1 in Texas), with wheat acreage totaling over 300,000 acres. Approximately 145 growers were found to have grown KB-positive wheat, and 73 growers were issued plow-down orders. As a percentage of the total in the four States of the RA, quarantine actions affected less than 3.3 percent of producers, 3.75 percent of wheat acreage, but almost 8 percent of wheat production.

Based on the SBA's size definition, 86 percent of producers (514 out of 598) are assumed to be classified within the small business category. Thus, the major

[7] Source: Economic Research Service, *Characteristics and Production Costs of U.S. Wheat Farms*, 1989, October, 1993.

part of any impact from Karnal bunt or Karnal bunt regulations is assumed to fall on these individuals.

Harvesters

Harvesting equipment is expensive and specialized for many agricultural crops. With a cost of over $130,000 for a new combine and only a limited time of use, many wheat growers in the regulated area depend on custom operators or ''custom cutters'' to harvest their wheat crop. It is estimated that about 390 combines were needed to harvest the 1995/96 wheat crop in the regulated area, with much of it being supplied by custom cutters. There were probably 20 to 30 firms engaged in this business activity (not including individuals who may have done some custom cutting of neighboring properties). All firms are assumed to be classified in the SBA classification as being a ''small business.'' It is assumed that only a few of these firms, namely those that were subjected to extensive cleaning and disinfection if they had harvested many KB-positive fields, suffered losses to their machinery as a result of quarantine actions. Additional losses occurred because some harvesters were not allowed to bring their equipment to certain States.

Wheat Seed Dealers

Wheat seed dealers sell seed to growers to produce their crop for milling. They also represent seed wheat research firms in that they sell wheat seed that is grown to be used as seed for the next growing season or for export. This wheat seed is called private variety seed as it was developed by a private firm and has a plant variety protection ''patent'' on that variety. There are approximately 25 to 30 seed marketing firms in the RA; some specialize in acquiring seed production from the RA for export. Probably 3 to 4 seed wheat dealers have over 80 percent of the seed business in the RA. These firms were affected by quarantine actions, i.e., by the restriction on selling or transferring seed out of the RA. Some of these firms derive their income from other enterprises such as vegetable production, rather than solely from wheat production and marketing. The number of firms that can be classified as ''small'' cannot be determined due to the proprietary nature of sales records.

Seed Wheat Research Firms

Seed wheat research firms take the risk and have the expertise to develop new wheat varieties for future use. Many develop a relationship with a seed wheat dealer (who is then called an ''associate'') to market the developers' specific varieties. Seed wheat research firms use seed production in the RA as a basis for seed to be used in climates similar to the RA, e.g., the Mediterranean, or use production in the RA as seed increases'' to be used in Northern climates the following spring. There are approximately 5 to 9 commercial seed wheat research firms engaged in the RA, with perhaps 3 to 4 major firms conducting over 70 percent of research activity. Also, there are small firms in the RA that specialize in ''seed increases'' for varieties being developed by universities, private companies, and foreign countries. The number of firms that can be classified as ''small'' according to SBA standards cannot be determined due to the proprietary nature of sales records.

Custom Haulers

There are approximately 130 to 140 individuals in the RA that haul grain from fields directly after harvest to storage and load-out locations (referred to as grain handlers). Some of these individuals also haul farm machinery from field to field to prepare or harvest wheat and other crops. The number of firms that can be categorized as a ''small business'' is unknown.

Grain Handlers

Grain handlers store and unload nonpropagative wheat received from growers. Wheat is received by trucks, pickups, and farm tractors pulling either grain buggies or farm wagons. Ownership of the wheat is usually transferred from the grower to the grain handler. It is estimated that there are 92 such assembly sites in the RA (50 in Arizona, 33 in California, 8 in New Mexico, and 1 in Texas). Off-farm storage capacities are only available on a State-wide basis:[8] Arizona (22.3 million bushels), California (98.04 million bushels), New Mexico (15.63 million bushels); and Texas (840.2 million bushels). The SBA defines a small grain elevator as one that employs fewer than 100 employees. It is estimated that nearly all of the elevators in the regulated areas can be classified as ''small.''

Wheat Millers

The number of wheat millers for the four States are:[9] California (12, with 1 processing durum); Arizona (2, with 1 processing durum); New Mexico (none); Texas (7, with 1 processing rye). There were 24 millers in and around the RA that entered into limited permits with APHIS: 2 in Arizona, 1 in New Mexico, and 21 in California. Limited permit data indicate that millers in the following States were also affected: Minnesota, Oregon, Virginia, Missouri, and Wisconsin. The size of these operations could not be estimated in terms of their SBA classification as ''small'' or ''large'' businesses. However, these firms are likely to be classified as a ''small'' business.

Prepared Feed Manufacturers

The number of animal feed manufacturers and/or millfeed processors in the Riverside-San Bernardino primary metropolitan statistical area (PMSA) is 15, and there are 11 in Arizona.[10] Only 12 of these 26 establishments employed over 20 employees. The Riverside-San Bernardino PMSA data indicates that the 15 establishments in that area collectively employed a total of 600 workers with a $20.5 million payroll (8 establishments of the 15 employed more than 20 employees). Based on these data, it is estimated that these larger firms employ about 62 workers on average and smaller firms had 15 workers per firm. Similar data for Arizona show that 4 of the 11 establishments in that State employed more than 20 employees. Given these scant data and SBA's definition of a ''small business'' in this group (SIC 2048)—i.e., an establishment with fewer than 500 employees—it is assumed that all firms fall in SBA's ''small'' business category.

Feedlots

It is estimated that about 24 feedlots in the RA (presumably feeding beef cattle) were affected by the regulations. They were found in Arizona (16), New Mexico (3), and California (5). SBA's definition of a ''small business'' in this group (SIC 0211) is an establishment with sales less than $1.5 million. No sales data on these firms were available, so it is not possible to estimate the number of firms that do not fall in SBA's small business category.

Based on the above information, we have concluded that the majority of the impact of Karnal bunt and subsequent regulations falls on small businesses. It is conceivable, however, that without Federal intervention, individual States and importing countries would place their own, perhaps more severe, restrictions on wheat shipments from the regulated areas. The 1996 Karnal

[8] Source: Grain and Milling Annual 1996. Off-farm capacities may also reflect storage capacities of millers.

[9] See footnote 8.

[10] Source: U.S. Department of Commerce, Economics and Statistics Administration Bureau, Bureau of Census, various State reports on California and Arizona, Manufacturers—Geographic Area Series, 1992.

bunt program provided pre-harvest sampling of fields and other measures to ensure the quality of wheat from the regulated areas. The use of limited permits for uninfected wheat further facilitated the marketing flow of wheat, thereby enabling the wheat industry within the regulated areas to be preserved.

VIII. Summary and Conclusions

The imposition of quarantine and emergency actions against Karnal bunt was a necessary, short-run measure taken to prevent the artificial spread of the disease to other wheat-producing areas in the United States. The establishment of Karnal bunt would have had serious adverse impact on the wheat export market, as over half of U.S. wheat exports are to countries that maintain restrictions against imports from countries where Karnal bunt is known to occur. In the absence of regulatory action, it is conceivable that farm income both within and outside the regulated areas could have been further jeopardized.

Given the regulatory objective of disease eradication, the quarantine measures to control a new disease outbreak such as Karnal bunt is necessarily broad due to the lack of information on the extent of the outbreak. These actions, enacted after production and marketing decisions were in place, undoubtedly had an adverse impact on growers and other affected individuals; many were likely unable to recover unexpected costs. The loss in market value due to the quarantine is estimated at $44 million. The majority of affected individuals and firms can be classified as ''small'' based on criteria established by the Small Business Administration.

In order to reduce the economic impact of the quarantine on affected wheat growers and other individuals, compensation was provided to mitigate certain losses and expenses. The payment of compensation is in recognition of the fact that while a large portion of the benefits of regulation accrue to others outside the regulated area, the regulatory burden falls disproportionately on a small segment of the industry. Indeed, it could be argued that without compensation, the regulatory actions would not have been economically justified, as the costs of disease control that are borne now could have a greater weight than benefits that are received in the future.

Based upon our analysis, we have concluded that our quarantine measures were appropriate and justifiable when compared with the magnitude of the benefits achieved. Even a 10-percent reduction in wheat exports would have a significant effect on wheat sector income. It is estimated that a 10-percent decrease in U.S. wheat exports would cause a decline in wheat sector income of over $500 million.

As of March 14, 1996, compensation for the 1995–96 crop year is estimated at $35 million. While not accounting for every loss or expense due to the disease or regulation, compensation for loss in value lessened the adverse impact on wheat sector income within the regulated areas. Remunerations for other losses are also being developed.

As more information is obtained on disease prevalence, the number of regulated acres are reduced and restrictions for the 1996–97 crop season are modified to be commensurate with the level of risk. The impact on those that are affected by regulation would also likely be reduced; unlike in 1996, the 1997 restrictions on wheat planting are known in advance and can, therefore, be taken into account when cropping decisions are made.

Wheat acreage in the regulated areas is projected to decline from 1995–96 levels, largely due to decreased demand for U.S. wheat exports. Less than 5 percent of the acres in the regulated areas is prohibited from planting wheat. The impact on farm income due to this prohibition is uncertain, as wheat is normally rotated with other crops. Overall, the impact of the Karnal bunt restrictions on wheat production in the regulated areas is likely to be small, as wheat can still be grown on ample, available land that was not planted with wheat in 1996.

Done in Washington, DC, this 31st day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–8544 Filed 3–31–97; 3:19 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 560

[No. 97–28]

RIN 1550–AB05

Amendments Implementing Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) today is issuing a final rule implementing provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other actions, EGRPRA: expanded and clarified federal thrifts' lending and investment authority; amended the Qualified Thrift Lender (QTL) test; authorized OTS to grant anti-tying exceptions conforming to exceptions granted to banks by the Board of Governors of the Federal Reserve System (FRB); and modified OTS's oversight authority over bank holding companies that own savings associations. Today's rule implements these statutory changes in final form and enables thrifts to take advantage of the expanded flexibility and burden reduction afforded by EGRPRA.

EFFECTIVE DATE: April 3, 1997.

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SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 1996, Congress enacted the EGRPRA [1] which amended and clarified thrifts' lending and investment powers under sections 5 and 10 of the Home Owners' Loan Act (HOLA).[2] EGRPRA confirmed that federal savings associations may engage in credit card lending without limitation; enabled federal savings associations to engage in education lending without investment restrictions; [3] increased the 10% of assets limitation on federal savings associations' commercial lending to 20% of assets, provided that amounts in excess of 10% are used for small business loans as defined by the OTS Director; and amended the QTL test to provide that investments in education, small business, credit card, and credit card account loans are includable

[1] P.L. 104–208, tit. 12, 110 Stat. 3009 (September 30, 1996).

[2] 12 U.S.C. 1464, 1467a, respectively.

[3] HOLA, § 5, previously limited education loans to 5% of a thrift's total assets. 12 U.S.C. 1464(c)(3)(A).

without limit for purposes of satisfying the QTL test.[4]

EGRPRA also authorized the OTS Director to issue regulations granting exceptions to anti-tying provisions in section 5(q) of the HOLA,[5] provided the exceptions are consistent with the HOLA and conform to exceptions granted by the FRB to banks. Finally, EGRPRA eliminated OTS supervision of holding companies that control both a bank and a savings association and that are registered as bank holding companies with the FRB.

On November 27, 1996, OTS issued an interim final rule enabling thrifts to take immediate advantage of the expanded flexibility and burden reduction afforded by EGRPRA.[6] The interim final rule included definitions of credit card, credit card account, small business, and small business loans. These definitions enabled thrifts to apply the newly modified QTL test and to exercise new investment authorities. OTS also streamlined its regulations by removing certain unnecessary QTL provisions from the Code of Federal Regulations, and added a new regulatory anti-tying exception that conformed to the FRB's safe harbor for combined balance accounts. OTS requested comment on any issues raised by the newly implemented regulations.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the interim final rule closed on January 27, 1997. Nine commenters, including five financial institution trade associations and four federal savings associations, responded to the request for comment. Commenters generally supported OTS's efforts to implement expeditiously EGRPRA's new provisions. Several commenters suggested that OTS modify some provisions, including adopting a safe harbor for loans to small businesses. Specific comments addressing various sections are discussed where appropriate in the section by section analysis below.

B. Section-by-Section Analysis

Section 560.3—Definitions of Credit Card and Credit Card Account

Section 2303(g) of EGRPRA requires the OTS Director to issue regulations defining the term ''credit card'' in order to enable thrifts to apply the newly modified QTL test.[7] This modified QTL test permits loans ''made through credit cards or credit card accounts'' to be counted as qualified thrift investments (QTI) without restriction. The definition of ''credit card'' and ''credit card account'' also provides federal thrifts with guidance in exercising their authority to ''invest in, sell, or otherwise deal in * * * loans made through credit cards or credit card accounts'' under section 5(c) of the HOLA. As revised by section 2303(b) of EGRPRA, section 5(c) authorizes federal thrifts to engage in credit card lending without any percentage of assets investment limitation.[8] Commenters generally agreed that it was appropriate for OTS to consistently define ''credit card'' and ''credit card account'' for both section 5(c) and section 10(m) of the HOLA.

Credit card. OTS based the regulatory definition of ''credit card'' on the plain language definition of ''credit card'' in Black's Law Dictionary.[9] Four commenters addressed the substance of this definition. Two commenters supported the use of the Black's Law Dictionary definition. These commenters asserted that this definition is easy to understand and consistent with EGRPRA's goal of providing thrifts greater investment flexibility. Two other commenters suggested that OTS employ the similar, but not identical, definition of ''credit card'' in the FRB's Truth in Lending Regulation at 12 CFR Part 226 (Regulation Z). Regulation Z defines credit card as ''any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.'' 12 CFR 226.2(a)(15). These commenters noted that the banking industry is familiar with Regulation Z and that uniform regulations would reduce the complexity of Federal regulation of the banking industry.

To enhance uniformity and consistency among the federal banking agencies, the OTS has adopted the definition of ''credit card'' in Regulation Z for purposes of the final EGRPRA amendments.

Credit Card Account. The interim rule defined ''credit card account'' as a credit account established in conjunction with the issuance of, or the extension of credit through, a credit card. The term includes loans made to consolidate credit card debt, including credit card debt held by other lenders, and participation certificates, securities and similar instruments secured by credit card receivables.

Two commenters supported including investments in loan pools that issue securities backed by credit card loans in the definition. These commenters noted that HOLA specifies that ''any reference to a loan [herein] * * * includes an interest in such loan * * *''[10] and, thus, implicitly includes securities backed by credit card accounts and receivables. One commenter argued that the inclusion of securities backed by credit card loans is beyond congressional intent because such debt instruments are essentially securities rather than loans.

OTS and its predecessor agency have long authorized federal savings associations to make a loan secured by an assignment of loans to the extent that the thrift may make or purchase the underlying loans.[11] Thus, the final rule continues to provide that loans made through credit cards and credit card accounts encompass investments in loan pools that issue securities backed by credit card loans.

Two commenters agreed with OTS's inclusion of credit card debt consolidation loans in the definition of ''credit card account.'' These commenters argued that such loans are, in economic substance, credit card loans. One commenter requested OTS to clarify that consolidation loans include other consumer debt such as personal or automobile loans. Another commenter argued against the inclusion of credit card debt consolidation loans, asserting that credit card debt consolidation loans, in essence, are consumer installment loans that may include non-credit card debt.

OTS believes that, in enacting EGRPRA, Congress intended to give thrifts the flexibility for innovation with respect to the terms and conditions of particular credit card products. Accordingly, OTS believes that a broad definition of credit card account within the limits of safety and soundness is consistent with congressional intent of EGRPRA and HOLA. Additionally, OTS does not consider loans that are used to consolidate other consumer debt such as personal or automobile loans to be credit card debt consolidation loans and would object to a thrift's treatment of loans consolidating both credit card and non-credit card related debt as a credit card account loan. Accordingly, the definition of credit card account is unchanged in the final rule.

OTS reiterates that § 560.30 of OTS's regulations, which implements the statutory credit card authority, permits

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[4] EGRPRA also permitted savings associations to substitute the tax code's ''domestic building and loan association'' test for compliance with the amended QTL test. *See* Section 2303(e) of EGRPRA.

[5] 12 U.S.C. 1464(q).

[6] 61 FR 60179 (November 27, 1996).

[7] *See* 12 U.S.C. 1467a(m).

[8] EGRPRA, section 2303(b), amending HOLA § 5(c), to be codified at 12 U.S.C. 1464(c)(1)(T).

[9] Black's Law Dictionary 367 (6th ed. 1990).

[10] 12 U.S.C. 1464(c)(6)(B).

[11] 12 CFR 560.31(c), as added 61 FR 50951, 50974 (September 30, 1996).

federal thrifts to engage in the full range of credit card operations authorized by HOLA. Under this regulation, however, OTS reserves the right to establish investment limits on a case-by-case basis if an institution's concentration in credit-card-related loans presents a safety and soundness concern.[12] As with any expansion of a line of business, institutions that expand their credit card lending pursuant to today's rule must do so in a safe and sound manner. Institutions planning any significant increase in these types of loans should prepare thorough business plans, acquire the necessary personnel and expertise, and establish adequate systems to identify and control risks associated with these products. OTS will monitor these lending activities, utilizing off-site surveillance and the on-site examination process.

Section 560.3—Definitions of Small Business and Small Business Loans

Section 2303(g) of EGRPRA requires the OTS Director to issue regulations defining ''small business'' for the purposes of the newly modified QTL test, which permits savings association to count small business loans as QTI without restriction under section 10(m) of the HOLA. Section 2303(c) of EGRPRA also directs the OTS Director to define ''small business loans'' in connection with the newly amended section 5(c) of the HOLA, which expands federal thrifts' commercial lending authority from 10% to 20% of assets, provided the amount in excess of 10% of assets is used solely for small business loans.[13]

To promote a harmonious interpretation of the statute, the interim final regulation defined ''small business'' and ''small business loan'' once for purposes of both HOLA provisions. OTS tied these regulatory definitions to the eligibility criteria established by the Small Business Administration (SBA) under section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as implemented by SBA's regulations at 13 CFR Part 121. OTS specifically solicited comment whether these SBA standards were the most appropriate basis for the definitions of small business or small business loans under the HOLA. The OTS also solicited comment on whether the agency should, for the sake of simplicity, include in its definition a *de minimis* safe harbor based on annual sales or some other criteria.[14]

Of the seven commenters addressing the small business definitions, four supported the use of SBA's regulatory definitions (either alone or in combination with a *de minimis* safe harbor). These commenters indicated that most lenders and small businesses are familiar with SBA's size eligibility standards, and asserted that the use of SBA's standards would promote regulatory uniformity among the agencies and would reduce regulatory compliance burdens.

Three other commenters contended that thrifts are unfamiliar with SBA's size eligibility standards. These commenters also asserted that the SBA definitions are too complex to apply in day-to-day commercial lending decisions since the SBA's criteria require knowledge of the borrower's precise line of business, as categorized and subcategorized by SBA's regulations. For some businesses, SBA's regulations rely on a firm's number of employees. For other businesses, the SBA definitions are based on the company's asset size or annual receipts. These commenters contended that the application of SBA definitions would require thrifts to gather additional data unrelated to lending decisions, and to make time-consuming determinations of SBA industrial classifications. They concluded that the use of the SBA definitions would impose additional burdens on thrifts' commercial lending activities, and would limit thrifts' incentive to pursue small business lending, contrary to the spirit of EGRPRA.

Six of the seven commenters suggested that OTS adopt a safe harbor in place of or as an alternative to the SBA definitions. These commenters reasoned that a safe harbor threshold would provide additional flexibility in qualifying businesses as eligible for small business loan categorization. The commenters suggested a variety of safe harbor standards, expressed in terms of annual receipts, number of employees, and/or loan amount of a business borrower.

One commenter noted that savings associations are required to report the aggregate number of loans made to businesses with gross annual revenues of $1 million or less pursuant to the OTS's Community Reinvestment Act (CRA) regulations.[15] This commenter also asserted that FRB Regulation B,[16] which implements the Women's Business Ownership Act of 1988, also uses the $1 million annual receipts standard to determine whether a business constitutes a small business. For consistency, the commenter suggested that OTS adopt the same standard. A second commenter, a bank trade association, did not support the safe harbor, but also recommended that if OTS decided to establish a threshold, it should use the $1 million sales standard to be consistent with the CRA and FRB regulations.

A third commenter preferred a safe harbor of $20 million in annual sales. This commenter represented that this amount was within the range of dollar amounts that SBA currently uses in its definitions. The commenter also observed that small businesses with $20 million or less in annual sales typically employed fewer employees and borrowed smaller amounts.

Two commenters suggested that OTS adopt a safe harbor based on annual receipts *or* the number of employees of a business. In other words, if a business has $5 million or less in annual receipts or 500 or fewer employees, it should automatically be deemed a small business regardless of its line of business. These commenters indicated that these thresholds were predominant among the myriad business types included in SBA regulations.

Finally, one commenter suggested that OTS define small business loans as business loans of $1 million or less that are made to borrowers that do not have more than 1,000 employees at the time such loans were made. This commenter explained that large and medium sized businesses are unlikely to negotiate

[12] 12 CFR 560.30, n. 5, 61 FR 50951, 50973 (September 30, 1996).

[13] Federal thrifts have long been authorized to make loans secured by business or agricultural real estate in amounts up to 400% of capital, 12 U.S.C. 1464(c)(2)(B). Prior to EGRPRA, federal thrifts could only make additional secured and unsecured loans to businesses and farms in amounts up to 10% of total assets. 12 U.S.C. 1464(c)(2)(A).

[14] The SBA Reauthorization Act of 1994, 15 U.S.C. 632(a)(2)(C), provides that unless specifically authorized by statute, no federal agency may prescribe a size standard for categorizing a business concern as a small business unless such size standard is made subject to public notice and comment, makes certain size determinations, and is approved by the SBA Administrator. OTS solicited comment regarding whether EGRPRA § 2303(g) constitutes a specific authorization within the meaning of 15 U.S.C. 632(a)(2)(C). Commenters addressing this issue believed that EGRPRA gave OTS authorization to define ''small business'' for purposes of the HOLA. Section 2303(g) of EGRPRA requires the Director to ''issue such regulations as may be necessary to define the term 'small business' '' for the purposes of the QTL requirements at section 10(m) of the HOLA. Similarly, under section 5(c)(2)(A) of the HOLA, as amended by section 2303(c) of EGRPRA, savings associations are authorized to invest in ''small business loans, as that term is defined by the Director.'' OTS believes that these statutes constitute specific authorizations to define ''small business'' within the meaning of 15 U.S.C. 632(a)(2)(C).

[15] 12 CFR 563e.42(b)(1)(iv). Small business loans for purposes of the CRA regulations, however, are defined by reference to the Thrift Financial Report, which is based on the amount of the loan. *See* 12 CFR 563e.12(t).

[16] 12 CFR 202.9(a)(3).

loans of $1 million or less and described the 1,000-employee level as the most representative level of employment in SBA regulations.

After reviewing these comments, OTS has determined to adopt alternative standards for determining when an extension of credit qualifies as a ''small business loan'' for purposes of thrifts' small business lending authority and the QTL test. OTS believes that this alternative approach will afford thrifts maximum flexibility to participate in small business lending activities consistent with safety and soundness.

First, OTS will continue to tie its definition of ''small business'' to the eligibility criteria established by SBA and implemented by SBA's regulations at 13 CFR Part 121. A loan to a business qualifying as a ''small business'' under SBA's regulations will qualify as a ''small business loan'' for purposes of HOLA § 5(c) lending authority and as a ''loan to a small business'' for purposes of the QTL test at HOLA § 10(m). For lenders and small businesses familiar with SBA's size eligibility standards, this alternative will provide a well-established mechanism for thrifts to expand their small business lending. By relying on SBA's definition, OTS also will promote regulatory uniformity among the agencies and will lessen the regulatory compliance burden on the small business community.

As an alternative mechanism, OTS is adopting a safe harbor threshold based on loan amount. Under the final rule, a loan of $1 million or less will generally be deemed a small business loan (or a loan to a small business) for purposes of thrifts' small business lending authority and the QTL test. This safe harbor provides thrifts with a simple, easy to apply, mechanism for qualifying loans as small business loans. This standard should enhance small business lending without adding an unnecessary layer of complexity to day-to-day commercial lending.

OTS believes that a threshold loan amount would be an appropriate safe harbor. OTS already uses a $1 million loan amount to define small business loan for purposes of its CRA regulations.[17] OTS also relies on a $1 million loan threshold for purposes of reporting small business loans to Congress pursuant to requirements of the Federal Deposit Insurance Corporation Improvement Act (FDICIA).[18] OTS's Thrift Financial Report (TFR) currently requires thrifts to annually report ''Loans to Small Businesses and Small Farms'' described in the TFR instructions as business loans in the amount of $1 million or less.[19] Furthermore, as noted by at least one commenter, large and medium sized businesses are unlikely to negotiate loans of $1 million or less. Indeed, a recently issued FRB report states that ''[s]urvey data indicates a high correlation between loan size and borrower size, and most small loans likely are to small businesses.'' [20]

Accordingly, the final rule defines small business loans and loans to small businesses, in part, by cross-reference to the TFR instructions. The use of these loan thresholds is consistent with OTS regulatory and reporting requirements and, additionally, does not pose any threat to safety and soundness.[21]

The final rule defines small business loans and loans to small businesses to include a loan (including a group of loans to one borrower) that meets the original amount restrictions and other criteria for loans to small businesses and small farms under the TFR. Savings associations must combine and report multiple loans to one borrower on an aggregate basis, rather than as separate loans in determining whether the loans fall within the threshold. Accordingly, multiple loans made by a savings association to the same borrower would not qualify as small business loans or loans to small businesses, if the aggregated loans would exceed the TFR threshold amounts.

OTS determined not to base the safe harbor threshold on annual receipts or sales. Unlike loan amount, which information is readily available to thrifts, the concept of annual receipts or sales may require some careful and potentially complex determinations with regard to the amount and timing of income.[22] OTS also determined not to base the safe harbor threshold on employee level. Unlike loan amount, thrifts do not necessarily obtain data regarding employee level as part of the typical loan underwriting process. Nor is this information readily available to thrifts. Employee levels are also subject to greater fluctuation and more difficult to substantiate than loan amount.

OTS believes that the alternative mechanisms for qualifying borrowers for small business loans will provide thrifts with the flexibility needed to pursue small business lending. This approach should also increase available credit to small businesses by creating incentives for thrifts to expand small business lending in a safe and sound manner.

Sections 563.50, 563.51, 563.52—Revisions to the QTL Test

Section 2303 (e) and (g) of EGRPRA substantially amended the QTL test. As a result of these statutory reforms, savings associations can now engage in substantial small business, agricultural, credit card, educational, and other consumer lending and remain in QTL compliance.[23]

The interim final rule did not codify the statutory amendments in OTS regulations. Instead, OTS removed all QTL provisions from its regulations and chose to rely directly on section 10(m) of the HOLA to govern this area. OTS believed that HOLA's detailed QTL requirements, combined with relevant handbook guidance and the new regulatory definitions discussed above, provide adequate direction to the thrift industry and OTS examination staff with respect to QTL compliance. This approach is consistent with OTS's effort to streamline its regulations and remove duplicative requirements pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).[24]

No commenter addressed this issue. Accordingly, OTS is adopting its final rule without change.

Section 563.36—Tying Restrictions

Section 5(q) of the HOLA prohibits a savings association from, *inter alia*, varying the price charged for a product or service (the tying product) based on whether the customer obtains an additional product or service (the tied product) offered by the association or its service corporation or affiliate, unless the additional product or service is a loan, discount, deposit or trust service (''traditional bank products''). The Bank Holding Company Act Amendments of 1970 (BHCA Amendments) contain a similar anti-tying provision applicable

[17] 12 CFR 563e.12(t). The CRA regulations of the other federal banking agencies contain the same definition.

[18] FDICIA § 122, 12 USC 1817 note, requires the federal banking agencies to collect annually from insured institutions information on small business and small farm lending as the agencies may need to assess the availability of credit to these sectors of the economy. The Bank Call Report contains the same $1 million loan threshold for bank reporting purposes.

[19] Pursuant to TFR instructions, loans to small farms are considered to be farm loans with ''original amounts'' of $500,000 or less.

[20] ''Information on Depository Credit for Small Businesses and Small Farms'' (October 1996) p. 1. FDICIA § 477, 12 USC 251, requires the FRB to collect and publish annually information on the availability of credit to small businesses and small farms.

[21] OTS may reevaluate this threshold after thrifts have had some experience with its application.

[22] *See* 13 CFR 121.104, which defines ''annual receipts'' for SBA purposes.

[23] For a more complete discussion of EGRPRA's amendments to the QTL test as well as the federal thrifts' branching authority, refer to the preamble to the interim final rule, 61 FR 60179–60180.

[24] 12 U.S.C. 4803.

to banks and authorizes the FRB to grant exemptions by regulation or order from such provisions.[25] Prior to EGRPRA, the HOLA did not grant exemptive authority to OTS.

Section 2216 of EGRPRA amended section 5(q) of the HOLA to authorize the OTS Director to issue regulations or orders permitting exceptions to the anti-tying prohibitions. These exceptions must not be contrary to the purposes of section 5(q) of the HOLA, and must conform to exceptions granted by the FRB to banks under the BCHA Amendments.

When the interim rule was issued, the FRB had promulgated four regulatory exceptions. For the reasons discussed in the interim rule, the OTS determined that there was no need to issue regulatory exceptions comparable to three of these exceptions.[26] These included FRB exceptions permitting: (1) a bank holding company, bank, or nonbank subsidiary to vary the consideration charged for a traditional bank product on the condition or requirement that a customer also obtain a traditional bank product from an affiliate; [27] (2) a bank holding company, bank or nonbank subsidiary to vary the consideration charged for securities brokerage services on the condition or requirement that a customer also obtain a traditional bank product from that bank holding company or bank or nonbank subsidiary, or from any affiliate of such company; [28] and (3) a bank holding company or nonbank subsidiary to vary the consideration for any extension of credit, lease or sale of property of any kind, or service, on the condition or requirement that the customer obtain some additional credit, property or service from itself or a nonbank affiliate.[29] Four commenters addressed the three FRB exemptions. All agreed that comparable OTS exceptions were unnecessary. The final rule is unchanged on this point.

The fourth FRB exception permits banks to vary the consideration for any product or package of products based on a customer's maintenance of a combined minimum balance in certain products specified by the bank varying the consideration (defined as ''eligible products''), if (i) that bank offers deposits, and all such deposits are eligible products, and (ii) balances in deposits count at least as much as non-deposit products toward the minimum balance.[30]

This regulatory exception permits banks to offer discounts to customers maintaining a combined minimum balance in deposit and non-deposit accounts, including brokerage and mutual fund accounts. As such, this regulatory ''safe harbor'' authorizes tying arrangements that, absent an exception, would be prohibited for savings associations, because the tied products would not necessarily be traditional bank products. In addition, savings and loan holding companies or affiliates are prohibited from offering such arrangements where one of the products involved is a savings association product (other than a traditional bank product).

The interim final rule included a comparable ''safe harbor'' exception for savings associations, savings and loan holding companies, and affiliates.[31] OTS concluded that this exception was not contrary to the purposes of section 5(q) of the HOLA because it did not present the anti-competitive effects that the HOLA's anti-tying provisions were intended to eliminate. Rather, the safe harbor enabled savings associations and their affiliates to offer a greater variety of banking products and services to their customers, and could enhance competition in the market place. This exception also ensured parity between savings associations and banks by enabling these institutions to offer a comparable range of products and services and, thus, enhanced competition among financial institutions consistent with the purposes of section 5(q) and the BHCA Amendments.

The OTS anti-tying exception at 12 CFR 563.36 conforms to the FRB's ''safe harbor'' for combined balance discounts. This safe harbor permits savings associations and their affiliates to offer discounts to customers maintaining certain combined minimum balance accounts. OTS also indicated that it may permit other exceptions under section 5(q) on a case-by-case basis upon determination that the exception is not contrary to the purposes of section 5(q), conforms to an exception granted by the FRB, and is consistent with safe and sound practices.

Three commenters supported OTS's adoption of this safe harbor exception. These commenters also agreed with OTS's decision to permit other exceptions on a case-by-case basis. Commenters believed that this flexible approach could expand the variety of products offered to customers in a rapidly changing marketplace and would enable thrifts to take full advantage of their holding company structure.

OTS's interim final rule did not require that all products offered pursuant to the safe harbor must be separately available for purchase. Although this condition applied to the FRB safe harbor,[32] the FRB had proposed to eliminate the condition in a proposed rule issued September 6, 1996.[33] OTS indicated it would reexamine this issue if the FRB's final rule did not eliminate the condition.

At least one commenter, a bank trade association, criticized the safe harbor for combined minimum balance accounts because it did not require that all products be offered separately for sale, contrary to the FRB safe harbor. Another commenter contended that there was no need for all items in a combined balance to be separately offered because there may be a rational economic need to offer certain products and services in a package form and that not offering each product separately does not necessarily raise anticompetitive issues.

In its final rule issued on February 28, 1997, the FRB in fact eliminated the separate availability requirement for combined balance discounts.[34] Accordingly the OTS is adopting the antitying safe harbor in its interim rule without change.

In the interim rule, OTS also solicited comment as to whether the agency should adopt regulatory amendments parallel to additional revisions proposed by the FRB. The FRB had proposed to rescind the provision in its regulation that extended the tying prohibitions to bank holding companies and their nonbank affiliates,[35] and had proposed that bank holding companies and their nonbank affiliates could engage in tying practices other than discounting, such as conditioning the availability of a

[25] 12 U.S.C. 1972.

[26] For a more detailed discussion of the three FRB exemptions and the OTS decision not to promulgate similar regulatory exemptions, *see* 61 FR 60181–82.

[27] 12 CFR 225.7(b)(1) (1996).

[28] 12 CFR 225.7(b)(2) (1996).

[29] 12 CFR 225.7(b)(3) (1996).

[30] 12 CFR 225.7(b)(4) (1996).

[31] The exception authority granted to OTS by amended HOLA § 5(q) is indirectly applicable to savings and loan holding companies and affiliates, because HOLA § 10(n) provides that, in connection with transactions involving the products or services of a savings and loan holding company or affiliate and those of an affiliated savings association, § 5(q) shall apply to savings and loan holding companies and their affiliates in the same manner as if they were savings associations.

[32] 12 CFR 225.7(c)(1)(1996).

[33] 61 FR 47242 (September 6, 1996).

[34] 62 FR 9290, 9323 (February 28, 1997).

[35] 12 CFR 225.7(a)(1996). Other aspects of the FRB's new rule need not be discussed here because they concern practices not prohibited for savings associations and their affiliates.

product on the purchase of another product.[36]

OTS requested comment on whether savings and loan holding companies and their non-bank affiliates should also be completely exempted from the tying restrictions. As noted above, the provision of law applying the tying restriction to savings and loan holding companies is statutory, not regulatory (as is the case for bank holding companies). Thus, OTS also requested comment on whether it would have legal authority to grant a complete exemption from section 10(n) of the HOLA.

Several commenters addressed this issue. Commenters generally agreed that OTS does not have authority to eliminate entirely restrictions on tying by savings and loan holding companies, because OTS does not have authority to grant exemptions from section 10(n) of the HOLA. However, none of the commenters disputed that OTS has authority to grant exceptions to savings associations pursuant to OTS's authority under section 5(q) of the HOLA to savings and loan holding companies.

The FRB, in its final rule, adopted its proposal to rescind that agency's regulatory extension of the tying prohibitions to bank holding companies and their nonbank affiliates.[37] Pursuant to section 10(n) of the HOLA, OTS does not presently appear to have the authority to except savings and loan holding companies and their affiliates entirely from all tying restrictions. Because OTS cannot completely except savings associations and their affiliates from tying prohibitions, OTS cannot adopt an exception precisely conforming to the FRB's elimination of regulatory restrictions on tying by bank holding companies. Nevertheless, the effects of OTS's inability to grant exceptions from section 10(n) are limited for two reasons. First, as previously noted, the section 10(n) restrictions do not apply unless the tying arrangement involves a savings association. Second, the exceptions promulgated under new section 5(q)(6) apply to savings and loan holding companies (and affiliates) as if they were savings associations.

As a final matter, one commenter noted that OTS has published no policies or guidance concerning the tying restrictions applicable to savings associations and their holding companies. This commenter recommended that OTS issue such a policy statement or guidance. This commenter suggested that the guidance should reflect OTS's position that section 5(q) permits the arrangements addressed in the first three FRB exceptions set forth at 12 CFR 225.7, and should contain examples of permissible practices under these exceptions. This commenter also suggested that FRB orders on tying arrangements could be used by thrifts as guidance.

OTS will consider these suggestions, particularly if thrifts indicate a need for such assistance after implementation of this final rule. In light of the differences between anti-tying statutes applicable to savings associations and banks, OTS does not believe it appropriate to adopt automatically orders issued by the FRB.

Sections 574.1, 574.2, 574.3, 575.2, 583.20, 584.2a—Regulation of Holding Companies

Section 2203 of EGRPRA eliminated OTS supervision of holding companies that control both a bank and a thrift, and are registered as a bank holding company with the FRB under the BHCA of 1956.[38] Accordingly, the interim final rule included: (1) revisions to OTS acquisition of control and holding company regulations to conform to EGRPRA's amendments to the Savings and Loan Holding Company Act; (2) an exception to the acquisition of control regulations clarifying that when a person acquires control of a bank holding company and the person is required to file a change of control notice with the FRB, no change of control notice is required to be filed with OTS; and (3) minor revisions to the Mutual Holding Company regulations to reflect the OTS position that section 2203 of EGRPRA does not affect its authority to regulate mutual holding companies, including mutual holding companies that have acquired a bank.

The one commenter addressing the issue concurred with OTS's implementation of EGRPRA. Accordingly, OTS adopts the described modifications without change.

III. Administrative Procedure Act

OTS has determined that the 30-day delay of effectiveness provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, may be waived in this rulemaking. Section 553(d) of the APA permits waiver of the 30 day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. OTS finds that good cause exists because the rule is substantially identical to the interim final rule that has been in effect since November 1996. The rule relieves various lending, investment, and tying restrictions for thrifts and merely conforms OTS regulations to EGRPRA's statutory changes. Accordingly, the final rule will be immediately effective upon publication in the **Federal Register**.

IV. Executive Order 12866

OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* do not apply. The final rule does not impose any additional burdens or requirements upon small entities and reduces burdens on all savings associations. The regulatory amendments implement statutory changes to the HOLA that relieve various lending, investment, and tying restrictions on thrifts and otherwise conform OTS regulations to EGRPRA.

VI. Unfunded Mandates Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995).

VII. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements take effect on the first date of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective on a day other than the first day of the next quarter. OTS believes that CDRIA does not apply to this final rule because it imposes no new burden on thrifts. For these reasons, OTS has determined that an immediate effective date is appropriate for this final rule.

List of Subjects 12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping

[36] The FRB noted that any tying arrangements permitted under these changes would be subject to the general provisions of the antitrust laws.

[37] 62 FR at 9312–9315, 9323.

[38] 12 U.S.C. 1841 *et seq.*

requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations by adopting as final the interim rule published at 61 FR 60179 (November 27, 1996), with the following changes.

PART 560—LENDING AND INVESTMENT

1. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

2. Section 560.3 is amended by revising the introductory text and the definitions for *credit card* and *small business loans* and *loans to small businesses* to read as follows:

§ 560.3 Definitions.

For purposes of this part and any determination under 12 U.S.C. 1467a(m):

* * * * *

Credit card is any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.

* * * * *

Small business loans and *loans to small businesses* include any loan to a small business as defined in this section; or a loan (including a group of loans to one borrower) that meets the original amount restrictions and other criteria for ''loans to small businesses and small farms'' as defined in the instructions for preparation of the Thrift Financial Report.

Dated: March 24, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–8011 Filed 4–2–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–01]

Establishment of Class D and Class E Airspace; Redmond, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Redmond, Oregon, Class D and Class E4 airspace areas to accommodate the commissioning of an Airport Traffic Control Tower (ATCT) at Roberts Field. Additionally, this rule redesignates existing Class E2 airspace as part-time to preclude the concurrent existence of the different classes of airspace at Redmond, Oregon, designated as surface areas.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Operations Branch, ANM–532.1, Federal Aviation Administration, Docket No. 97–ANM–01, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On January 29, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D and Class E4 airspace areas at Redmond, Oregon, to accommodate the commissioning of an ATCT at Roberts Field. Additionally, the FAA proposed to redesignate the existing Class E2 surface area as part-time to preclude the concurrent existence of different classes of airspace designated as surface areas (62 FR 4218).

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas extending upward from the surface of the earth are published in paragraph 5000, paragraph 6004, and paragraph 6002, respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations establishes Class D and Class E4 airspace at Redmond, Oregon. These areas are designated part-time. Additionally, the existing Class E2 surface area at Redmond, Oregon, is redesignated as part-time. These areas will be effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM OR D Redmond, OR [New]

Redmond, Roberts Field, OR
(lat. 44°15′14″ N, long. 121°09′00″ W)

That airspace extending upward from the surface to, and including, 5,600 feet MSL within a 5.1-mile radius of Roberts Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ANM OR E4 Redmond, OR [New]

Redmond, Roberts Field, OR
Deschutes VORTAC
(lat. 44°15′10″ N, long. 121°18′13″ W)

(lat. 44°15′10″ N, long. 121 °18′13″ W)

That airspace extending upward from the surface within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of Roberts Field to .9 mile west of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM OR E2 Redmond, OR [Revised]

Redmond, Roberts Field, OR
(lat. 44°15′14″ N, long. 121°09′00″ W)
Deschutes VORTAC
(lat. 44°15′10″ N. long. 121°18′13″ W)

That airspace within a 5.1-mile radius of Roberts Field, and within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of the airport to .9 mile west of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on March 21, 1997.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–8501 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AWP–23]

Establishment of Class E Airspace; Atwater, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Atwater, CA. The development of a VHF Ominidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 at Castle Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace to accommodate for the VOR SIAP to RWY 13 and other Instrument Flights Rules (IFR) operations at Castle Airport, Atwater, CA.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Atwater, CA (62 FR 4668). This action will provide adequate controlled airspace to accommodate a VOR SIAP to RWY 13 and other IFR operations to Castle Airport, Atwater, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Atwater, CA. The development of a GPS SIAP to RWY 13 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the VOR RWY 13 SIAP and other IFR operations at Castle Airport, Atwater, CA.

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. Therefore, this regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Atwater, CA [New]

Castle Airport, CA
(Lat. 37°22′04″ N, long. 120°33′30″ W).

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Castle Airport and within 7 miles each side of the 310° bearing from the Castle Airport, extending from the Castle Airport to 23 miles northwest of the airport, excluding the Merced, CA, Modesto, CA, and Oakdale, CA Class E airspace areas.

* * * * *

Issued in Los Angeles, California, on March 4, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–8497 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AWP–35]

Establishment of Class E Airspace; Fallbrook, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Fallbrook, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 to Fallbrook Community Airpark has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Fallbrook Community Airpark, Fallbrook, CA.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Fallbrook, CA (62 FR 6508). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 18 at Fallbrook Community Airpark, Fallbrook, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Fallbrook, CA. The development of a GPS SIAP to RWY 18 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 18 SIAP at Fallbrook Community Airpark, Fallbrook, CA.

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. Therefore, this regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Fallbrook, CA [New]

Fallbrook Community Airpark, CA
(Lat. 33°21′15″ N, long. 117°15′03″ W)

* * * * *

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Fallbrook Community Airpark and within 4 miles west and 5.3 miles east of the 014° bearing from the Fallbrook Community Airpark, extending from the 6-mile radius to 20.5 miles north of the airport, excluding the portion within the Camp Pendleton, CA, Class E airspace area.

Issued in Los Angeles, California, on March 14, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–8496 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–27]

Amendment of Class E Airspace; San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on February 25, 1997 (62 FR 8369), Airspace Docket No. 96–AWP–27.

EFFECTIVE DATE: 0901 UTC March 27, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–4578, Airspace Docket No. 96–AWP–27, published on February 25, 1997 (62 FR 8369), revised the description of the Class E airspace area at San Jose, CA. An error was discovered in the geographic coordinates for the San Jose, CA, Class E airspace area. This action corrects that error.

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at San Jose, CA, as published in the **Federal Register** on February 25, 1997 (62 FR 8369) (**Federal Register** Document 97–4578; page 8369, column 3), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP CA E5 San Jose, CA [Corrected]

By removing ''(lat. 37°22′00″ N, long. 121°08′04″ W, and lat. 37°22′00″ N, long. 121°24′04″ W.) and substituting ''(lat. 37°22′00″ N, long. 122°08′04″ W, and lat. 37°22′00″ N, long. 122°24′04″ W.)''.

* * * * *

Issued in Los Angeles, California, on March 4, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–8499 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM97–2–000; Order No. 594]

Statement of Compliance With Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996; Policy Statement

Issued March 26, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; policy statement.

SUMMARY: The Commission is issuing this Policy Statement in compliance with section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Section 223 of SBREFA requires each agency regulating the activities of small entities to establish a policy to provide for the reduction, and under appropriate circumstances, for the waiver of civil penalties for violations of statutory or regulatory requirements by small entities.

It is the policy of the Commission that to be considered for a reduction or waiver of a penalty, a small entity must not have a history of previous violations, and the violations at issue must not have been the product of willful or criminal conduct, or have caused loss of life or injury to persons, damage to property or the environment, or endangered persons, property or the environment. A small entity that complies with those standards is eligible for consideration for a waiver or reduction of a civil penalty. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. If an eligible small entity cannot meet the criteria for waiver of a civil penalty, it may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

The Commission reserves the right to waive or reduce civil penalties in circumstances other than those listed under this Policy if it is in the public interest to do so.

DATES: This rule is effective March 29, 1997.

FOR FURTHER INFORMATION CONTACT: Stuart Fischer, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, Telephone: (202) 208–1033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the ''Go to the FedWorld Telnet Site'' button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

STATEMENT OF PENALTY REDUCTION/ WAIVER POLICY TO COMPLY WITH SECTION 223 OF THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

I. Introduction

The Commission is issuing this Policy Statement in compliance with section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[1] Section 223 of SBREFA requires each agency regulating the activities of small entities to establish a policy to provide for the reduction, and under appropriate circumstances, for the waiver of civil penalties for violations of statutory or regulatory requirements by small entities.

It is the policy of the Commission that to be considered for a reduction or waiver of a penalty, a small entity must not have a history of previous violations, and the violations at issue must not have been the product of willful or criminal conduct, or have caused loss of life or injury to persons, damage to property or the environment, or endangered persons, property or the environment. A small entity that complies with those standards is eligible for consideration for a waiver or reduction of a civil penalty. An eligible small entity will be granted a waiver if it can demonstrate that it also performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. If an eligible small entity cannot meet the criteria for waiver of a civil penalty, it may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

The Commission reserves the right to waive or reduce civil penalties in circumstances other than those listed under this Policy if it is in the public interest to do so.

II. Background

A. SBREFA

President Clinton signed SBREFA into law on March 29, 1996. The stated purpose of SBREFA is, among other things, ''to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution oriented.'' [2]

Many of the provisions of SBREFA, such as congressional review of agency rulemaking, a right to judicial review under the Regulatory Flexibility Act (RFA), and amendments to the Equal Access to Justice Act became effective either on the date of enactment or within 90 days of that date. However, section 223 of SBREFA, entitled ''Rights of Small Entities In Enforcement Actions,'' takes effect by March 29, 1997, one year after enactment.[3] Section 223(a) of SBREFA requires each agency regulating the activities of small entities to establish a policy or program

[1] Pub. L. 104–121, 110 Stat. 860, *et seq.*, Section 201, *et seq.* (1996). Section 223 is part of Subtitle B of SBREFA, entitled ''Regulatory Enforcement Reforms.'' Subtitle B is codified as a note to 5 U.S.C. § 601 (1996), which is part of the Regulatory Flexibility Act. Because of this, we will use the session law citations in this policy statement.

[2] Pub. L. No. 104–121, 110 Stat. 858, Section 203(6) (1996).

[3] *Id.*, Section 223(a). In addition to the requirements of section 223, section 213(b) of SBREFA requires agencies regulating the activities of small entities to establish a program by March 29, 1997, for responding to inquiries concerning information on, and advice about, compliance with statutory and regulatory requirements. *Id.*, Section 213(b). The Commission has already established and publicized advice programs for small entities offered by its Office of Hydroelectric Licensing and Office of Pipeline Regulation, as well as the availability of assistance through the Enforcement Task Force Hotline. Additionally, Commission staff from the Office of General Counsel, the Office of Electric Power Regulation and the Office of Chief Accountant respond to compliance inquiries made by all entities, regardless of size. Thus, the Commission has complied with section 213(b).

providing for the reduction and, under appropriate circumstances, the waiver of civil penalties for violations of statutory or regulatory requirements by small entities.[4] Penalty reduction/waiver policies or programs are ''subject to the requirements or limitations of other statutes.'' [5]

1. Definition of ''Small Entity''

Section 221(1) of SBREFA defines the term ''small entity'' as having the same meaning as in section 601 of the RFA.[6] Section 601 of the RFA, in turn, defines ''small entity'' as ''small business,'' ''small organization'' and ''small governmental jurisdiction.'' [7]

Under Section 601(3) of the RFA, a ''small business'' has the same meaning as ''small business concern'' under section 632(a) of the Small Business Act,[8] unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after opportunity for notice and comment, establishes its own definition.[9]

Section 632(a)(1) of the Small Business Act defines a ''small business concern'' as an enterprise ''which is independently owned and operated and which is not dominant in its field of operation.'' [10] The SBA has applied the definition of small business to a number of specific industries based on the sizes of the enterprises and their affiliations.[11] The SBA defines a ''Natural Gas Transmission Company,'' which includes an interstate natural gas pipeline, as a small business if it has less than $5,000,000 in revenues.[12] The SBA considers an electric utility, including a hydroelectric project, a small business if it produces up to four million megawatt hours per year.[13]

When the SBA determines whether an enterprise is a small business, it counts the enterprise's affiliations. Family enterprises or enterprises in which the same individual or individuals have a controlling interest are aggregated together for this purpose.[14] If the aggregate total of the affiliated enterprises exceeds the size requirement for small businesses, none of the affiliated enterprises is considered a small business.

The RFA defines ''small organization'' as a not-for-profit enterprise which is independently owned and operated and not dominant in its field.[15] The RFA defines a ''small governmental jurisdiction'' as a governmental entity with a population of less than 50,000.[16]

2. Conditions and Exclusions

SBREFA does not mandate the content of a penalty reduction/waiver policy. Subject to the requirements or limitations of other statutes, section 223(b) of SBREFA suggests, but does not require, several conditions or exclusions that may be included in such a policy. These are: Requiring correction of the violation within a reasonable period of time; limiting the applicability of the reduction/waiver policy to violations discovered through participation in a compliance assistance or audit program operated or supported by the agency or a state; excluding small entities that have been subject to multiple enforcement actions by the agency; excluding violations involving willful or criminal conduct; excluding violations that pose serious health, safety or environmental threats; and requiring a good faith effort to comply with the law.[17] In addition to the suggested conditions and exclusions, section 223(a) of SBREFA states that ''under appropriate circumstances'' an agency may consider ability to pay in determining penalty assessments on small entities.[18]

B. The Commission's Civil Penalty Authority

The Commission has the authority to assess civil penalties under section 31(c) of the Federal Power Act (FPA),[19] section 316A of the FPA,[20] and section 504(b)(6) of the Natural Gas Policy Act of 1978 (NGPA).[21] The Natural Gas Act does not provide for civil penalties.

1. The FPA

Section 31(c) of the FPA provides for penalties up to $10,000 per violation per day and requires that:

> In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner.[22]

The factors the Commission considers in assessing civil penalties are: Whether the person had actual knowledge of the violation or constructive knowledge deemed to be possessed by a reasonable individual acting under similar circumstances; whether the person has a history of previous violations; whether the violation caused loss of life or injury to persons; whether economic benefits were derived because of the violation; whether the violation caused damage to property or the environment; whether the violation endangered persons, property or the environment; whether there were timely, untimely or no remedial efforts; and whether there are any other pertinent considerations.[23] The section 385.1505 factors are similar to the conditions and exclusions suggested under section 223(b) of SBREFA.

Under the ''other pertinent considerations'' factor, the Commission has considered the size of a project, the gross revenues earned and whether the entity relied on advice given by Commission staff. While the Commission is not required under the FPA to consider an entity's ability to pay, the Commission has considered that factor when the respondent raised the issue.[24]

The Commission also has civil penalty authority under section 316A of the FPA,[25] to remedy violations of sections 211, 212, 213 and 214 of that statute. Sections 211 and 212 of the FPA concern wheeling electric power. Section 213 contains reporting requirements involving requests for wholesale transmission services. Section 214 deals with sales by exempt wholesale generators.

2. The NGPA

Section 3414(b)(6) of the NGPA provides for civil penalties up to $5,000 per violation per day and does not identify specific required factors to consider when assessing penalties, other than requiring that the violation is ''knowing.'' [26] However, the Commission has informally considered factors similar to those in section 385.1505 when analyzing NGPA civil penalty matters.

[4] *Id*., Section 223(a).
[5] *Id*., Section 223(b).
[6] *Id*., Section 221(1).
[7] 5 U.S.C. Section 601 (1994).
[8] 15 U.S.C. Section 632(a)(1) (1994).
[9] 5 U.S.C. Section 601(3) (1994).
[10] 15 U.S.C. Section 632(a) (1994).
[11] 13 CFR 121.101–201.
[12] 13 CFR 121.201.
[13] *Id*.
[14] *Id*., Section 121.103.
[15] 5 U.S.C. Section 601(4) (1994).
[16] 5 U.S.C. Section 601(5) (1994).
[17] Pub. L. 104–121, 110 Stat. 862, Section 223(b)(1)–(6) (1996).
[18] *Id*., Section 223(a) (1996).
[19] 16 U.S.C. Section 823b(c)(1994).
[20] 16 U.S.C. Section 825o–1 (1994).
[21] 15 U.S.C. Section 3414(b)(6) (1994).
[22] 16 U.S.C. 823b(c)(1994).
[23] 18 CFR 385.1505.
[24] *See, e. g., Clifton Power Corp.* v. *FERC*, 88 F.3d 1258, 1267 (D.C. Cir. 1996); *Bluestone Energy Design, Inc.* v. *FERC*, 74 F.3d 1288, 1295 (D.C. Cir. 1996).
[25] 16 U.S.C. 825o–1 (1994).
[26] 15 U.S.C. 3414(b)(6)(A) (1994). The NGPA defines ''knowing'' as actual knowledge or constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances. 15 U.S.C. 3414(b)(6)(B) (1994).

III. Discussion

A. Eligibility for Penalty Reduction or Waiver

The Commission is adopting many of the exclusions suggested by section 223(b) of SBREFA. Specifically, to be considered for a reduction or waiver of a penalty, a small entity must not have a history of previous violations, and the violations at issue must not have been the product of willful or criminal conduct, or have caused loss of life or injury to persons, damage to property or the environment, or endangered persons, property or the environment. [27] While SBREFA suggests limiting penalty reduction or waiver policies to violations discovered through a small entity's participation in a compliance assistance or audit program, [28] we will not make this a prerequisite because it would be too limiting. Requiring participation in a compliance assistance program could exclude first time violators who did not recognize their need for compliance assistance. Although seeking compliance assistance may be an indication of good faith for purposes of a penalty waiver or reduction, it will not be used as a bar to eligibility for this Waiver/Reduction Policy.

B. Criteria for Waiver or Reduction of a Civil Penalty

If it meets all of the eligibility criteria for this Waiver/Reduction Policy, a small entity will be granted a waiver of a civil penalty if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not derive an economic benefit from the violations. The requirements for timely remedial efforts and good faith are conditions suggested for penalty waiver or reduction under sections 223(b)(1) and (6) of SBREFA. These conditions are similar to factors that the Commission already considers under its regulations when determining civil penalties. [29]

While the requirement that the small entity not be allowed to retain economic benefits from the violations is not a condition or exclusion identified in SBREFA, the Commission believes that this factor must be considered when determining whether to waive or reduce civil penalties. The final penalty amount should capture any economic benefits derived from violations. Otherwise small entities could be encouraged to violate statutory and regulatory requirements for profit. Violators should not be able to retain economic benefits that are unavailable to small entities that comply with statutory and regulatory requirements.

If an eligible small entity meets some, but not all, of the criteria for a waiver of a civil penalty, it may still be eligible for a penalty reduced from that which would otherwise be appropriate. The appropriateness of a penalty and the level of reduction will be decided on a case-by-case basis by considering the same criteria used for determining a waiver.

In determining whether to reduce a civil penalty, the Commission will also consider, upon request, the small entity's ability to pay. In considering ability to pay, the Commission is following the suggestion in section 223(a) of SBREFA. If a small entity wants the Commission to consider its ability to pay a civil penalty, the entity must provide written documentation demonstrating its financial condition. Acceptable documentation includes, but is not limited to: Federal income tax returns, state income tax returns, income statements, balance sheets, statements of change in financial position, bank statements for loans and checking accounts. The Commission reserves the right to request more than one type of verifying data on financial condition. In analyzing ability to pay, the Commission will consider the small entity's cost of compliance with statutory and regulatory requirements.

The Commission reserves the right to waive or reduce civil penalties in circumstances other than those listed under this Policy if it is in the public interest to do so.

IV. Administrative Effective Date and Congressional Notification

Under the terms of 5 U.S.C. 553(d)(2), this Policy Statement is effective on March 29, 1997. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Policy Statement is not a major rule within the meaning of section 251 of Subtitle E of SBREFA.[30] The Commission is submitting this Policy Statement to both Houses of Congress and to the Comptroller General.

[27] See, Pub. L. 104–121, 110 Stat. 862, Section 223(b)(3)–(5) (1996).

[28] *Id*., Section 223(b)(2).

[29] See, e.g., 18 CFR 385.1505(b)(8)-(10). The Commission considers good faith when determining the types of remedial efforts made by the violator and whether the violator had actual or constructive knowledge of the violation. *See, e. g.*, 18 CFR 385.1505(b) (1), (2) and (8)–(10).

[30] 5 U.S.C. 804(2) (1996).

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding an undesignated center heading and § 2.500, to read as follows:

Statement of Penalty Reduction/Waiver Policy to Comply With the Small Business Regulatory Enforcement Fairness Act of 1996

§ 2.500 Penalty reduction/waiver policy for small entities.

(a) It is the policy of the Commission that any small entity is eligible to be considered for a reduction or waiver of a civil penalty if it has no history of previous violations, and the violations at issue are not the product of willful or criminal conduct, have not caused loss of life or injury to persons, damage to property or the environment or endangered persons, property or the environment. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. An eligible small entity that cannot meet the criteria for waiver of a civil penalty may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

(b) Notwithstanding paragraph (a) of this section, the Commission reserves the right to waive or reduce civil penalties in appropriate individual circumstances where it determines that a waiver or reduction is warranted by the public interest.

[FR Doc. 97–8314 Filed 4–2–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 113 and 144

[T.D. 97–19]

RIN 1515–AB86

Duty-Free Stores

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations principally with respect to duty-free stores in order to reduce the overall paperwork burden for proprietors thereof as well as for Customs. In particular, for purposes of Customs audit of, and control over, such facilities, greater reliance is placed on the use of records generated and maintained by proprietors and importers in the ordinary course of business, instead of on the use of specially prepared Customs forms. The amendments provide benefits in this regard to other classes of Customs bonded warehouses as well.

EFFECTIVE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Steven T. Soggin, Program Officer, Office of Field Operations, (202–927–0765).

SUPPLEMENTARY INFORMATION:

Background

By a final rule document published in the **Federal Register** as T.D. 92–81 on August 20, 1992 (57 FR 37692), the Customs Regulations were amended to designate duty-free stores as a new class of Customs bonded warehouse, and to incorporate operating procedures for the administration of these facilities.

However, in letters dated October 6 and 13, 1992, a major trade association voiced a number of concerns with respect to the final rule. Prompted by this correspondence, and following lengthy study, Customs published a notice of proposed rulemaking in the **Federal Register** on June 6, 1996, 61 FR 28808, setting forth specific revisions to the duty-free store regulations. The proposed changes also provided some benefits to other classes of bonded warehouses, and were intended to reduce the overall paperwork burden both for warehouse proprietors and for Customs.

In brief, under the proposed rule, the following sections of the Customs Regulations were to be affected: §§ 19.1, 19.2, 19.4, 19.6, 19.11, 19.12, 19.35, 19.36, 19.37, 19.39, 113.63, 144.34, 144.36, 144.37, 144.39 and 144.41.

Seven commenters responded to the notice of proposed rulemaking. A description, together with Customs analysis, of the comments they made is set forth below.

Discussion of Comments (Part 19)

Comment: Two commenters stated that the term ''exclusively'' in proposed § 19.1(a)(9) limits the operation of a warehouse to that of a duty-free store providing only conditionally duty-free merchandise to another duty-free store. It was requested that proposed § 19.1(a)(9) be amended by deleting ''exclusively'' to allow continued operations of multi-class warehouses.

Customs Response: The wording of § 19.1(a)(9) is correct. Section 19.1(a)(9) states: ''All distribution warehouses used exclusively to provide individual duty-free sales locations and storage cribs with conditionally duty-free merchandise are also Class 9 warehouses.'' While the term ''exclusively'' in this context defines a warehouse solely distributing merchandise to a duty-free store as a Class 9 warehouse, this does not preclude a multi-class warehouse which distributes merchandise to duty-free stores from also conducting other functions of a different class for which it is approved.

Comment: One commenter suggested amending proposed § 19.2(a) to make specific provision for facilitating the approval of a common inventory and recordkeeping system in use at multiple storage locations. The commenter stated in this regard that Customs was required to approve a proprietor's inventory and recordkeeping system in every location, even though it might be the same system, which was redundant.

Customs Response: Customs believes that the commenter's concern is already addressed in § 144.34(c)(2), and that this matter need not specifically be addressed as well in § 19.2(a). Section 144.34(c)(2) allows a proprietor to file a single application with the director of the port in which the applicant's centralized inventory control system is located, with copies to all affected port directors. This procedure eliminates duplicative work for both Customs and the trade by initiating the Customs approval process solely at the port where the applicant's centralized inventory control system exists.

Comment: One commenter objected to the proposed elimination from § 19.2(g) of the cross-reference therein to § 19.3(f), which, as such, provided for an administrative hearing in the case of a decision by a port director to deny an initial application for a bonded warehouse. This commenter stated that eliminating a hearing, though rarely needed, would increase the chance of costly and time-consuming litigation.

Customs Response: Customs disagrees, to the extent that the citation in § 19.2(g) to § 19.3(f) does arguably accord the right to an administrative hearing as well in the case of the denial of an application to bond a warehouse. Formal administrative hearings are themselves costly to the Government, often requiring the services of an administrative law judge. Customs believes that administrative resources for such a hearing are best limited to those instances involving the revocation or suspension of bonded warehouse status, as expressly provided for under § 19.3(f).

Comment: One commenter recommended that proposed § 19.4(b)(5) reducing the storage time from 5 years to 6 months for original duty-free sales tickets be amended to eliminate all time requirements for retention of original duty-free sales tickets.

Customs Response: Customs disagrees. The record retention period of 6 months is already a marked time reduction from the current sales ticket storage requirement of 5 years. Customs believes a 6-month time period for storage of original duty-free sales tickets is the minimum time necessary for both the trade and Customs to verify the accuracy of original sales ticket information with sales information generated by electronic or other approved alternative means.

Comment: One commenter suggested that proposed § 19.4(b)(7) delete the requirement to establish and maintain aisles in bonded warehouses. The commenter stated that space was a precious commodity, and proposed an alternative, whereby Customs would give a proprietor a reasonable time to produce merchandise subject to a spot check or audit.

Customs Response: Customs agrees. The second sentence of § 19.4(b)(7) is changed to read as follows: ''Doors and entrances shall be left unblocked for access by Customs officers and warehouse proprietor personnel.'' Also, to this end, § 19.4(b)(2) is changed to read as follows: ''The warehouse proprietor shall permit access to the warehouse and present merchandise within a reasonable time after request by any Customs officer.''

Comment: One commenter asked that the last sentence of § 19.4(b)(8)(ii) be amended to include the term ''unique identifier'', so that it would read as follows: ''The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location,

covered by any warehouse entry, general order, seizure, or unique identifier so a physical count can be made to verify the accuracy of the record balance.''

Customs Response: Customs agrees, and the section is so changed.

Comment: One commenter stated that proposed § 19.4(b)(9) should be amended to delete the word ''destruction'', because miscellaneous requirements for destruction pertain only to a few classes of warehouses. The commenter further observed that, should general order merchandise remain in a warehouse beyond 6 months, responsibility should not rest with the warehouse to maintain destruction records.

Customs Response: Customs disagrees. The term ''destruction'' needs to remain in this section. An owner of merchandise in any warehouse may, at any time, lawfully request that merchandise be destroyed under Customs supervision. Requests for the destruction of merchandise in a warehouse must be accounted for by the warehouse proprietor.

Comment: Two commenters requested that proposed § 19.6(a)(1) granting a 5-day time limit within which to file a copy of any joint discrepancy report with the port director, be amended so as to allow warehouse proprietors a 30-day limit in which to do so. The commenters thought that this increased time extension would ease a restrictive time burden by allowing a month to prepare a discrepancy report for Customs.

Customs Response: Customs believes that the 5-day time requirement for filing a joint discrepancy report is not unduly burdensome. Indeed, this 5-day time limit itself represents a reasonable extension from the previous requirement in the Customs Regulations that such discrepancy reports be filed within 2 days. However, a 30-day time limit within which to submit these reports is too long. A joint discrepancy report involves sensitive custody transfers, and Customs believes the reasonably prompt reporting of discrepancies in this regard is essential.

Comment: One commenter called for the deletion of the requirement for a procedures manual in proposed § 19.12(b), on the basis that the preparation and maintenance of such a manual constituted an unjustified paperwork burden.

Customs Response: Customs disagrees. The proprietor's certification at the time of application to bond that a procedures manual describing the warehouse's inventory and recordkeeping system meets the requirements of 19 CFR 19.12 plays a significant role in the license approval process. The importance of this requirement extends into the areas of compliance and audit activities. The manual serves as a critical tool to Customs by demonstrating the proprietor has established a methodology for inventory control and recordkeeping.

Comment: One commenter observed that proposed § 19.12(d)(2)(ii) would in effect require a warehouse proprietor to maintain as part of an inventory recordkeeping system the cost or value of general order merchandise, and that a proprietor would often have no idea as to the cost or value of such merchandise.

Customs Response: Customs agrees. Section 19.12(d)(2)(ii) is changed by adding at the beginning thereof the phrase, ''Except for merchandise in general order,''.

Comment: Two commenters recommended that Customs amend proposed § 19.12(d)(3) to allow the option of accelerated payment of revenue for non-extraordinary shortages prior to the filing of the annual CF 300 or certification of annual reconciliation.

Customs Response: Customs agrees. The last sentence of § 19.12(d)(3) is changed to allow a proprietor the option of submitting payment of duties and fees for non-extraordinary shortages any time prior to the annual filing of the CF 300 or certified annual reconciliation.

Comment: One commenter advocated, with respect to proposed § 19.12(d)(5), that there be no physical inventory requirement to account for merchandise, because non-government bonded warehouses did not have such a requirement. One commenter asserted that an annual reconciliation required in proposed § 19.12(h) need not be undertaken at the same time as the physical inventory.

Customs Response: The physical inventory requirement in § 19.12(d)(5) requires that a proprietor conduct at least one physical inventory during the year. This need not necessarily take place at the time of the annual reconciliation. Customs believes that an annual physical inventory is necessary to gauge the accuracy of the proprietor's inventory control system. Section 19.12(h) does not itself deal with the requirement for a physical inventory.

Comment: One commenter stated that proposed § 19.12(f)(3) prohibited the application of First-In-First-Out (FIFO) procedures to various types of merchandise, including quota and restricted merchandise. Specifically, the commenter declared that Headquarters Ruling 225837 exempted textile quota requirements on merchandise for export; therefore, no basis existed to prohibit use of FIFO procedures to such merchandise subject to textile quotas.

Customs Response: Customs agrees, to the extent that such merchandise is for export only. To this end, accordingly, the following sentence is added to § 19.12(f)(2): ''Fungible textile and textile products which are withdrawn from a Class 9 warehouse may be accounted for using FIFO inventory procedures, inasmuch as such articles would be exempt from textile quotas.'' In this regard, a Class 9 warehouse (duty-free store) may only sell and deliver merchandise for export to individuals departing the Customs territory.

The Committee for the Implementation of Textile Agreements (CITA), U.S. Department of Commerce, has been consulted and agrees with Customs treatment of textiles in Class 9 bonded warehouses or duty-free stores as not being subject to quota and visa requirements.

However, it is understood that any textile articles exported from a Class 9 warehouse and thereafter reimported into the U.S. would be subject to the laws and regulations of the U.S. affecting imported merchandise, including any applicable quotas.

Comment: One commenter suggested that Customs amend proposed § 19.12(h)(2) to allow a proprietor to reconcile merchandise under an item's unique identifier number for annual reconciliation, instead of tracking by entry number. The commenter explained that it was not possible to comply with the proposed section under the FIFO inventory because units transferred to warehouses in other ports could not be posted or identified to an entry until disposed of.

Customs Response: All merchandise accounted for as sold, damaged, short, or otherwise disposed of, receive a designated entry number. For annual reconciliation of FIFO eligible merchandise not disposed of, a list of all open and closed warehouse entries shall be presented to Customs to account for merchandise.

Comment: One commenter requested that the address requirement be eliminated from proposed §§ 19.39(c)(5)(i) and 144.37(h)(2)(v) for Class 9 warehouses at airports. The commenter noted in this connection that few duty-free stores routinely obtained the address of a purchaser and that the address requirement had little utility in the context of airport duty-free store operations.

Customs Response: Customs agrees with this request. The risk of diversion

of goods purchased at an airport duty-free store is minimal. Hence, §§ 19.39(c)(5)(i) and 144.37(h)(2)(v) are changed to eliminate any requirement that an airport duty-free store submit to Customs upon request the address of a purchaser.

Warehouse Withdrawals And Rewarehouse Entries

Comment: One commenter asked that proposed § 144.34(c) be amended to permit all classes of warehouses to participate in alternative transfer procedures as opposed to only Class 2 and Class 9 warehouses. The commenter stated that as long as the warehouse is owned by the same legal entity maintaining a centralized inventory control system, and has the consent of the surety, such transfer operations could easily be controlled in the same manner as those for Class 2 and Class 9 warehouses.

Customs Response: Various custody transfer and liability issues are primary concerns preventing the extension of transfer procedures under § 144.34(c) to other classes of Customs bonded warehouses.

Comment: One commenter suggested that Customs delete the requirements in paragraphs (c)(4)(iv) and (c)(4)(vi) of proposed § 144.34, respectively, that a warehouse proprietor operating multiple storage locations under a centralized inventory system document all intracompany transfers of merchandise by means of the appropriate warehouse entry number, as well as maintain a subordinate permit file folder at all intracompany locations where merchandise is transferred. The commenter stated that under FIFO inventory procedures, units cannot be assigned an entry number, there being no withdrawal or rewarehouse entry made at the time of transfer to place in the subordinate permit file.

Customs Response: Customs disagrees. Customs does not require an assigned entry number at the time of transfer. Section 144.34(c)(4)(vi) allows up to 7 days to provide required warehouse entry documentation after transfer. Maintaining records in a subordinate permit file allows a proprietor to account for transactions such as shortages, overages, damages, and the like, resulting from intracompany movements. The documents required are set forth in § 19.12(d)(4).

Comment: Two commenters observed that proposed §§ 144.34(c)(6)(ii), 144.36(c)(2), and 144.41(c)(2) appeared to suggest that ''restricted'' merchandise could not be included in the alternative inventory control system. The commenters believed that it was not intended to exclude alcoholic products from this privilege.

Customs Response: The commenters are correct that alcohol and tobacco products may be included as part of an approved alternative inventory control and transfer system. To make this clear, §§ 144.34(c)(6)(ii), 144.36(c)(2) and 144.41(c)(2) are revised to state: ''With the exception of alcohol and tobacco products* * *''.

Comment: One commenter recommended that proposed § 144.34(c) include transfers of merchandise from a foreign trade zone to a Class 9 warehouse.

Customs Response: Customs has such a proposal under active consideration. Such proposal will be a subject of a separate publication, if Customs decides to proceed therewith.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above should be adopted.

In addition, § 19.35(e)(2) is changed to reflect current statutory law (19 U.S.C. 1555(b), as amended by sections 3(a)(8) and 29, Pub. L. 104–295), which permits merchandise purchased in a duty-free store, if thereafter returned to the United States, to be subject to the personal exemption of the arriving party under either item 9804.00.65, 9804.00.70 or 9804.00.72, Harmonized Tariff Schedule of the United States.

Also, § 19.12(d)(3) is changed to provide that the amount of duty, taxes, and any interest applicable to each warehouse entry involved in multiple shortages detected in a warehouse must be separately specified, even though such duty and taxes may have been tendered in one consolidated payment. This provision is needed because such duty may be claimed for drawback, and Customs must have this information in order to process the claim.

Furthermore, for the sake of editorial clarity, the last two sentences of § 19.12(d)(5) are moved to § 19.12(d)(3), and a cross reference to § 19.4(b)(8)(ii) is added thereto, in order to properly reflect the fact that the terms ''unique identifier'' and ''inventory category'' are interrelated. Also, for editorial clarity and consistency, the term ''specific identifier, wherever it appeared in the document, is changed to ''unique identifier''.

Regulatory Flexibility Act and Executive Order 12866

This final rule document is intended to simplify recordkeeping requirements for duty-free stores and other Customs bonded warehouses. To this end, greater reliance is placed on the use of records generated and maintained by proprietors and importers in the ordinary course of business, instead of on the use of specially prepared Customs forms. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this rule does not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Nor does the rule result in a ''significant regulatory action'' under E.O. 12866.

Paperwork Reduction Act

The collection of information in this final rule document is contained in §§ 19.2, 19.4, 19.6, 19.11, 19.12, 19.36, 19.37, 19.39, 144.36, 144.37 and 144.41. This information is required and will be used to ensure the exportation of merchandise from duty-free stores and other Customs bonded warehouses, and to otherwise satisfy the requirements of law and the protection of the revenue. The rule is intended to simplify recordkeeping requirements for duty-free stores and other Customs bonded warehouses. The likely respondents and/or recordkeepers are business or other for-profit institutions.

The collection of information contained in this final rule document has already been approved by the Office of Management and Budget (OMB) under 1515–0005. The estimated average annual burden associated with this collection is 10 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Warehouses.

19 CFR Part 113

Customs bonds.

19 CFR Part 144

Customs duties and inspection, Imports, Warehouses.

Amendments to the Regulations

Parts 19, 113 and 144, Customs Regulations (19 CFR parts 19, 113 and 144) are amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 and the specific authority for §§ 19.1, 19.6, 19.11, and 19.35—19.39 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

Section 19.6 also issued under 19 U.S.C. 1555;

* * * * *

Section 19.11 also issued under 19 U.S.C. 1556, 1562;

* * * * *

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

* * * * *

2. Section 19.1 is amended by adding a sentence at the end of paragraph (a)(9) to read as set forth below, and by removing paragraph (c).

§ 19.1 Classes of customs warehouses.

(a) * * *

(9) * * * All distribution warehouses used exclusively to provide individual duty-free sales locations and storage cribs with conditionally duty-free merchandise are also Class 9 warehouses.

* * * * *

3. Section 19.2 is amended by revising its heading, by adding three sentences at the end of paragraph (a), and by revising paragraphs (b)(2) and (g), to read as follows:

§ 19.2 Applications to bond.

(a) * * * The applicant must prepare and have available at the warehouse a procedures manual describing the inventory control and recordkeeping system that will be used in the warehouse. A certification by the proprietor that the inventory control and recordkeeping system meets the requirements of § 19.12 will be submitted with the application. The physical security of the facility must meet the approval of the port director.

(b) * * *

(2) A description of the store's procedures, which includes inventory control, recordkeeping, and delivery methods. These procedures must be set forth in the proprietor's procedures manual. Such manual and subsequent changes therein must be furnished to the port director upon request. The procedures in the manual shall provide reasonable assurance that conditionally duty-free merchandise sold therein will be exported;

* * * * *

(g) The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial. The decision of the port director will be the final Customs administrative determination in the matter.

4. Section 19.4 is revised to read as follows:

§ 19.4 Customs and proprietor responsibility and supervision over warehouses.

(a) *Customs supervision.* The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the port director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, storage, security, or safety in a warehouse facility.

(b) *Proprietor responsibility and supervision*—(1) *Supervision.* The proprietor shall supervise all transportation, receipts, deliveries, sampling, recordkeeping, repacking, manipulation, destruction, physical and procedural security, conditions of storage, and safety in the warehouse as required by law and regulations. Supervision by the proprietor shall be that which a prudent manager of a storage and manipulation facility would be expected to exercise.

(2) *Customs access.* The warehouse proprietor shall permit access to the warehouse and present merchandise within a reasonable time after request by any Customs officer.

(3) *Safekeeping of merchandise and records.* The proprietor is responsible for safekeeping of merchandise and records concerning merchandise entered in Customs bonded warehouses. The proprietor or his employees shall safeguard and shall not disclose proprietary information contained in or on related documents to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the document relates or their authorized agent.

(4) *Records maintenance.*—(i) *Maintenance.* The proprietor shall:

(A) Maintain the inventory control and recordkeeping system in accordance with the provisions of § 19.12 of this part;

(B) Retain all records required in this part and defined in § 162.1(a) of this chapter, pertaining to bonded merchandise for 5 years after the date of the final withdrawal under the entry; and

(C) Protect proprietary information in its custody from unauthorized disclosure.

(ii) *Availability.* Records shall be readily available for Customs review at the warehouse. In addition, a proprietor may keep records at another location for Customs review, but only if the proprietor first receives written approval for such storage from the port director.

(5) *Record retention in lieu of originals.* A warehouse proprietor may utilize alternative storage methods in lieu of maintaining records in their original formats, if such storage is approved by Customs under paragraph (b)(5)(i) of this section. For Customs purposes, original records may be stored in alternate form at any time after the final withdrawal under the entry number to which these records pertain, except that duty-free store operators may store original sales tickets in alternate form at any time beginning six months after date of sale. If the proprietor chooses to use alternative storage methods, the following conditions must be met:

(i) *Approval.* The proprietor may request approval to maintain records in an alternative format by writing and describing the system of storage, the conversion techniques used and the security safeguards to be employed to prevent alteration, to the director of the regulatory audit field office closest to the party's headquarters operation. If satisfied that the alternative storage proposed will ensure the accuracy and availability of the records when required, the director will grant written approval.

(ii) *Retention of reproductions.* The proprietor shall retain and keep available an original and one duplicate

of each microfilm, microfiche, cd ROM (compact disk, Read-Only Memory), or other storage medium used, for five years from the date of the final withdrawal under the entry number to which these records pertain. Duty-free store operators must keep alternate storage media containing sales tickets for five years from the date of the final withdrawal or five years from the date of the sale, whichever is shorter.

(iii) *Hard-copy reproductions.* The proprietor must have the capability of making direct hard-copy reproductions of the data stored on the microfilm, microfiche, cd ROM, or other storage medium. The proprietor shall bear the expense of making hard-copy reproductions of any or all records required by any proper official of the U.S. Customs Service for the audit or inspection of books and records.

(iv) *Standards required for reproducing records.* Proprietors shall maintain the integrity of the original records by insuring that copies are true reproductions of the original records and serve the purpose for which such records were created. The following shall be observed: Copies shall contain all significant record detail shown on the original; copies of the record shall be so arranged, identified, and indexed that any individual document or component of the records can be located with reasonable facility; any indexes, registers, or other finding aids shall be contained on the storage medium at the beginning of the records to which they relate; each time reproductions are made, a written certification will be executed by a responsible company official (see § 191.6(a) of this chapter; the same parties who have authority to sign drawback documents are ''responsible company officials'' for purposes of this section), stating that the reproductions stored on the microfilm, microfiche, cd ROM, or other storage medium constitute a true, complete and accurate reproduction of the original documents; and the proprietor shall maintain and make available a manual describing procedures for reproducing original records on alternative storage media and controls in effect for assuring completeness and accuracy of the reproductions. The procedures shall incorporate reasonable controls for assuring accuracy and completeness of alternative records. The proprietor is responsible for assuring that these controls are executed each time original records are reproduced.

(v) *Revocation of alternative record storage method.* Failure to maintain the records in accordance with these conditions and requirements will constitute a breach of the proprietor's bond and may result in the revocation by Customs of the privilege of maintaining records in a form other than the original format.

(6) *Warehouse and merchandise security.* The warehouse proprietor shall maintain the warehouse facility in a safe and sanitary condition and establish procedures adequate to ensure the security of all merchandise under Customs custody stored in the facility. The warehouse construction will be a factor that will be considered by the port director in deciding whether to approve the application. The facility shall be built in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. If a portion of the facility is to be used for the storage of non-bonded merchandise, the port director shall designate the means for effective separation of the bonded and non-bonded merchandise, such as a wall, fence, or painted line. All inlets and outlets to bonded tanks shall be secured with locks and/or in-bond seals.

(7) *Storage conditions.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. Doors and entrances shall be left unblocked for access by Customs officers and warehouse proprietor personnel.

(8) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks and numbers shall be received under the weigher's or gauger's numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately until the discrepancy is resolved with Customs. Merchandise received in the warehouse shall be stored in a manner directly identifying the merchandise with the entry, general order, or seizure number; using a unique identifier for inventory categories composed of fungible merchandise accounted for on a First-In-First-Out (FIFO) basis; or using a unique identifier for inventory categories composed of fungible merchandise accounted for using another approved alternative inventory method.

(i) *Direct identification.* The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. Containers covered by a given warehouse entry, general order or seizure shall not be mixed with goods covered by any other entry, general order or seizure. Merchandise covered by a given warehouse entry, general order or seizure may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for each entry, general order or seizure is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

(ii) *FIFO.* A proprietor may account for fungible merchandise on a First-In-First-Out (FIFO) basis instead of specific identification by warehouse entry number, provided the merchandise meets the criteria for fungibility and the recordkeeping requirements contained in § 19.12 of this part are met. As of the beginning date of FIFO procedures, each kind of fungible merchandise in the warehouse under FIFO shall constitute a separate inventory category. Each inventory category shall be assigned a unique number or other identifier by the proprietor to distinguish it from all other inventory categories under FIFO. All of the merchandise in a given inventory category shall be physically placed so as to be segregated from merchandise under other inventory categories or merchandise accounted for under other inventory methods. The unique identifier shall be marked on the merchandise, its container, or the location where it is stored so as to clearly show the inventory category of each article under FIFO procedures. Merchandise covered by a given unique identifier may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for a specific unique identifier is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, seizure, or unique identifier so a physical count can be made to verify the accuracy of the record balance.

(iii) *Other alternative inventory methods.* Other alternative inventory systems may be used, if Customs approval is obtained. Importers or proprietors who wish to use an alternative inventory method other than FIFO must apply to Customs Headquarters, Office of Regulations and Rulings, for approval.

(9) *Miscellaneous responsibilities.* The proprietor is responsible for complying with requirements for transport to his warehouse, deposit, manipulation, manufacture, destruction, shortage or overage, inventory control and recordkeeping systems, and other requirements as specified in this part.

5. Section 19.6 is amended by revising the fourth sentence of paragraph (a)(1), paragraph (d)(1), and the sixth sentence of paragraph (d)(2), by redesignating paragraph (d)(4) as (d)(5) and by adding a new paragraph (d)(4), to read as follows:

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

(a)(1) *Deposit in warehouse.* * * * A copy of any joint report of discrepancy shall be made within five business days of agreement and provided to the port director on the appropriate cartage documents as set forth in § 125.31 of this chapter. * * *

* * * * *

(d) *Blanket permits to withdraw*—(1) *General.* (i) Blanket permits may be used to withdraw merchandise from bonded warehouses for:

(A) Delivery to individuals departing directly from the Customs territory for exportation under the sales ticket procedure of § 144.37(h) of this chapter (Class 9 warehouses only);

(B) Aircraft or vessel supplies under § 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(C) The personal or official use of personnel of foreign governments and international organizations set forth in subpart I, part 148 of this chapter; or

(D) A combination of the foregoing.

(ii) Blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port, except for a withdrawal for transportation to another port by a duty-free sales enterprise which meets the requirements for exemption as stated in § 144.34(c) of this chapter. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit shall state in capital letters on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that ''Some or all of the merchandise will be withdrawn under blanket permit per section 19.6(d), C.R.'' Customs acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the port director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(2) *Withdrawals under blanket permit.* * * * A copy of the withdrawal shall be retained in the records of the proprietor as provided in § 19.12(d)(4) of this part. * * *

* * * * *

(4) *Withdrawals under blanket permit for aircraft or vessel supplies.* Multiple withdrawals under a blanket permit for aircraft or vessel supplies, if consigned to the same daily aircraft flight number or vessel sailing, may be filed on one Customs Form 7512; however, an attachment form, developed by the warehouse proprietor and approved by the port director may be used for all withdrawals. This attachment form shall provide a sufficient summary of the goods being withdrawn, and shall include the warehouse entry number, the quantity and weight being withdrawn, the Harmonized Tariff Schedule of the United States number(s), the value of the goods, import and export lading information, the duty rate and amount, and any applicable Internal Revenue tax calculation, for each warehouse entry being withdrawn. A copy of Customs Form 7512 and the summary attachment must be attached to each permit file folder unless the warehouse proprietor qualifies for the permit file folder exemption under § 19.12(d)(4)(iii) of this part.

* * * * *

6. Section 19.11 is amended by revising paragraph (h) to read as follows:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

* * * * *

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into its smallest irreducible unit for sale without a prior permit issued by the port director. The port director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found to be nonsaleable, if the merchandise to be destroyed is valued at less than 5 percent of the value of the merchandise at time of entry or $1,250, whichever is less, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry and/or destruction whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

7. Section 19.12 is revised to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise transported, deposited, stored, manipulated, manufactured, smelted, refined, destroyed in or removed from the bonded warehouse and all merchandise collected by a proprietor or his agent for transport to his warehouse. The records shall provide an audit trail from deposit through manipulation, manufacture, destruction, and withdrawal from the bonded warehouse either by specific identification or other Customs authorized inventory method. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and correctness of his annual submission or reconciliation;

(2) Producing accurate and timely reports and documents as required by this part; and

(3) Identifying shortages and overages of merchandise in sufficient detail to determine the quantity, description, tariff classification and value of the missing or excess merchandise so that appropriate reports can be filed with Customs on a timely basis.

(b) *Procedures manual.* (1) The proprietor shall have available at the warehouse an English language copy of

its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The proprietor shall keep current its procedures manual and shall submit to the port director a new certification at the time any change in the system is implemented.

(c) *Entry of merchandise into a warehouse.*—(1) *Identification.* All merchandise collected by a proprietor or his agent for transport to his warehouse shall be receipted. In addition, all merchandise entered in a warehouse will be recorded in a receiving report or document using a Customs entry number or unique identifier if an alternate inventory control method has been approved. All merchandise will be traceable to a Customs entry and supporting documentation.

(2) *Quantity verification.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in § 19.6(a).

(3) *Recordation.* Merchandise received will be accurately recorded in the accounting and inventory system records from the receiving report or document using the Customs entry number or unique identifier if an alternative inventory control method has been approved.

(d) *Accountability for merchandise in a warehouse.*—(1) *Identification of merchandise.* The Customs entry number or unique identifier, as applicable under § 19.4(b)(8), will be used to identify and trace merchandise.

(2) *Inventory records.* The inventory records will specify by Customs entry number or unique identifier if an alternative inventory control method is approved:

(i) The location of the merchandise within the warehouse;

(ii) Except for merchandise in general order, the cost or value of the merchandise, unless the proprietor's financial records maintain cost or value and the records are made available for Customs review; and

(iii) The beginning balance, cumulative receipts and withdrawals, adjustments, destructions, and current balance on hand by date and quantity.

(3) *Theft, shortage, overage or damage.* Any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) shall be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The applicable duties, taxes and interest on thefts and shortages so reported shall be paid by the responsible party to Customs within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and shall specify the applicable duty, tax and interest. These same requirements shall apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor shall record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor shall also record all shortages and overages as required in the Customs Form 300 or annual reconciliation report under paragraphs (f) or (g) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier shall be submitted to the port director at the time the Warehouse Proprietor's Submission, Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) and (h) of this section, or at any time prior to the annual filing of the CF 300 or certified annual reconciliation. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in § 19.35(c) will be the net discrepancies for a unique identifier (see § 19.4(b)(8)(ii) of this part) such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with § 144.34 of this chapter may offset overages and shortages within the same unique identifier for merchandise located in stores in different ports (see § 19.4(b)(8)(ii) of this part).

(4) *Permit file folders.*—(i) *Maintenance.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals and blanket permit summaries within five business days after the event occurs. The permit file folders shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours.

(ii) *Review.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall: review the permit file folder to ensure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry; notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed; and file the permit file folder with Customs within 30 calendar days after final withdrawal, except as allowed by paragraph (b)(4)(iv) of this section. The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the port director upon receipt from Customs of the Customs Form 6043.

(iii) *Exemption to maintenance requirement.* Maintenance of permit file folders will not be required, if the proprietor has an automated system capable of: satisfactorily summarizing all actions by Customs warehouse entry; providing upon demand by Customs an entry activity summary report which lists all individual receipts, withdrawals, destructions, manipulations and adjustments by warehouse entry and is cross-referenced to the source documents for each transaction; and maintaining source documents so that the documents can be readily retrieved upon request. Failure to provide the entry activity summary report or documentation supporting the entry activity summary report upon demand by the port director or the field director of regulatory audit could result in reinstatement by the port director of the requirement to maintain the permit file folder for all warehouse entries. When final withdrawal is made, the proprietor must submit the entry activity summary report to Customs. Prior to submission, the proprietor must ensure the accuracy of the summary report and assure that all supporting documentation is on file and available for review if requested by Customs.

(iv) *Exemption to submission requirement.* At the discretion of the port director, a proprietor may be allowed to furnish formal notification of final withdrawal in lieu of the

requirement to submit the permit file folder or entry activity summary within 30 calendar days of each final withdrawal. If approved to use this procedure the proprietor could be required by the port director to submit permit file folders or entry activity summaries on a selective basis. Failure to promptly provide the permit file folder or entry activity summary upon request by the port director or the field director of regulatory audit could result in withdrawal of this privilege.

(5) *Physical inventory.* The proprietor shall take at least an annual physical inventory of all merchandise in the warehouse, or periodic cycle counts of selected categories of merchandise such that each category is counted at least once during the year, with prior notification of the date(s) given to Customs so that Customs personnel may observe or participate in the inventory if deemed necessary. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the facility where the original entry was filed must reconcile the on-hand balances at all locations with the record balance for those entries with merchandise in multiple locations. The proprietor shall notify the port director of any discrepancies, record appropriate adjustments in the inventory control and recordkeeping system, and make required payments and entries to Customs, in accordance with paragraph (d)(3) of this section.

(e) *Withdrawal of merchandise from a warehouse.* All bonded merchandise withdrawn from a warehouse will be accurately recorded within the inventory control and recordkeeping system. The inventory control and recordkeeping system must have the capability to trace all withdrawals back to a Customs entry and to ultimate disposition of the merchandise by the proprietor.

(f) *Special provisions for use of FIFO inventory procedures.*—(1) *Notification.* A proprietor who wishes to use FIFO procedures for all or part of the merchandise in a bonded warehouse shall provide the port director a written certification that: The proprietor has read and understands Customs FIFO procedures set forth in this section; the proprietor's procedures are in accordance with Customs FIFO procedures, and the proprietor agrees to abide by those procedures; and the proprietor of a public warehouse will obtain the written consent of any importer using the warehouse before applying FIFO procedures to their merchandise.

(2) *Qualifying merchandise.* FIFO inventory procedures may be used only for fungible merchandise. For purposes of this section, ''fungible merchandise'' means merchandise which is identical and interchangeable for all commercial purposes. While commercial interchangeability is usually decided between buyer and seller or between proprietor and importer, Customs is the final arbiter of fungibility in bonded warehouses. The criteria for determining whether merchandise is fungible include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, value, brand name, unit of quantity (such as barrels, gallons, pounds, pieces), model number, style and same kind and quality. Fungible textile and textile products which are withdrawn from a Class 9 warehouse may be accounted for using FIFO inventory procedures, inasmuch as such articles would be exempt from textile quotas.

(3) *Merchandise specifically excluded.* FIFO procedures cannot be applied to the following merchandise, as well as any other merchandise which does not comply with the requirements of paragraph (f)(2) of this section:

(i) Merchandise subject to quota, visa or export restrictions chargeable to different countries of origin;

(ii) Textile and textile products of different quota categories;

(iii) Merchandise with different tariff classifications or rates of duty, except where the difference is within the merchandise itself (such as kits, merchandise in unusual containers) or where the tariff classification or dutiability is determined only by conditions upon withdrawal (for example, withdrawal for vessel supplies, bonded wool transactions);

(iv) Merchandise with different legal requirements for marking, labeling or stamping;

(v) Merchandise with different trademarks;

(vi) Merchandise of different grades or qualities;

(vii) Merchandise with different importers of record;

(viii) Damaged or deteriorated merchandise;

(ix) Restricted merchandise; or

(x) General order, abandoned or seized merchandise.

(4) *Maintenance of FIFO.* FIFO procedures used for merchandise in any inventory category, must be used consistently throughout the warehouse storage and recordkeeping practices and procedures for the merchandise. For example, merchandise may not be added to inventory by FIFO but withdrawn by bypassing certain inventory layers to reach a specific warehouse entry other than the oldest one. However, this does not preclude the use of specific identification for some merchandise in a warehouse entry and FIFO for other merchandise, so long as they are segregated in physical storage and clearly distinguished in the inventory and accounting records.

(5) *FIFO recordkeeping.* In the inventory and accounting records, the proprietor shall establish an inventory layer for each warehouse entry represented in each inventory category. The layers shall be established in the order of time of acceptance of the entry or by the date of importation of merchandise covered by each applicable warehouse entry. There shall be no mixing of layering both by time of acceptance and date of importation in the same warehouse. Records for each layer shall, as a minimum, show the warehouse entry number, date of acceptance, date of importation, quantity and unit of quantity. They shall also show for each entry the type of warehouse withdrawal number or other specific removal event charged against the entry, by date and quantity. Each addition to or deduction from the inventory category shall be posted in the appropriate inventory category within 2 business days after the event occurs. All FIFO records and documentation shall consistently use the same unit of quantity within each inventory category.

(6) *Entry requirements.* Warehouse entries covering any merchandise to be accounted for under FIFO must be prominently marked ''FIFO'' on the face of the entry document. The entry document or an attachment thereto shall show the unique identifier of each inventory category to be accounted for under FIFO, the quantity in each inventory category and the unit of quantity.

(7) *Receipts.* Any shortages, overages, or damage found upon receipt shall be attributed to the entry under which the merchandise was received. FIFO procedures will not take effect until the merchandise is physically placed in the storage location for the inventory category represented in the entry.

(8) *Manipulation.* When manipulation results in a product with a different unique identifier, the inventory and accounting records shall show the quantities of merchandise in each inventory category appearing in the product covered by the new unique identifier. The withdrawal shall show the unique identifiers of both the materials used in the manipulation and the product as manipulated. The quantities of the original unique

identifiers will be deducted from their respective warehouse entries on a FIFO basis when the resultant product is withdrawn.

(9) *Discontinuance of FIFO.* A proprietor may voluntarily discontinue the use of FIFO procedures for all or part of the merchandise currently under FIFO by providing written notification to the port director. The notification shall clearly describe the merchandise, by commercial names and unique identifiers, to be removed from FIFO. Following notification, the merchandise shall be segregated in both the recordkeeping system and the physical location by warehouse entry number and the quantities so removed shall be deducted from the appropriate FIFO inventory category balances. Merchandise so removed shall be maintained under the specific identification inventory method. FIFO procedures which were voluntarily discontinued may be reinstated, but not for merchandise covered by any warehouse entry for which FIFO was discontinued.

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor shall file with the field director of regulatory audit within 45 calendar days from the end of his business year a Warehouse Proprietor's Submission on Customs Form 300. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the CF 300 shall cover all locations and warehouses of the proprietor. An alternative format may be used for providing the information required on the CF 300, if prior written approval is obtained from the field director of regulatory audit.

(h) *Annual reconciliation.*—(1) *Report.* Instead of filing Customs Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, shall prepare a reconciliation report within 90 days after the end of the fiscal year unless the field director authorizes an extension for reasonable cause. The proprietor shall retain the annual reconciliation report for 5 years from the end of the fiscal year covered by the report. The report must be available for a spot check or audit by Customs, but need not be furnished to Customs unless requested. There is no form specified for the preparation of the report.

(2) *Information required.* The report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the reconciliation shall cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under § 144.34, the annual reconciliation must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

(3) *Certification.* The proprietor shall submit to the field director of regulatory audit within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the proprietor's IRS number; date of fiscal year end; the name and street address of the warehouse; the name, title, and telephone number of the person having custody of the records; and the address where the records are stored. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with paragraph (d)(3) of this section. Any previously unreported shortages and overages should be reported to the port director and any unpaid duties, taxes and fees should be paid at this time.

(i) *System review.* The proprietor shall perform an annual internal review of the inventory control and recordkeeping system and shall prepare and maintain on file a report identifying any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

(j) *Special requirements.* A warehouse proprietor submission (CF 300) or annual reconciliation must be prepared for each facility or location as defined in §§ 19.2(a) and 19.35(c) of this part. When merchandise is transferred from one facility or location to another without filing a rewarehouse entry, as provided for in § 144.34(c) of this chapter, the submission/reconciliation for the warehouse where the entry was originally filed should account for all merchandise under the warehouse entry, indicating the quantity in each location.

8. Section 19.13 is amended by revising the fourth sentence of paragraph (g) to read as follows:

§ 19.13 Requirements for establishment of warehouses.

* * * * *

(g) *Secure storage.* * * * The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards prescribed in § 19.4(b)(6) of this part. * * *

* * * * *

9. Section 19.13a is amended by revising the first sentence of its introductory text and by revising paragraph (b) to read as follows:

§ 19.13a Recordkeeping requirements.

The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of §§ 19.4(b) and 19.12. * * *

* * * * *

(b) Take an annual physical inventory of the merchandise as provided in § 19.12(d)(5) in conjunction with the annual submission required by § 19.12(g); and

* * * * *

10. Section 19.35 is amended by revising the introductory text of paragraph (c) and by revising paragraphs (c)(2), (e)(2) and (f) to read as follows:

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

* * * * *

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise and requested by the proprietor may be treated by Customs as one location if:

* * * * *

(2) The recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from centralized inventory or inventory records must be updated no less

frequently than at the end of each business day to reflect that day's activity.

* * * * *

(e) * * *

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax with personal exemption; and,

* * * * *

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.4(b)(6) of this part shall be applied to the security of the sales rooms and cribs by the port director. The proprietor shall establish procedures to safeguard the merchandise so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

* * * * *

11. Section 19.36 is amended by revising the last sentence of paragraph (e) and the third sentence of paragraph (g) to read as follows:

§ 19.36 Requirements for duty-free store operations.

* * * * *

(e) *Merchandise eligible for warehousing.* * * * However, such merchandise must be either identified or marked ''DUTY-PAID'' or ''U.S.-ORIGIN'', or similar markings, as applicable, so that Customs officers can easily distinguish conditionally duty-free merchandise from other merchandise in the sales or crib area.

* * * * *

(g) *Inventory procedure.* * * * The inventory shall be reconcilable with the accounting and inventory records and the permit file folder requirements of § 19.12 (d), (e) and (f) of this part. * * *

12. Section 19.37 is amended by revising the first and fourth sentences, and the fifth (and last) sentence of paragraph (a) to read as follows:

§ 19.37 Crib operations.

(a) *Crib.* A crib means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a supply of articles for delivery to persons departing from the United States. * * * The quantity of goods in the crib may be an amount requested by the proprietor which is commercially necessary for the delivery operations for a period, if approved by the port director. The port director may increase or decrease the quantity as deemed necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or may order the return to the storage area of goods remaining unsold.

* * * * *

13. Section 19.39 is amended by removing the last three sentences of paragraph (c)(2); § 19.39 is further amended by revising the first sentence of paragraph (c)(3), by redesignating paragraphs (c)(4)(ii), (c)(4)(iii) and (c)(4)(iv), as (c)(4)(iii), (c)(4)(iv) and (c)(4)(v), respectively, and adding a new paragraph (c)(4)(ii), and by revising paragraphs (c)(5) and (e), to read as set forth below:

§ 19.39 Delivery for exportation.

* * * * *

(c) * * *

(3) *Aircraft delivery.* The merchandise will be delivered by a licensed cartman for lading as baggage directly on the aircraft on which the passenger will depart. * * *;

(4) *Unit-load delivery.* * * *

(ii) Merchandise shall be placed on the aircraft on which the passenger departs the United States for carriage as passenger baggage;

* * * * *

(5) *Cancelled or aborted flights or no-show passengers*—(i) *Cancelled or aborted flights.* The proprietor shall, upon request, make available to Customs the purchaser's name, the purchaser's airline ticket number and the identity and quantity of the merchandise delivered by the proprietor to the purchaser (if the merchandise was delivered to the airline rather than the passenger, the name of the airline employee to whom the merchandise was delivered), and the date and time of that delivery in lieu of retrieving the merchandise for safekeeping until the purchaser actually departs.

(ii) *No-show passengers.* A proprietor who delivers merchandise directly to an airline for delivery to a passenger who does not board the flight shall establish a procedure to obtain redelivery of that merchandise from the airline.

* * * * *

(e) *Delivery method.* Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen or bonded carriers under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the port director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

* * * * *

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.63 is amended by redesignating paragraph (a)(4) as (a)(5) and adding a new paragraph (a)(4), by removing the word ''and'' from the end of paragraph (b)(2), and by adding the word ''and'' at the end of paragraph (b)(3), by adding a new paragraph (b)(4), and by revising the first sentence of paragraph (d), to read as follows:

§ 113.63 Basic custodial bond conditions.

(a) * * *

(4) If authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, to operate as constructive custodian for all merchandise transferred under those procedures, thereby assuming primary responsibility for the continued proper custody of the merchandise notwithstanding its geographical location;

* * * * *

(b) * * *

(4) If authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, to keep safe any merchandise so transferred.

* * * * *

(d) *Agreement to Redeliver Merchandise to Customs.* If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, or authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, the principal agrees to redeliver timely, on demand by Customs, any merchandise delivered to unauthorized locations or to the consignee without the permission of Customs. * * *

* * * * *

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for part 144 and the specific authority for § 144.37 continue to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624;

* * * * *

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

2. Section 144.34 is amended by adding a new paragraph (c) to read as follows:

§ 144.34 Transfer to another warehouse.

* * * * *

(c) *Transfers between integrated bonded warehouses*—(1) *Eligibility.* (i) Only an importer who will transfer warehoused merchandise among Class 2 and 9 warehouses listed on the

application in paragraph (c)(2) of this section is eligible to participate.

(ii) The importer must have a centralized inventory control system that shows the location of all of the warehoused merchandise at all times, including merchandise in transit.

(iii) The importer and its surety must sign the application. If the application to use this alternative procedure is approved by the appropriate port director, the importer's entry bond containing the conditions provided under § 113.62 of this chapter will continue to attach to any merchandise transferred under these alternative procedures.

(iv) Each proprietor of a warehouse listed on the application and each surety who underwrites that proprietor's custodial bond coverage under § 113.63 of this chapter shall sign the application.

(2) *Application.* Application must be made in writing to the port director of the port in which the applicant's centralized inventory control system exists, with copies to all affected port directors, for exemptions from the requirements for transfer of merchandise from one bonded warehouse to another set forth in paragraphs (a) and (b) of this section. The application must list all bonded warehouses to and from which the merchandise may be transferred; all such warehouses must be covered by the same centralized inventory control system. Only blanket exemption requests will be considered; exemptions will not be considered for individual transfers. The application may be in letter form, signed by all participants, and contain a certification to the port director by the applicant that he maintains accounting records, documents and financial statements and reports that adequately support Customs activities.

(3) *Operation.* An importer who receives approval to transfer merchandise between bonded warehouses in accordance with the provisions of this section may, after entry into the first warehouse, transfer that merchandise to any other warehouse without filing a withdrawal from warehouse or a rewarehouse entry. The warehoused merchandise will be treated as though it remains in the first warehouse so long as the actual location of the merchandise at all times is recorded as provided under the provisions of this section.

(4) *Inventory control requirements.* The records required to be maintained must include a centralized inventory control system and supporting documentation which meets the following requirements:

(i) Provide Customs upon demand with the proper on-hand balance of each inventory item in each warehouse facility and each storage location within each warehouse;

(ii) Provide Customs upon demand with the proper on-hand balance for each open warehouse entry and the actual quantity in each warehouse facility;

(iii) If an alternative inventory system has been approved, provide Customs upon demand with the proper on-hand balance for each unique identifier and the quantity related to each open warehouse entry and the quantity in each warehouse facility;

(iv) Maintain documentation for all intracompany movements, including authorizations for the movement, shipping documents and receiving reports. These documents must show the appropriate warehouse entry number or unique identifier, the description and quantity of the merchandise transferred, and must be properly authorized and signed evidencing shipment from and delivery to each location;

(v) Maintain a consolidated permit file folder at the location where the merchandise was originally warehoused. The consolidated permit file folder must meet the requirements of § 19.12(d)(4) of this chapter regardless of the warehouse facility in which the action occurred. Documentation for all intracompany movements, including authorizations for movement, shipping documents, receiving reports, as well as documentation showing ultimate disposition of the merchandise must be filed in the consolidated permit file folder within seven business days;

(vi) Maintain a subordinate permit file at all intracompany locations where merchandise is transferred containing copies of documentation required by § 19.12(d)(4) of this chapter and by paragraph (c)(3)(v) of this section relating to merchandise quantities transferred to the location. A copy of all documents in the subordinate permit file folder must be filed in the consolidated permit file folder within seven business days; no exceptions will be granted to this requirement. When the final withdrawal is made on the respective entry, the subordinate permit file shall be considered closed and filed at the intracompany location to which the merchandise was transferred; and

(vii) File the withdrawal from Customs custody at the original warehouse location at which the merchandise was entered.

(5) *Waiver of permit file folder requirements.* The permit file folder requirements of paragraphs (c)(3)(v) and (c)(3)(vi) of this section may be waived if the proprietor's recordkeeping and inventory control system qualifies under the requirements of § 19.12(d)(4)(iii) of this chapter at all locations where bonded merchandise is stored.

(6) *Procedure not available*—(i) *Liens.* The transfer procedures permitted under paragraph (c) of this section shall not be available for merchandise with respect to which Customs is notified of the existence of a lien, as prescribed in § 141.112 of this chapter (see 19 U.S.C. 1564), until proof shall be produced at the original warehouse location that the lien has been satisfied or discharged.

(ii) *Restricted merchandise.* With the exception of alcohol and tobacco products, merchandise subject to a restriction on release such as covered by a licensing, quota or visa requirement, is not eligible.

3. Section 144.36 is amended by revising paragraphs (c) and (f), by removing the word ''or'' from the end of paragraph (g)(4), and by adding the word ''or'' at the end of paragraph (g)(5) and adding a new paragraph (g)(6) thereafter, to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * *

(c) *Form.* (1) A withdrawal for transportation shall be filed on Customs Form 7512 in five copies. An extra copy or copies of the Customs Form 7512 may be required for use in connection with the delivery of the merchandise to the bonded carrier and, in the case of alcoholic beverages, two extra copies shall be required for use in furnishing the duty statement to the port director at destination.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed on one Customs Form 7512, under one control number, provided that there is an attachment, to be certified by a Customs officer, providing the information for each withdrawal, as required in paragraph (d) of this section. With the exception of alcohol and tobacco products, this procedure shall not be allowed for merchandise which is in any way restricted (for example, quota/visa).

(3) The requirement that a Customs Form 7512 be filed and the information required in paragraph (d) of this section be shown shall not be required if the merchandise qualifies under the exemption in § 144.34(c).

* * * * *

(f) *Forwarding procedure.* The merchandise shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1 through 18.8 of this chapter). However, when the alternate procedures under § 144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation (Customs Form 7512) and a rewarehouse entry will not be required.

(g) *Procedure at destination.* * * *

(5) * * *; or

(6) Deposited into the proprietor's bonded warehouse or duty free store warehouse without rewarehouse entry as required in § 144.41, if the merchandise qualifies for the exemption specified in § 144.34(c).

* * * * *

4. Section 144.37 is amended by revising paragraph (h)(2)(v), and by revising the fourth sentence and the last sentence in the concluding text of paragraph (h)(3), to read as follows:

§ 144.37 Withdrawal for exportation.

* * * * *

(h) * * *

(2) * * *

(v) The full name and address of the purchaser. However, the port director may waive the address requirement for all merchandise except for alcoholic beverages in quantities in excess of 4 liters and cigarettes in quantities in excess of 3 cartons. Also, the address requirement is not applicable with respect to purchasers at airport duty-free enterprises; and

* * * * *

(3) *Sales ticket register.* * * *

* * * The sales ticket register shall be included in the permit file folder with or in lieu of the blanket permit summary, as provided in § 19.6(d)(5) of this chapter. * * * In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a readily retrievable manner in a separate file.

5. Section 144.39 is amended by revising its first sentence to read as follows:

§ 144.39 Permit to transfer and withdraw merchandise.

With the exception of merchandise transferred under the procedures of § 144.34(c), if all legal and regulatory requirements are met, the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. * * *

6. Section 144.41 is amended by revising paragraph (c) to read as follows:

§ 144.41 Entry for rewarehouse.

* * * * *

(c) *Combining separate shipments.* (1) Separate shipments consigned to the same consignee and received under separate withdrawals for transportation may be combined into one rewarehouse entry if the warehouse withdrawals are from the same original warehouse entry.

(2) Shipments covered by multiple warehouse entries, and shipped from a single warehouse under separate withdrawals for transportation, via a single conveyance, may be combined into one rewarehouse entry if consigned to the same consignee and deposited into a single warehouse. With the exception of alcohol and tobacco products, this procedure shall not be allowed for merchandise which is in any way restricted (for example, quota/visa). The combined rewarehouse entry shall have attached either copies of each warehouse entry package which is being combined into the single rewarehouse entry or a summary with pertinent information, that is, the date of importation, commodity description, size, HTSUS and entry numbers, for all entries withdrawn for consolidation as one rewarehouse entry. Any combining of separate withdrawals into one rewarehouse entry shall result in the rewarehouse entry being assigned the import date of the oldest entry being combined into the rewarehouse entry.

(3) Combining of separate shipments shall be prohibited in all other circumstances.

* * * * *

Approved: March 5, 1997.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–8447 Filed 4–2–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–96–069]

RIN 2115–AE47

Drawbridge Regulations; St. Johns River, FL

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Fuller Warren (I10/I95) drawbridge, located in Jacksonville, Florida, by limiting the number of openings during certain periods. This change is being made because of complaints of delays to vehicular traffic on Interstate 95. This action is necessary to accommodate the needs of vehicular traffic flow and still provide for the reasonable needs of navigation.

DATES: This rule is effective April 3, 1997. Comments must be received on or before June 2, 1997.

ADDRESSES: Comments may be mailed to the Commander (oan), Seventh Coast Guard District, Bridge Section, Brickell Plaza Federal Building, 909 S.E. First Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the same address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 536–4103.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Project Manager, Seventh Coast Guard District, Bridge Section, at (305) 536–7331.

SUPPLEMENTARY INFORMATION: This rule is being published as an interim rule and is being made effective on the date of publication. This rule is being promulgated without an NPRM because this proposed regulation change is needed immediately due to the large increase on highway traffic on Interstate 95 and the greater number of bridge openings being caused by increased vessel traffic along this reach of the St. Johns River. This interim rule was tested by a ninety day temporary deviation with request for comments (62 FR 3461, January 23, 1997) from November 8, 1996, through February 8, 1997. The change in opening schedules helped to relieve traffic congestion without unreasonably impacting navigation. The Coast Guard did not receive any objections to the temporary deviation during the test period. The interim rule has not changed from the previously tested temporary deviation.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD07–96–069) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule or the assessment in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the District Commander at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard is changing the regulations governing the operation of the Fuller Warren (I10/I95) drawbridge, located in Jacksonville, Florida, by limiting the number of openings during certain periods. This change is being made because of complaints of delays to vehicular traffic during the heavy morning and afternoon commute periods. The traffic volume has doubled on this interstate highway system since 1991, reducing the Level of Service (LOS) to LOS E during weekdays. This action is necessary to accommodate the needs of vehicular traffic flow and provide for the reasonable needs of the vessel navigation. The regulations governing the operation of the Acosta (SR13) Bridge are being removed since the drawbridge has been replaced with a fixed bridge.

This interim rule is unchanged from the temporary deviation with comments published on January 23, 1997. The interim rule reduces the number of drawbridge openings by increasing the morning and afternoon commuter closed periods from 1½ hours to 2 hours, and establishing hourly openings from 9 a.m. to 4 p.m. Monday through Friday except federal holidays. Tugs with tows shall be passed at any time from 9 a.m. to 4 p.m. Vessels in an emergency involving life or property shall be passed at any time through the drawbridge.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of Executive order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because of the infrequent operation of the draw, and commercial tugs with tows shall be passed at any time from 9 a.m. to 4 p.m., and vessels in a situation where a delay would endanger life or property will be passed through the draw at any time.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field's and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impacts on small entities.

The economic impact will not affect a substantial number of small entities since commercial tugs with tows are exempt from the midday restrictions and will be able to plan their passage to avoid the morning and afternoon closed periods.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed the rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under Section 2.B.2.e.(32) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.325 is amended by revising paragraph (a), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) to read as follows:

§ 117.325 St. Johns River.

(a) The draw of the Main Street (US17) Bridge, mile 24.7, at Jacksonville, shall open on signal except that, from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Saturday except Federal holidays, the draws need not be opened for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property.

(b) The draw of the Fuller Warren (I10–I95) Bridge, mile 25.4, at Jacksonville, shall open on signal except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. From 9 a.m. to 4 p.m., Monday through Friday except Federal holidays, except for tugs with tows, the draws need open only on the hour for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property.

* * * * *

Dated: March 4, 1997.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 97–8506 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN53–1a; FRL–5710–1]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving the following as revisions to the Indiana ozone State Implementation Plan (SIP): a Rate-Of-Progress (ROP) plan to reduce Volatile Organic Compounds (VOC) emissions in Lake and Porter Counties by 15 percent (%) by November 15, 1996; a contingency plan to reduce VOC emissions by an additional 3% beyond the ROP plan, and an Indiana agreed order requiring VOC emission controls on Keil Chemical Division, Ferro Corporation, located in Lake County (Keil Chemical). The 15% ROP plan, 3% contingency plan, and the agreed order were submitted together on June 26, 1995. The plans and agreed order help to protect the public's health and welfare by reducing the emissions of VOC that contribute to the formation of ground-level ozone, commonly known as urban smog.

DATES: This final rule is effective June 2, 1997 unless adverse comments are received by May 5, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background on 15% ROP and Contingency Plans Requirements

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) requires states with ozone nonattainment areas classified as moderate and above to submit a SIP revision known as a 15% ROP plan. This plan must reflect an actual reduction in typical ozone season weekday VOC emissions of at least 15% in the area during the first 6 years after enactment (i.e., by November 15, 1996). The emission reductions needed to achieve the 15% requirement must be calculated using a 1990 anthropogenic VOC emissions inventory as a baseline, minus emissions that have been reduced by: (1) The Federal Motor Vehicle Control Program (FMVCP) measures for the control of motor vehicle exhaust or evaporative emissions promulgated before January 1, 1990; and (2) gasoline Reid Vapor Pressure (RVP) regulations promulgated by November 15, 1990 (See 55 FR 23666, June 11, 1990). In addition, the plan must account for net growth in emissions within the nonattainment area between 1990 and 1996.

Section 172(c)(9) of the Act requires states with moderate and above areas to adopt a contingency plan by November 15, 1993, which provides for specific control measures to be implemented if an area fails to achieve ROP requirements or attain the National Ambient Air Quality Standard in the time frames specified under the Act. In addition, section 182(c)(9) of the Act requires that contingency plans for serious or above ozone nonattainment areas to provide for specific measures to be implemented if an area fails to meet an applicable milestone under the Act. These sections require that contingency measures must be able to take effect when a failure occurs without further action by the State or the Administrator.

In Indiana, two ozone nonattainment areas are subject to the 15% ROP and contingency plans requirements: the Lake and Porter Counties portion of the Chicago severe ozone nonattainment area, and the Clark and Floyd Counties portion of the Louisville moderate ozone nonattainment area. This rulemaking action addresses only the plans for Lake and Porter Counties; Clark and Floyd Counties will be addressed in a separate **Federal Register**.

II. Indiana's 15% ROP and Contingency Plans Submittal

The Act requires States to observe certain procedural requirements in developing SIPs and SIP revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each State's SIP revision submitted under the Act be adopted by the State after reasonable notice and public hearing. The State of Indiana submitted a portion of the Lake and Porter Counties 15% ROP and contingency plan SIP revisions on January 13, 1994. The SIP revisions were reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). However, the submittal was deemed incomplete because the plans had not yet gone through public hearing and did not include fully adopted rules for all of the plans' control measures. Indiana held a public hearing on the plans on March 29, 1994. A summary of comments from that hearing and the Indiana Department of Environmental Management's (IDEM) response was submitted on July 5, 1994. IDEM sent a supplemental submittal on June 26, 1995, which included fully adopted rules for the Lake and Porter Counties 15% ROP and contingency plans. In a July 17, 1995, letter to Indiana, the State was notified that the SIP submittal was deemed complete.

III. Criteria for 15% ROP and Contingency Plans Approvals

The requirements for 15% ROP and 3% contingency plans are found in section 172(c)(9), 182(b)(1), and 182(b)(9) of the Act, and the following EPA guidance documents:

1. *Procedures for Preparing Emissions Projections*, EPA–450/4–91–019, Environmental Protection Agency, July 1991.

2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992.

3. ''November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories,'' memorandum from J. David Mobley, Edwin L. Meyer, and G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans*, EPA–452/R–92–005, Environmental Protection Agency, October 1992.

5. ''Quantification of Rule Effectiveness Improvements,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

6. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993.

7. ''Correction to 'Guidance on the Adjusted Base Year Emissions Inventory

and the 1996 Target for the 15 Percent Rate of Progress Plans','' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

8. ''15 Percent Rate-of-Progress Plans,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA–452/R–93–007, Environmental Protection Agency, May 1993.

10. ''Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, May 6, 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–005, Environmental Protection Agency, June 1993.

12. ''Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series,'' memorandum from G.T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, Environmental Protection Agency, July 28, 1993.

13. ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, August 13, 1993.

14. ''Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. ''Guidance on Issues Related to 15 Percent Rate-of-Progress Plans,'' memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

16. ''Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

17. ''Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

18. ''Clarification of 'Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate-of-Progress Plans','' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. ''Review and Rulemaking on 15 Percent Rate-of-Progress Plans,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. ''Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, October 29, 1993.

21. ''Rate-of-Progress Plan Guidance on the 15 Percent Calculations,'' memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

22. ''Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas,'' memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

23. ''Credit for 15 percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

24. ''Guidance on Projection of Nonroad Inventories to Future Years,'' memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

25. ''Discussion at the Division Directors Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

26. ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

27. ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

28. ''Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations,'' memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

29. ''Future Nonroad Emission Reduction Credits for Locomotives,'' memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

30. ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

31. ''Fifteen Percent Rate-of-Progress Plans—Additional Guidance,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

32. ''Update on the credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

33. ''Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from Inspection and Maintenance (I/M) and Guidance for Recalculation,'' memorandum from Margo Oge, Director, Office of Mobile Sources, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 13, 1996.

34. ''Modeling 15 Percent Volatile Organic Compound (VOC) Reduction(s) from I/M in 1999: Supplemental Guidance,'' memorandum from Gay MacGregor, Director, Regional and State Programs Division, and Sally Shaver, Director, Air Quality Strategies and Standards Division, Environmental Protection Agency, December 23, 1996.

35. ''15% Volatile Organic Compound (VOC) State Implementation Plan (SIP) Approvals and the 'As Soon As

Practicable' Test,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Richard B. Ossias, Deputy Associate General Counsel, Division of Air and Radiation, Office of General Counsel, Environmental Protection Agency, February 12, 1997.

36. ''Sample City Analysis: Comparison of Enhanced Inspection and Maintenance (I/M) Reductions Versus Other 15 Percent Rate of Progress (ROP) Plan Measures,'' E.H. Pechan, February 12, 1997.

For a 15% ROP plan SIP to be approved, the plan must adequately justify how much emission reduction is needed to achieve the 15% emission reduction by November 15, 1996, and how the plan's control strategy will secure that reduction.

The procedure for calculating the needed emission reduction is as follows:

(A) Calculate the ''1990 ROP inventory'' by subtracting from the area's ''1990 base year inventory'' (required to be submitted under sections 172(c)(3) and 182(a)(1) of the Act [1]) biogenic emissions, emissions outside of the nonattainment area, and pre-enactment banked emission credits;

(B) Calculate the ''1990 adjusted base year inventory'' by subtracting from the 1990 ROP inventory any emission reductions from the pre-1990 FMVCP and 1990 RVP Federal regulations which occur between 1990 and 1996;

(C) Calculate ''15% of adjusted base year emissions'' by multiplying the 1990 adjusted base year inventory by 15%;

(D) Calculate the ''total required reductions by 1996'' by adding emission reductions from the 1990 FMVCP and 1990 RVP federal rules to the 15% of adjusted base year emissions calculation (as provided under section 182(b)(1)(D) of the Act);

(E) Calculate the ''1996 emissions target level'' by subtracting from the 1990 ROP base year inventory the total required reductions by 1996;

(F) Calculate the ''1996 projected emission estimate'' by a number of methods, such as adding growth factors to the 1990 adjusted base-year inventory, or adding growth factors and required emission reductions to the 1990 ROP inventory; and

(G) Calculate the ''reduction required by 1996 to achieve 15% net of growth'' by subtracting the 1996 target emissions level from the 1996 projected emissions level.

In determining what control measures a State can use in its 15% ROP plan strategy, the Act provides under section 182(b)(1)(C) that emission reductions from control measures are creditable to the extent that they have actually occurred before November 15, 1996. In keeping with this requirement, the General Preamble states that all credited emission reductions must be real, permanent, and enforceable, and that regulations needed to implement the plan's control strategy must be adopted and implemented by the State by November 15, 1996.

As for the contingency plan, the General Preamble states that the contingency measures must provide reductions of 3% of the emissions from the 1990 adjusted base year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. The State can use its discretion to implement any contingency measures before 1996. Alternately, the State may decide not to implement a measure until the area has failed to secure the 15% emission reduction, attain the National Ambient Air Quality Standards (NAAQS) for ozone, or meet any other applicable milestone under the Act. In that situation, the reductions must be achieved through triggered, prior adopted rules within one year from the date in which the failure has been identified.

The EPA has reviewed the State's submittal for consistency with the requirements of the Act and EPA guidance. A summary of EPA's analysis is provided below.

IV. Analysis of Lake and Porter Counties 15% ROP and Contingency Plans

Indiana's 15% ROP summary for Lake and Porter Counties is provided in the following table:

15% ROP SUMMARY FOR LAKE AND PORTER COUNTIES

	Lbs VOC/day
CALCULATION OF REDUCTION NEEDS BY 1996	
1990 Lake and Porter Counties Total VOC Emissions	424,721
1990 ROP Emissions (Anthropogenic only)	381,841
1990–1996 Noncreditable Reductions (Reductions from 1990 RVP and Pre-1990 FMVCP Regulations)	58,838
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	323,003
15% of Adjusted Base Year Emissions	48,450
Total Required Emission Reductions by 1996 (15% of Adjusted Base Year Emissions plus Noncreditable Reductions)	107,288
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	274,553
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	342,683
REDUCTION NEEDS BY 1996 TO ACHIEVE 15 PERCENT NET OF GROWTH (1996 Projected Emission minus 1996 Target Level)	68,130
CREDITABLE REDUCTION FROM MANDATORY CONTROLS	
Mobile Sources:	
Enhanced Vehicle Inspection and Maintenance (I/M) Program (326 IAC 13–1.1)	6,817
Federal Reformulated Gasoline Program (40 CFR Part 80, Subpart D)	14,905
Area Sources:	
Stage II Gasoline Vapor Recovery (326 IAC 8–4–6)	9,824
Federal Architectural and Industrial Maintenance (AIM) Coatings Rule	2,920
Point Sources:	
Non-Control Techniques Guideline (CTG) Reasonably Available Control Technology (RACT) Rule (326 IAC 8–7)	4,559

[1] Sections 172(c)(3) and 182(a)(1) of the Act require that nonattainment plan provisions include a comprehensive, accurate inventory of actual emissions which occurred in 1990 from all sources of relevant pollutants in the nonattainment area. This inventory provides an estimate of the amount of VOC and oxides of nitrogen produced by emission sources such as automobiles, powerplants and the use of consumer solvents in the household. Because the approval of such inventories is necessary to an area's 15% ROP plan and attainment demonstration, the emission inventory must be approved prior to or with the 15% ROP plan submission.

15% ROP SUMMARY FOR LAKE AND PORTER COUNTIES—Continued

	Lbs VOC/day
SUBTOTAL—REDUCTIONS FROM MANDATORY CONTROLS	39,025
CREDITABLE REDUCTIONS FROM NON MANDATORY CONTROLS	
Point Sources:	
Keil Chemical Agreed Order	5,327
Coke Oven Battery Shutdowns at Inland Steel Flat Products[2] (326 IAC 6–1–10.1(k)(5))	22,850
Area Sources:	
Residential Open Burning (326 IAC 4–1)	929
SUBTOTAL—REDUCTION FROM NON MANDATORY CONTROLS	29,106
TOTAL CREDITABLE REDUCTIONS FROM 15% ROP PLAN	68,130

[2] Total reductions from the coke oven battery closures are 23,609 lbs VOC/day. Reductions not counted toward the 15% ROP plan are being used as a contingency measure.

A. Calculation of the 1990 Adjusted Base Year Emission Inventory

To determine the 1990 adjusted base year inventory, Indiana used the 1990 base year emission inventory approved by EPA on January 4, 1995 (60 FR 375), which was found to meet the requirements of sections 172(c)(3) and 182(a)(1) of the Act for Lake and Porter Counties. Total VOC emissions estimated from this inventory are 424,721 lbs VOC/day. Indiana subtracted biogenic emissions and emissions from outside Lake and Porter Counties from the 1990 base year inventory to determine that the 1990 ROP inventory level is 381,841 lbs VOC/day. No pre-enactment banked emission credit was included in this inventory.

Indiana used EPA's Mobile Source Emissions Model (MOBILE)5a to calculate the emission reductions from the pre-1990 FMVCP and 1990 RVP regulations; these reductions were subtracted from the 1990 ROP inventory level to find the 1990 adjusted base year inventory level of 323,003 lbs VOC/day. Indiana's documentation includes the actual 1990 motor vehicle emissions using 1990 vehicle miles traveled (VMT) and MOBILE5a emission factors, and the adjusted emissions using 1990 VMT and the MOBILE5a emission factors in calendar year 1996 with the appropriate RVP for the nonattainment area as mandated by EPA. The plan includes adequate documentation showing how the MOBILE5a model was run to calculate the expected emission reductions from FMVCP and RVP.

B. 1996 ROP Target Emission Level

To calculate the 1996 target emission level for Lake and Porter Counties, Indiana first multiplied the 1990 adjusted base year inventory by 0.15 to determine that the 15% required emission reduction by 1996 is 48,450 lbs VOC/day. Then, 58,838 lbs VOC/day of reductions from non-creditable control measures (pre-1990 FMVCP and 1990 RVP) were added to the 15% required reduction to find that the total required reductions by 1996 is 107,288 lbs VOC/day. Finally, Indiana subtracted the 1996 total required emission reductions from the 1990 ROP emission inventory to determine that the 1996 emission target level for Lake and Porter Counties is 274,553 lbs VOC/day.

The 15% ROP plan submittal adequately documents the calculations used to determine the Lake and Porter Counties target level by showing each step, discussing any assumptions made, and stating the origin of the numbers used in the calculations.

C. Projected Emission Inventory

To determine the 1996 projected emission inventory, Indiana has included in the 15% ROP plan the growth factors used together with documentation for the assumptions made. The point, area, and non-road mobile source emission inventories were projected using either source supplied data, population forecasts, historical data, or, where historical data were unavailable or not suitable to project, the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), regional growth data were used. The on-road mobile source emission inventory was projected using MOBILE5a. The State's calculations for growth in the on-road mobile, off-road mobile, industrial, and area source sectors is 10,180 lbs VOC/day, 1,298 lbs VOC/day, 4,692 lbs VOC/day, and 3,510 lbs VOC/day, respectively, for a total of 19,680 lbs VOC/day. These growth estimates were calculated in a manner consistent with EPA's guidance documents. The projected emissions were added to the 1990 adjusted base-year inventory to determine that the 1990 projected emission inventory level is 342,683 lbs VOC/day.

D. Contingency Measure Provisions

Indiana's contingency plan summary for Lake and Porter Counties is shown in the following table:

CONTINGENCY MEASURE SUMMARY FOR LAKE AND PORTER COUNTIES

	Lbs VOC/day
CALCULATION OF CONTINGENCY MEASURE REDUCTION NEEDED	
1990 Adjusted Base Year Emissions	342,683
3 Percent of 1990 Adjusted Base Year Emissions	9,690
CREDITABLE REDUCTIONS FROM CONTINGENCY MEASURES	
Remaining Coke Oven Battery Shutdowns at Inland Steel (326 IAC 6–1–10.1(k)(5))	759
Municipal Solid Waste (MSW) Landfill Rule (326 IAC 8–8)	1,132
Coke Oven National Emission Standard for Hazardous Air Pollutants (NESHAP)[3] (40 CFR Part 63, Subpart L)	1,226
Automobile Refinishing Rule (326 IAC 8–10)	4,679

CONTINGENCY MEASURE SUMMARY FOR LAKE AND PORTER COUNTIES—Continued

	Lbs VOC/day
Volatile Organic Liquid (VOL) Storage Rule (326 IAC 8–9)	2,620
TOTAL CREDITABLE CONTINGENCY REDUCTIONS	10,416

[3] Although the purpose of NESHAP rules are to control the emissions of hazardous air pollutants (HAP), pursuant to section 112 of Title III of the Act, much of the HAPs controlled under the coke oven NESHAP are also VOC.

E. Creditable Reductions From Control Measures

From the calculation of the 1996 target emission level and 1996 projected emission level, Indiana must reduce emissions in Lake and Porter Counties by 68,130 lbs VOC/day, to secure the 15% ROP reduction, and an additional 9,690 lbs VOC/day, to secure the required 3% contingency reduction. The Lake and Porter Counties 15% ROP and 3% contingency plans do meet this requirement. The total creditable emission reduction achieved by the 15% ROP and 3% contingency plans are 68,130 lbs VOC/day, and 10,416 lbs VOC/day, respectively. Emission reductions not needed to meet the 3% contingency requirement will be applied toward achieving post-1996 ROP reductions, leading to attainment of the ozone air quality standard.

The SIP submittal includes documentation indicating the sources or source categories which are expected to be affected by each control measure, the sources' projected 1996 emissions without controls, and the assumptions used to estimate how much the sources' 1996 emissions would be reduced by each control measure. These assumptions were derived primarily from Midwest Research Institute's April 30, 1993, document entitled ''Support Document for Indiana's Lake and Porter Nonattainment Area 1996 Rate of Progress Plan,'' which was contracted by EPA to assist Indiana in developing the 15% ROP and contingency plans. A review of the emission reduction credit taken for each control measure follows:

Enhanced I/M Program

Of the 15% ROP plans originally submitted to EPA, most contain enhanced I/M programs because they achieve more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties implementing enhanced I/M programs, only a few States are currently actually testing cars using the original enhanced I/M protocol.

On September 18, 1995 (60 FR 48029), EPA finalized revisions to its enhanced I/M rule allowing States significant flexibility in designing I/M programs appropriate for their needs. Further, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the final enhanced I/M rules and/or the guidance contained within the NHSDA, to secure State legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded States from obtaining emission reductions from enhanced I/M by November 15, 1996.

Given the heavy reliance by many States on enhanced I/M programs to help satisfy 15% ROP plan requirements, and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA has recognized that it is not possible for many States to achieve the portion of the 15% ROP reductions that are attributed to enhanced I/M by November 15, 1996. Under these circumstances, disapproval of the 15% ROP plan SIPs would serve no purpose. Consequently, under certain circumstances, EPA will allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs in their 15% ROP plans, even though the emission reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will approve 15% ROP SIPs if the emission reductions from the revised, enhanced I/M programs, as well as from the other 15% ROP plan measures, will achieve the 15% level as soon after November 15, 1996, as practicable. To make this ''as soon as practicable'' determination, the EPA must determine that the 15% ROP plan contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. The EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

Indiana's enhanced I/M program for Lake and Porter Counties was approved by EPA on March 19, 1996 (61 FR 11142), and the State began testing vehicles under the new program on January 1, 1997. A single contractor, Envirotest, Inc., operates a test-only centralized network for inspections and re-inspection. The Indiana I/M program requires coverage of all 1976 and newer gasoline powered light duty passenger cars and light duty trucks up to 9,000 pounds Gross Vehicle Weight Rating (GVWR). All applicable 1981 and newer vehicles will be subject to a transient, mass emissions tailpipe test that includes the purge and pressure test. All applicable 1976 through 1980 vehicles will be subject to a BAR90 single-speed idle test that includes the pressure test. The I/M contractor has acquired all the emission test sites required under the State I/M contract, and all the test stations required have been constructed.

EPA has analyzed Indiana's enhanced I/M program to predict when the emission reductions claimed in the Lake and Porter Counties 15% ROP plan for the program will actually be secured. This analysis was based on the methodology specified in EPA's policy memoranda, ''Date by Which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation,'' August 13, 1996, and ''Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance,'' December 23, 1996. MOBILE5b runs were used to evaluate the credit using inputs that reflect actual program startup. Some of the input parameters of the modeling included: a January 1, 1997, program start date; start-up cutpoints as recommended by EPA; and expected evaporative test procedures available at start-up. The State has taken credit in the Lake and Porter Counties 15% ROP plan for 6,817 lbs VOC/day, or 3.41 tons per day reductions from enhanced I/M. Based on EPA's analysis, the emission reduction claimed will be secured by November 1999. (See EPA's August 13, 1996, policy memorandum titled ''Date by Which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for

Recalculation,'' for further discussion on the November 1999 date).

To determine whether there are other available potential control measures which can meaningfully accelerate the date by which 15% emission reduction in Lake and Porter Counties can be achieved, EPA compared the Lake and Porter Counties 15% ROP and contingency plans with control measures included in 15% ROP plans nation-wide, which are listed in EPA's report, ''Sample City Analysis: Comparison of Enhanced I/M Reductions Versus other 15 Percent ROP Plan Measures,'' referenced in EPA's policy document ''15% VOC SIP Approvals and the 'As Soon As Practicable' Test,'' February 12, 1997. Based upon the report, EPA believes that there are no other potential control measures beyond those already included in the Lake and Porter Counties 15% ROP and contingency plans which can secure a significant amount of emission reduction before November 1999.

Because Indiana's enhanced I/M program will secure emission reductions claimed under the Lake and Porter Counties 15% ROP plan by November 1999, and because there are no other potential control measures which can meaningfully accelerate the achievement of 15% reduction in the counties before November 1999, the EPA finds that the Lake and Porter Counties 15% ROP plan does secure 15% emission reductions as soon as practicable. On this basis, the emission reduction claimed for the Lake and Porter Counties enhanced I/M program under the 15% ROP plan is approvable.

Federal Reformulated Gasoline Program

The federal reformulated gasoline program (40 CFR part 80, subpart D) requires gasoline providers in Lake and Porter Counties to sell only gasoline which meets certain blending requirements to reduce pollution. The VOC reduction from reformulated gasoline was determined using the MOBILE5a model to estimate the difference between 1996 highway mobile source emissions at RVP 9.0, the level of control upon gasoline in Lake and Porter Counties before the reformulated gasoline requirement, and 1996 highway mobile source emissions with reformulated gasoline. Indiana has credited a 14,905 lbs/day emission reduction from this program, which is acceptable.

Stage II Gasoline Vapor Recovery Rule

Indiana's Stage II rule (326 IAC 8–4–6) requires facilities that sell more than 10,000 gallons of gasoline per month to operate Stage II vapor recovery systems certified to have a control effectiveness of at least 95%. Indiana has estimated that the rule has a 84% program in-use efficiency, accounting for annual inspection program effects and the exemption of facilities with a monthly gasoline throughput of less than 10,000 gallons. Indiana has credited a 9,824 lbs VOC/day emission reduction from this rule, which is acceptable.

Federal AIM Coatings Rule

Pursuant to section 183(e) of the Act, EPA proposed on June 25, 1996 (61 FR 32729), a national rule requiring manufacturers of AIM coatings to meet VOC content limitations. The March 7, 1996, EPA memorandum ''Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule'' allows States to take credit for a 20% reduction in AIM coating emissions, even though promulgation of the rule has been delayed. Based on this policy, Indiana has taken an emission reduction credit of 2,920 lbs VOC/day, which is acceptable.

Non-CTG RACT Rule

Indiana's Non-CTG RACT rule (326 IAC 8–7) requires VOC controls on sources which have the potential to emit 25 tons of VOC emissions per year, and are not already covered under an existing CTG or part of a post-1990 CTG category.[4] Sources subject to this rule are allowed to demonstrate compliance by choosing among any one of the following three available options: (1) achieve an overall VOC reduction in baseline actual emissions of 98% by the addition of add-on controls or documented reduction in VOC-containing materials used; (2) achieve a level of reduction equal to 81% of baseline actual emission by the same means as stated above, where it is demonstrated that a 98% reduction in source emissions is not achievable; or (3) achieve an alternative overall emission reduction by the application of RACT as determined by the State and EPA. Indiana estimates that the rule's overall control efficiency is 81%, and has a rule effectiveness of 80%. Indiana has credited 4,559 lbs VOC/day in emission reductions from this rule, which is acceptable.

Keil Chemical Agreed Order

Keil Chemical is required under a July 29, 1994, agreed order (Cause No. A–2250) to limit emissions from its Pyro-Chek stack to 15 tons of VOC/year by operating a carbon adsorption add-on control device. Indiana credits this device to reduce emissions by 5,327 lbs VOC/day, which is acceptable.

Coke Oven Battery Shutdowns at Inland Steel Flat Products

Inland Steel is required under Indiana's Particulate Matter rule 326 IAC 6–1–10.1(k)(5) to shut down numbers 6 through 11 coke batteries before 1996. The 1990 base-year inventory emissions from these coke batteries, 23,609 lbs VOC/day, are being credited as emission reductions. Indiana is using 22,850 lbs VOC/day towards the 15% ROP plan, and 759 lbs VOC/day as a contingency measure. These reductions are acceptable.

Residential Open Burning Rule

Under Indiana's rule 326 IAC 4–1, residential open burning is banned in Lake and Porter Counties. Indiana estimates 80% emission reduction and 80% rule effectiveness from this rule. An emissions reduction credit of 929 lbs VOC/day from the rule is acceptable.

Municipal Solid Waste Landfills Rule

The State rule 326 IAC 8–8 applies to new and existing municipal solid waste landfills emitting greater than 55 tons of non-methane organic compounds per year and with a minimum design capacity of 100,000 megagrams of solid waste. The rule requires the operation of a landfill gas collection system and combustion device. Based on a destruction efficiency of 98% and collection efficiencies ranging from 50% to 60%, Indiana estimates that an overall VOC emission control efficiency of 49% may be achieved, with 80% rule effectiveness. Indiana has credited an emission reduction of 1,132 lbs VOC/day from this rule, which is acceptable.

Coke Oven NESHAP

This federal rule (40 CFR part 63, subpart L) applies to all by-product coke ovens and nonrecovery coke ovens as stipulated in the rule. The hazardous air pollutants regulated under the rule are also VOC. The rule is estimated to have a 15% and 52% control efficiency for topside leaks and charging, respectively, along with 80% rule effectiveness. An emission reduction of 1,226 lbs VOC/day has been credited from this rule, which is acceptable.

[4] RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are EPA documents which provide recommendations on what EPA considers the presumptive norm for RACT for particular industries. Indiana was required to adopt the Non-CTG RACT rule by section 182(b)(2) of the Act.

Automobile Refinishing Rule

The State rule 326 IAC 8–10 requires automobile and mobile equipment refinishing shops to use lower VOC coatings, less-emitting spray-gun and spray-gun cleaning equipment, and improved work practices to reduce VOC. To improve rule effectiveness, this rule also requires refinishing coating suppliers in the area to sell only coatings which meet the VOC limits required in the rule. In addition to documentation contained in the submittal, Indiana submitted supplemental documentation which indicates that an overall 77.8% emission reduction can be expected from all the control measures required by this rule, with 100% rule effectiveness. This documentation has been included in the docket for this rulemaking. Indiana has taken an emission reduction credit of 4,679 lbs VOC/day from this rule, which is acceptable.

VOL Storage Rule

The State rule 326 IAC 8–9 requires special roof design and sealing requirements for certain VOL storage vessels. Indiana is only taking credit from controls on external floating roof tanks and fixed roof tanks, assuming 96% and 50% control efficiency, respectively, as contingency measures. The emission credit taken for the VOL storage rule, 2,620 lbs VOC/day, is acceptable.

The Lake and Porter Counties 15% ROP and contingency plans contain adequate documentation on how the expected emission reductions from the control measures were calculated. These expected reductions are approvable.

F. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See sections 172(c)(6), 110(a)(2)(A) of the Act, and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from the Assistant Administrator for Air and Radiation (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP [see section 110(a)(2)(C) of the Act].

The control measures included in the Lake and Porter 15% ROP and contingency plans have been fully adopted by Indiana and have been submitted to EPA as revisions to the State's ozone SIP. The EPA has independently reviewed each control measure to determine conformance with SIP requirements under section 110 and part D of the Act, and the overall enforceability of the measure's requirements. Rulemaking action on each control measure is as follows:

Control measure	Date of EPA approval
Enhanced I/M Program (326 IAC 13–1.1)	March 19, 1996 (61 FR 11142).
Reformulated Gasoline (40 CFR Part 80, Subpart D)	Federal regulation promulgated February 16, 1994, (59 FR 7716).
Stage II Gasoline Vapor Recovery (326 IAC 8–4–6)	April 28, 1994 (59 FR 21942).
Federal AIM Coatings Rule	Proposed federal regulation for which Indiana can take credit. (See memorandum dated March 7, 1996, from John Seitz, Director, Office of Air Quality Planning and Standards to Regional Air Division Directors.)
Non-CTG RACT (326 IAC 8–7)	July 5, 1995 (60 FR 34857).
Keil Chemical July 29, 1994, Agreed Order	Date of EPA approval action is date of today's FEDERAL REGISTER. See discussion below.
Residential Open Burning Ban (326 IAC 4–1)	February 1, 1996 (61 FR 3581).
Coke Oven Battery Shutdown (326 IAC 6–1–10.1(k)(5))	June 15, 1995 (60 FR 31412).
Municipal Solid Waste Landfills (326 IAC 8–8)	January 17, 1997 (62 FR 2591).
Coke Oven NESHAP (40 CFR Part 60, Subpart L)	Federal regulation promulgated October 27, 1993 (58 FR 57911).
Auto Refinishing (326 IAC 8–10)	June 13, 1996 (61 FR 29965).
Volatile Organic Liquid Storage Tanks (326 IAC 8–9)	January 17, 1997 (62 FR 2593).

The agreed order for Keil Chemical is being approved in today's direct final rulemaking action. A discussion of this approval is included in part V of this rulemaking action.

G. Transportation Conformity 1996 Mobile Source Emissions Budget

Section 176(c) requires States to submit SIP revisions establishing the State's criteria and procedures for assessing the conformity of federal actions (transportation and general) to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. To assure conformity with the SIP, conformity analyses for transportation projects must take into account the amount of on-road mobile source emissions that can be emitted in accordance with SIP emission reduction milestones. For the purposes of EPA transportation conformity determinations, the 1996 emission level for on-road mobile sources that is achieved from the 15% ROP plan, constitutes the 1996 VOC mobile source emission budget for Lake and Porter Counties. This level, which is derived from MOBILE5a using 1996 projected on-road mobile source emissions with reformulated gasoline and enhanced I/M, is 50,015 lbs/day. Therefore, final approval of the 15% ROP plan also approves the 1996 mobile source VOC emission budget.

For years after 1996, conformity determinations addressing VOCs must demonstrate consistency with this plan revision's motor vehicle emissions budget, and satisfaction of the build/no-build test. Final approval of this 15% ROP plan would not eliminate the need for a build/no-build test for oxides of nitrogen.

H. Concluding Statement on 15% ROP and Contingency Plans

The EPA has reviewed the Lake and Porter Counties 15% ROP and contingency plans SIP revisions submitted to EPA as described above, and finds that the plans satisfy the requirements of sections 172(c)(9), 182(b)(1), and 182(c)(9) of the Act, as well as EPA guidance for such plans. Therefore, the EPA, in this action, is approving these plans as revisions to the Indiana ozone SIP.

V. Analysis of Keil Chemical Agreed Order

A July 29, 1994, agreed order (Cause No. A–2250) between IDEM and Keil Chemical was included in the Lake and Porter Counties 15% ROP and contingency plans SIP submittal as a control measure for the 15% ROP plan. Keil Chemical operates a Pyro-Chek manufacturing process in Hammond, Lake County, Indiana. The 1990 plant VOC emissions from the Pyro-Chek stack were estimated to be 5,060 lbs VOC/day, and, if left uncontrolled, were projected to be approximately 5,464 lbs VOC/day in 1996. Pursuant to the agreed order with IDEM, Keil Chemical installed and began operation of a carbon adsorption system to limit VOC emissions from the Pyro-Chek process stack to 15 tons of VOC per year. The agreed order also requires Keil Chemical to implement a fugitive emission control program and limits total emissions from the plant to 25 tons of VOC per year. In today's action, EPA is approving the July 29, 1994, Agreed Order as a revision to the Indiana ozone SIP. As a result of the control placed on the Pyro-Chek stack, Indiana is claiming 5,327 lbs VOC/day in emissions reductions from the stack.

VI. Final Rulemaking Action

The EPA approves Indiana's 15% ROP plan for Lake and Porter Counties, 3% contingency plan for Lake and Porter Counties, and the Keil Chemical Agreed Order, as revisions to the SIP. For transportation conformity purposes, final approval of the 15% ROP plan also approves the 1996 mobile source emission budget of 50,015 lbs VOC/day.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on June 2, 1997 unless, by May 5, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 2, 1997.

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

VII. Administrative Requirements

A. Executive Order 12866

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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 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 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Ozone.

Dated: February 19, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the 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.

2. Section 52.770 is amended by adding paragraph (c)(112) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(112) On June 26, 1995, Indiana submitted an agreed order with Keil Chemical Division, Ferro Corporation (Keil Chemical) requiring volatile organic compound emission control at Keil Chemical's Pyro-Chek manufacturing process, located in Hammond, Lake County, Indiana.

(i) Incorporation by reference. Agreed Order of the Indiana Department of Environmental Management, Cause No. A–2250, adopted and effective, July 29, 1994.

3. Section 52.777 is amended by adding paragraphs (k) and (l) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbon).

* * * * *

(k) On June 26, 1995, Indiana submitted a 15 percent rate-of-progress plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 182(b)(1) of the Clean Air Act, as amended in 1990.

(l) On June 26, 1995, Indiana submitted a 3 percent contingency plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 172(c)(9) and 182(c)(9) of the Clean Air Act, as amended in 1990.

[FR Doc. 97–8383 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 95–21; FCC 97–92]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations concerning ex parte presentations in Commission proceedings. The new rules simplify the determination in particular proceedings of whether ex parte presentations are permissible and whether they must be disclosed. The proposed rules also modify the Commission's ''Sunshine period prohibition.'' Certain other minor amendments of the rules are made. The intended effect of the amendments is to make the rules simpler and easier to comply with, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1760.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, GC Docket No. 95–21, adopted on March 13, 1997, and released March 19, 1997. The full text of the report and order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Suite 140, 2100 M Street NW., Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Report and Order

1. In this report and order, the Commission revises its rules governing ex parte presentations in Commission proceedings. The revision is intended to make the rules simpler and clearer, and thus more effective in ensuring fairness in Commission proceedings. The Commission stresses that the ex parte rules are important and that full compliance is expected.

2. The Commission revises its system for specifying whether proceedings are ''restricted,'' ''permit-but-disclose'' or ''exempt,'' which determine how ex parte presentations are treated in that proceeding subject to specific exceptions. (An ex parte presentation is a communication to a Commission decisionmaker concerning the outcome or merits of a proceeding which—if written—is not served on all parties and—if oral—is made without notice and the opportunity for all parties to be present.) In restricted proceedings, ex parte presentations are prohibited. In permit-but-disclose proceedings, ex parte presentations are permitted but must be disclosed on the record of the proceeding. In exempt proceedings, ex parte presentations may be made without limitation. The revised rules adopt a simplified system for determining the status of a proceeding.

3. Under this system, all proceedings not specifically designated as exempt or permit-but-disclose (either by the rules or by order or public notice in an individual proceeding) are restricted from the point that someone becomes a ''party'' to the proceeding. Thus, the extent of the restriction is governed by the definition of ''party.'' If there is only a single ''party'' (as defined in the ex parte rules) in a restricted proceeding, the Commission and the party may freely make presentations to each other because there is no other party to be served or with a right to be present. If there are additional parties, then those parties must be served or be given an opportunity to be present. Under the rules, parties include: (1) any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person who files a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application; (2) any person who files a complaint which is served on the subject of the complaint or which is a formal complaint under 47 U.S.C. § 208 and § 1.721 of our rules, and the person who is the subject of such a complaint; (3) any person who files a petition to revoke a license or other authorization or a petition for an order to show cause and the licensee or entity who is the subject of the petition; (4) the subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order, or any other person who has otherwise been given formal party status in a proceeding; and (5) in a rulemaking proceeding (other than a broadcast allotment proceeding) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, the general public. To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or an individual Commissioner will not confer party status since such filings do not demonstrate the requisite intent or formality for party status.

4. A few matters will continue to be expressly classified as exempt. These include (1) notice of inquiry proceedings, (2) petitions for rulemaking, (3) tariff proceedings before they are set for investigation, and (4) proceedings involving complaints which are not served on the target of the complaint, are informal § 208 complaints, or are cable rate complaints not filed on the standard complaint form.

5. Other proceedings are classified as permit-but-disclose (a term replacing the former term ''nonrestricted). These

include: (1) declaratory ruling proceedings; (2) proceedings under 47 U.S.C. § 214(a) that do not involve applications under Title III of the Communications Act; and (3) Freedom of Information Act requests. As under current practice, however, the Commission may decide on a case-by-case basis that because a petition for declaratory relief predominately concerns the rights of particular parties, it should be treated as restricted, and may so modify treatment of the proceeding. Applications for a Cable Landing Act license are similar to § 214 applications (and often filed in conjunction therewith), and the new rules also expressly subject them to permit-but-disclose procedures, again provided that no Title III applications are involved. Permit-but-disclose proceedings also include: (1) tariff investigations which have been set for investigation under 47 U.S.C. § 204; (2) proceedings conducted pursuant to 47 U.S.C. § 220(b) for prescription of common carrier depreciation rates (upon release of a public notice of specific proposed depreciation rates); and (3) proceedings to prescribe a rate of return under 47 U.S.C. § 205. Additionally, the Commission will continue to treat proceedings before a Joint Board or before the Commission involving a recommendation from a Joint Board as permit-but-disclose. Proceedings involving cable rate complaints under 47 CFR § 543(c) and filed on the required form (FCC form 329) will also be treated as permit-but-disclose.

6. The Commission also makes an exception to its Sunshine period prohibition. Pursuant to the rules, once a proceeding has been placed on a sunshine notice, no presentations, whether ex parte or not, are permitted until the Commission has released the full text of the order in the proceeding noticed in the Sunshine notice, deleted the item from the sunshine agenda, or returned the item for further staff consideration. The prohibition is intended to give the Commission ''a period of repose'' in which to make decisions. The Commission exempts from the prohibition the discussion of recent Commission actions at widely-attended meetings or symposia.

7. The Commission also modifies the ex parte rules in certain respects. It gives additional authority to the Office of General Counsel to evaluate alleged ex parte violations. It increases to at least two a week the frequency of publishing lists of ex parte presentations. It also clarifies several aspects of the rules and codifies some existing interpretations and policies.

Regulatory Flexibility Certification

8. The NPRM (60 FR 8995 (February 16, 1995)) incorporated an Initial Regulatory Flexibility Analysis (IFRA) of the proposed rules pursuant to 5 U.S.C. § 605. No comments were received in direct response to the IFRA. Section 604 of the Regulatory Flexibility Act, as amended, requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless the Commission certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. § 605(b). The Commission believes that the rules it adopted will not have a significant economic impact on a substantial number of small entities.

9. As noted above, the Commission's purpose in revising the ex parte rules is to simplify and clarify them. It finds that the modifications do not impose any additional compliance burden on persons dealing with the Commission including small entities. It also finds that the revised rules clarify the situations in which ex parte presentations are permissible, when they must be reported on the record, and when they are prohibited, without significantly changing the current rules substantively. The Commission believes that the revised rules do not otherwise affect the rights of persons to participate as parties in Commission proceedings. It further finds that there is no reason to believe that operation of the revised rules will impose any costs on parties in particular proceedings subject to those rules, beyond those costs incurred under our former rules. Rather, the Commission anticipates that the revisions will serve to make the rules easier to comply with and more effective for small entities as well as others. By increasing the frequency with which the Commission issues reports of ex parte presentations, the amended rules will make it easier for small entities and others to determine when ex parte presentations have occurred.

10. Accordingly, the Commission certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996), that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b).

List of Subjects in 47 CFR Parts 0 and 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.11(a)(9) is revised to read as follows:

§ 0.11 Functions of the Office.

(a) * * *

(9) In consultation with the General Counsel, approve waivers of the applicability of the conflict of interest statutes pursuant to 18 U.S.C. 205 and 208, or initiate necessary actions where other resolutions of conflicts of interest are called for.

* * * * *

3. Section 0.41(o) is added to read as follows:

§ 0.41 Functions of the Office.

* * * * *

(o) To serve as the principal operating office on *ex parte* matters involving restricted proceedings. To review and dispose of all *ex parte* communications received from the public and others.

4. Section 0.251(h) is added to read as follows:

§ 0.251 Authority delegated.

* * * * *

(h) The General Counsel is delegated authority to issue rulings on whether violations of the *ex parte* rules have occurred.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

6. Section 1.1200 is revised to read as follows:

§ 1.1200 Introduction.

(a) *Purpose.* To ensure the fairness and integrity of its decision-making, the Commission has prescribed rules to

regulate ex parte presentations in Commission proceedings. These rules specify ''exempt'' proceedings, in which ex parte presentations may be made freely (§ 1.1204(b)), ''permit-but-disclose'' proceedings, in which ex parte presentations to Commission decision-making personnel are permissible but subject to certain disclosure requirements (§ 1.1206), and ''restricted'' proceedings in which ex parte presentations to and from Commission decision-making personnel are generally prohibited (§ 1.1208). In all proceedings, a certain period (''the Sunshine Agenda period'') is designated in which all presentations to Commission decision-making personnel are prohibited (§ 1.1203). The limitations on ex parte presentations described in this section are subject to certain general exceptions set forth in § 1.1204(a). Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable ex parte rules by order, letter, or public notice. Joint Boards may modify the ex parte rules in proceedings before them.

(b) Inquiries concerning the propriety of ex parte presentations should be directed to the Office of General Counsel.

7. Section 1.1202 is revised to read as follows:

§ 1.1202 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Presentation*. A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation.

Note to paragraph (a): A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

(b) *Ex parte presentation*. Any presentation which:

(1) If written, is not served on the parties to the proceeding; or

(2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

Note to paragraph (b): Written communications include electronic submissions transmitted in the form of texts, such as by Internet electronic mail.

(c) *Decision-making personnel*. Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decision-maker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing.

(d) *Party*. Unless otherwise ordered by the Commission, the following persons are parties:

(1) Any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

Note 1 to paragraph (d): Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such applicants may make presentations to the Commission about their own applications provided that no one has become a party with respect to their application by other means, *e.g.*, by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(2) Any person who files a complaint which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721, and the person who is the subject of such a complaint that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721;

(3) Any person who files a petition to revoke a license or other authorization or who files a petition for an order to show cause and the licensee or other entity that is the subject of the petition;

(4) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(5) Any other person who has otherwise been given formal party status in a proceeding; and

(6) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a)(1) or (2).

Note 2 to paragraph (d): To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or individual Commissioners will not confer party status.

Note 3 to paragraph (d): The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also

determine in particular instances that persons who qualify as ''parties'' under § 1.1202(d) should nevertheless not be deemed parties for purposes of this subpart.

Note 4 to paragraph (d): Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Mass Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

(e) *Matter designated for hearing.* Any matter that has been designated for hearing before an administrative law judge or which is otherwise designated for hearing in accordance with procedures in 5 U.S.C. 554.

8. Section 1.1203 is revised to read as follows:

§ 1.1203 Sunshine period prohibition.

(a) With respect to any Commission proceeding, all presentations to decision-makers concerning matters listed on a Sunshine Agenda, whether ex parte or not, are prohibited during the period specified by paragraph (b) of this section:

(1) The presentation is exempt under § 1.1204(a);

(2) The presentation relates to settlement negotiations and otherwise complies with any ex parte restrictions in this subpart;

(3) The presentation occurs in the course of a widely attended speech or panel discussion and concerns a Commission action in an exempt or a permit-but-disclose proceeding that has been adopted (not including private presentations made on the site of a widely attended speech or panel discussion); or

(4) The presentation is made by a member of Congress or his or her staff, or by other agencies or branches of the federal government or their staffs in a proceeding exempt under § 1.1204 or subject to permit-but-disclose requirements under § 1.1206. If the presentation is of substantial significance and clearly intended to affect the ultimate decision, the presentation (or, if oral, a summary of the presentation) must be placed in the record of the proceeding by Commission staff or by the presenter in accordance with the procedures set forth in § 1.1206(b).

(b) The prohibition set forth in paragraph (a) of this section applies from the release of a public notice that a matter has been placed on the Sunshine Agenda until the Commission:

(1) Releases the text of a decision or order relating to the matter;

(2) Issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or

(3) Issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.

9. Section 1.1204 is revised to read as follows:

§ 1.1204 Exempt ex parte presentations and proceedings.

(a) *Exempt ex parte presentations.* The following types of presentations are exempt from the prohibitions in restricted proceedings (§ 1.1208), the disclosure requirements in permit-but-disclose proceedings (§ 1.1206), and the prohibitions during the Sunshine Agenda and circulation period prohibition (§ 1.1203):

(1) The presentation is authorized by statute or by the Commission's rules to be made without service, see, e.g., § 1.333(d), or involves the filing of required forms;

(2) The presentation is made by or to the General Counsel and his or her staff and concerns judicial review of a matter that has been decided by the Commission;

(3) The presentation directly relates to an emergency in which the safety of life is endangered or substantial loss of property is threatened, provided that, if not otherwise submitted for the record, Commission staff promptly places the presentation or a summary of the presentation in the record and discloses it to other parties as appropriate.

(4) The presentation involves a military or foreign affairs function of the United States or classified security information;

(5) The presentation is to or from an agency or branch of the Federal Government or its staff and involves a matter over which that agency or branch and the Commission share jurisdiction provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will, if not otherwise submitted for the record, be disclosed by the Commission no later than at the time of the release of the Commission's decision;

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

Note 1 to paragraph (a): Under paragraphs (a)(5) and (a)(6) of this section, information will be relied on and disclosure will be made only after advance coordination with the agency involved in order to ensure that the agency involved retains control over the timing and extent of any disclosure that may have an impact on that agency's jurisdictional responsibilities. If the agency involved does not wish such information to be disclosed, the Commission will not disclose it and will disregard it in its decision-making process, unless it fits within another exemption not requiring disclosure (*e.g.*, foreign affairs). The fact that an agency's views are disclosed under paragraphs (a)(5) and (a)(6) does not preclude further discussions pursuant to, and in accordance with, the exemption.

(7) The presentation is between Commission staff and an advisory coordinating committee member with respect to the coordination of frequency assignments to stations in the private land mobile services or fixed services as authorized by 47 U.S.C. 332;

(8) The presentation is a written presentation made by a listener or viewer of a broadcast station who is not a party under § 1.1202(d)(1), and the presentation relates to a pending application that has not been designated for hearing for a new or modified broadcast station or license, for renewal of a broadcast station license or for assignment or transfer of control of a broadcast permit or license;

(9) Confidentiality is necessary to protect persons making ex parte presentations from possible reprisals; or

(10) The presentation is requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible settlement, subject to the following limitations:

(i) This exemption does not apply to restricted proceedings designated for hearing;

(ii) In restricted proceedings not designated for hearing, any new written information elicited from such request or a summary of any new oral information elicited from such request shall promptly be served by the person making the presentation on the other parties to the proceeding. Information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section. The Commission or its staff may waive the service requirement if service would be too burdensome because the parties are

numerous or because the materials relating to such presentation are voluminous. If the service requirement is waived, copies of the presentation or summary shall be placed in the record of the proceeding and the Commission or its staff shall issue a public notice which states that copies of the presentation or summary are available for inspection. The Commission or its staff may determine that service or public notice would interfere with the effective conduct of an investigation and dispense with the service and public notice requirements;

(iii) If the presentation is made in a proceeding subject to permit-but-disclose requirements, disclosure must be made in accordance with the requirements of § 1.1206(b), provided, however, that the Commission or its staff may determine that disclosure would interfere with the effective conduct of an investigation and dispense with the disclosure requirement. As in paragraph (a)(10)(ii) of this section, information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section;

Note 2 to paragraph (a): If the Commission or its staff dispenses with the service or notice requirement to avoid interference with an investigation, a determination will be made in the discretion of the Commission or its staff as to when and how disclosure should be made if necessary. *See Amendment of Subpart H, Part I,* 2 FCC Rcd 6053, 6054 ¶¶ 10–14 (1987).

(iv) If the presentation is made in a proceeding subject to the Sunshine period prohibition, disclosure must be made in accordance with the requirements of § 1.1206(b) or by other adequate means of notice that the Commission deems appropriate;

(v) In situations where new information regarding the merits is disclosed during settlement discussions, and the Commission or staff intends that the product of the settlement discussions will be disclosed to the other parties or the public for comment before any action is taken, the Commission or staff in its discretion may defer disclosure of such new information until comment is sought on the settlement proposal or the settlement discussions are terminated.

(11) The presentation is an oral presentation in a restricted proceeding requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A summary of the presentation shall promptly be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral ex parte presentation, subject to the same service requirement.

(b) *Exempt proceedings.* Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), ex parte presentations to or from Commission decision-making personnel are permissible and need not be disclosed with respect to the following proceedings, which are referred to as ''exempt'' proceedings:

(1) A notice of inquiry proceeding;

(2) A petition for rulemaking, except for a petition requesting the allotment of a broadcast channel (see also § 1.1206(a)(1)), or other request that the Commission modify its rules, issue a policy statement or issue an interpretive rule, or establish a Joint Board;

(3) A tariff proceeding (including directly associated waiver requests or requests for special permission) prior to it being set for investigation (see also § 1.1206(a)(4));

(4) A proceeding relating to prescription of common carrier depreciation rates under section 220(b) of the Communications Act prior to release of a public notice of specific proposed depreciation rates (see also § 1.1206(a)(9));

(5) An informal complaint proceeding under 47 U.S.C. 208 and § 1.717; and

(6) A complaint against a cable operator regarding its rates that is not filed on the standard complaint form required by § 76.951 of this chapter (FCC Form 329).

10. Section 1.1206 is revised to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(a) Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), until the proceeding is no longer subject to administrative reconsideration or review or to judicial review, ex parte presentations (other than ex parte presentations exempt under § 1.1204(a)) to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that ex parte presentations to Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section:

(1) An informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act other than a proceeding for the allotment of a broadcast channel, upon release of a Notice of Proposed Rulemaking (see also § 1.1204(b)(2));

(2) A proceeding involving a rule change, policy statement or interpretive rule adopted without a Notice of Proposed Rule Making upon release of the order adopting the rule change, policy statement or interpretive rule;

(3) A declaratory ruling proceeding;

(4) A tariff proceeding which has been set for investigation under section 204 or 205 of the Communications Act (including directly associated waiver requests or requests for special permission) (see also § 1.1204(b)(4));

(5) Unless designated for hearing, a proceeding under section 214(a) of the Communications Act that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(6) Unless designated for hearing, a proceeding involving an application for a Cable Landing Act license that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(7) A proceeding involving a request for information filed pursuant to the Freedom of Information Act;

Note 1 to paragraph (a): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

(8) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board;

(9) A proceeding conducted pursuant to section 220(b) of the Communications Act for prescription of common carrier depreciation rates upon release of a public notice of specific proposed depreciation rates (see also § 1.1204(b)(4));

(10) A proceeding to prescribe a rate of return for common carriers under section 205 of the Communications Act; and

(11) A cable rate complaint proceeding pursuant to section 623(c) of the Communications Act where the complaint is filed on FCC Form 329.

Note 2 to paragraph (a): In a permit-but-disclose proceeding involving only one ''party,'' as defined in § 1.1202(d) of this subpart, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

(b) The following disclosure requirements apply to ex parte presentations in permit but disclose proceedings:

(1) *Written presentations.* A person who makes a written ex parte presentation subject to this section shall, no later than the next business day after the presentation, submit two

copies of the presentation to the Commission's secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding.

(2) *Oral presentations.* A person who makes an oral ex parte presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, with copies to the Commissioners or Commission employees involved in the oral presentation, an original and one copy of a memorandum which summarizes the new data or arguments. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

Note 1 to paragraph (b): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or tape recording of the discussion as an alternative to a memorandum.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in permit-but-disclose proceedings presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as ex parte presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare a written summary of any such oral presentations and place them in the record in accordance with paragraph (b)(2) of this section and place any such written presentations in the record in accordance with paragraph (b)(1) of this section.

(4) *Notice of ex parte presentations.* The Commission's Secretary or, in the case of non-docketed proceedings, the relevant Bureau or Office shall place in the public file or record of the proceeding written ex parte presentations and memoranda reflecting oral ex parte presentations. The Secretary shall issue a public notice listing any written ex parte presentations or written summaries of oral ex parte presentations received by his or her office relating to any permit-but-disclose proceeding. Such public notices should generally be released at least twice per week.

Note 2 to paragraph (b): Interested persons should be aware that some ex parte filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All ex parte presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

Note 3 to paragraph (b): As a matter of convenience, the Secretary may also list on the referenced public notices materials, even if not ex parte presentations, that are filed after the close of the reply comment period or, if the matter is on reconsideration, the reconsideration reply comment period.

11. Section 1.1208 is revised to read as follows:

§ 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a), ex parte presentations (other than ex parte presentations exempt under § 1.1204 (a)) are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which ex parte presentations are prohibited, referred to as ''restricted'' proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings).

Note 1 to § 1.1208: In a restricted proceeding involving only one ''party,'' as defined in § 1.1202(d), the party and the Commission may freely make presentations to each other because there is no other party to be served or with a right to have an opportunity to be present. See § 1.1202(b). Therefore, to determine whether presentations are permissible in a restricted proceeding without service or notice and an opportunity for other parties to be present the definition of a ''party'' should be consulted. **Examples:** After the filing of an uncontested application or waiver request, the applicant or other filer would be the sole party to the proceeding. The filer would have no other party to serve with or give notice of any presentations to the Commission, and such presentations would therefore not be ''ex parte presentations'' as defined by § 1.1202(b) and would not be prohibited. On the other hand, in the example given, because the filer is a party, a third person who wished to make a presentation to the Commission concerning the application or waiver request would have to serve or notice the filer. Further, once the proceeding involved additional ''parties'' as defined by § 1.1202(d) (e.g., an opponent of the filer who served the opposition on the filer), the filer and other parties would have to serve or notice all other parties.

Note 2 to § 1.1208: Consistent with § 1.1200(a), the Commission or its staff may determine that a restricted proceeding not designated for hearing involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties and specify that the proceeding will be conducted in accordance with the provisions of § 1.1206 governing permit-but-disclose proceedings.

12. Section 1.1210 is revised to read as follows:

§ 1.1210 Prohibition on solicitation of presentations.

No person shall solicit or encourage others to make any presentation which he or she is prohibited from making under the provisions of this subpart.

13. Section 1.1212 is revised to read as follows:

§ 1.1212 Procedures for handling of prohibited ex parte presentations.

(a) Commission personnel who believe that an oral presentation which is being made to them or is about to be made to them is prohibited shall promptly advise the person initiating the presentation that it is prohibited and shall terminate the discussion.

(b) Commission personnel who receive oral ex parte presentations which they believe are prohibited shall forward to the Office of General Counsel a statement containing the following information:

(1) The name of the proceeding;

(2) The name and address of the person making the presentation and that person's relationship (if any) to the parties to the proceeding;

(3) The date and time of the presentation, its duration, and the circumstances under which it was made;

(4) A full summary of the substance of the presentation;

(5) Whether the person making the presentation persisted in doing so after

being advised that the presentation was prohibited; and

(6) The date and time that the statement was prepared.

(c) Commission personnel who receive written ex parte presentations which they believe are prohibited shall forward them to the Office of General Counsel. If the circumstances in which the presentation was made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Office of General Counsel with the presentation.

(d) Prohibited written ex parte presentations and all documentation relating to prohibited written and oral ex parte presentations shall be placed in a public file which shall be associated with but not made part of the record of the proceeding to which the presentations pertain. Such materials may be considered in determining the merits of a restricted proceeding only if they are made part of the record and the parties are so informed.

(e) If the General Counsel determines that an ex parte presentation or presentation during the Sunshine period is prohibited by this subpart, he or she shall notify the parties to the proceeding that a prohibited presentation has occurred and shall serve on the parties copies of the presentation (if written) and any statements describing the circumstances of the presentation. Service by the General Counsel shall not be deemed to cure any violation of the rules against prohibited ex parte presentations.

(f) If the General Counsel determines that service on the parties would be unduly burdensome because the parties to the proceeding are numerous, he or she may issue a public notice in lieu of service. The public notice shall state that a prohibited presentation has been made and may also state that the presentation and related materials are available for public inspection.

(g) The General Counsel shall forward a copy of any statement describing the circumstances in which the prohibited ex parte presentation was made to the person who made the presentation. Within ten days thereafter, the person who made the presentation may file with the General Counsel a sworn declaration regarding the presentation and the circumstances in which it was made. The General Counsel may serve copies of the sworn declaration on the parties to the proceeding.

(h) Where a restricted proceeding precipitates a substantial amount of correspondence from the general public, the procedures in paragraphs (c) through (g) of this section will not be followed with respect to such correspondence. The correspondence will be placed in a public file and be made available for public inspection.

14. Section 1.1214 is revised to read as follows:

§ 1.1214 Disclosure of information concerning violations of this subpart.

Any party to a proceeding or any Commission employee who has substantial reason to believe that any violation of this subpart has been solicited, attempted, or committed shall promptly advise the Office of General Counsel in writing of all the facts and circumstances which are known to him or her.

15. Section 1.1216 is revised to read as follows:

§ 1.1216 Sanctions.

(a) *Parties.* Upon notice and hearing, any party to a proceeding who directly or indirectly violates or causes the violation of any provision of this subpart, or who fails to report the facts and circumstances concerning any such violation as required by this subpart, may be disqualified from further participation in that proceeding. In proceedings other than a rulemaking, a party who has violated or caused the violation of any provision of this subpart may be required to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate may also be imposed.

(b) *Commission personnel.* Commission personnel who violate provisions of this subpart may be subject to appropriate disciplinary or other remedial action as provided in part 19 of this chapter.

(c) *Other persons.* Such sanctions as may be appropriate under the circumstances shall be imposed upon other persons who violate the provisions of this subpart.

[FR Doc. 97–8042 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–167; RM–8699]

Radio Broadcasting Services; Claremore and Chelsea, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Michael P. Stephens, reallots Channel 264A from Claremore to Chelsea, Oklahoma, as the community's first local aural transmission service, and modifies Station KTFR's construction permit to specify Chelsea as its community of license. *See* 60 FR 56554, November 9, 1995. Channel 264A can be allotted to Chelsea in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.0 kilometers (1.2 miles) southwest, at coordinates 36–31–27 NL and 95–26–55 WL, to avoid a short-spacing to Station KGLC, Channel 265A, Miami, OK. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–167, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Claremore, Channel 264A and adding Chelsea, Channel 264A.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8437 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 97–15; Notice 1]

RIN 2127–AG64

Light Truck Average Fuel Economy Standard, Model Year 1999

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1999. The issuance of the standard is required by statute. Pursuant to section 323 of the fiscal year (FY) 1997 DOT Appropriations Act, the light truck standard for MY 1999 is 20.7 mpg.

DATES: The amendment is effective May 5, 1997. The standard applies to the 1999 model year. Petitions for reconsideration must be submitted within 45 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that ''[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, NHTSA shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Pursuant to this authority, the agency has set light truck CAFE standards through MY 1998. See 49 CFR 533.5(a). The standard for MY 1998 is 20.7 mpg.

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

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

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

NHTSA thereafter issued a final rule limited to MY 1998, which set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 14680 (April 3, 1996).

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

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

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for NHTSA to set the MY 1999 standard is approximately April 1, 1997, a date falling within FY 1997. Since the issuance of a standard requires the expenditure of funds, the agency's ability to promulgate a standard for MY 1999 at a level other than the level specified for MY 1998 is prohibited by the terms of section 323 of the FY 1997 Appropriations Act.

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

Examination of the legislative history of the FY 1997 Act further supports this view. The language contained in Section 323 remained unmodified as part of H.R. 3675, which was eventually enacted as the FY 1997 Act. Section 323 was reported by the House Committee on Appropriations as part of H.R. 3675. The Committee print of the House Report to accompany H.R. 3675 stated that the section precluded NHTSA from prescribing CAFE standards that differ from those set for the 1998 model year.

As explained above, section 323 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MY 1998. In NHTSA's view, the express directive contained in the FY 1997 Appropriations Act precludes the agency from exercising any discretion in setting CAFE standards for the 1999 model year. The agency has not issued a Notice of Proposed Rulemaking (NPRM) and has therefore not offered an opportunity for notice and comment prior to issuance of the MY 1999 light truck standard. As NHTSA cannot expend any funds to set the 1999 standard at any level other than the MY 1998 standard, providing an opportunity for notice and comment would be superfluous. Accordingly, NHTSA is setting the MY 1999 light truck CAFE standard at the MY 1998 level of 20.7 mpg.

II. Impact Analyses

A. Economic Impacts

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

B. Environmental Impacts

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

C. Impacts on Small Entities

NHTSA has not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. As Congress has eliminated the agency's discretion by precluding any action other than the one taken in this notice, such an evaluation is unnecessary. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a ''small business'' under the Regulatory Flexibility Act.

D. Impact of Federalism

This action has not been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The preparation of a Federalism Assessment is not required where Congress has precluded any action other than the one published in this notice. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

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

III. Conclusion

Based on the foregoing, the agency is establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 1999 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

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

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

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

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

§ 533.5 Requirements.

* * * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7

Issued on: March 31, 1997.

Philip R. Recht,

Deputy Administrator.

[FR Doc. 97–8519 Filed 3–31–97; 1:44 pm]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 62, No. 64
Thursday, April 3, 1997

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–15]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CT58 series turboshaft engines. This proposal would require removal from service of compressor rear shafts, initial and repetitive inspections of ten rotating parts, and replacement if found cracked, until those parts are removed from service and replaced with improved design parts. This proposal is prompted by a stage 2 turbine wheel incident in 1993 which resulted in an increased awareness of small features on critical rotating parts which could affect part life. The actions specified by the proposed AD are intended to prevent fatigue cracking on specific critical rotating parts, which could result in failure of the part, causing an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by June 2, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE–15, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, Technical Publications, 1000 Western Avenue, Lynn, MA 01910; telephone (617) 594–5102, fax (617) 594–2717. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–15.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–15, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of a stage 2 uncontained turbine wheel failure on a General Electric Company (GE) Model CT58–140–1 turboshaft engine. The investigation resulted in the issuance of airworthiness directive (AD) 94–07–05 and an increased awareness of all small features on CT58 critical rotating parts. The manufacturer began a review of all small features on critical rotating parts on the CT58 engine that could affect the life capability of that part. A small feature is identified as a fillet radius, breakage, or edge radius that is 0.20 inches or less. Subsequent to the issuance of AD 94–07–05 the FAA has determined that a small feature may be the life limiting area of a critical rotating part and may result in a lower crack initiation part life than what is currently published. Because of the small feature's size, any local departures from the true contour (but still within the tolerance requirements) could affect the part fatigue life, and depending on the nature and location of the local departure(s), this small feature could become the life limiting area and subject to fatigue cracking prior to the published life limit. This condition, if not corrected, could result in fatigue cracking on specific critical rotating parts, which could result in failure of the part, causing an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of the following GE Aircraft Engines Service Bulletins (SB's): No. (CT58) 72–181, CEB–284, Revision 1, dated November 29, 1995, that describes procedures for initial and repetitive inspections of life limited rotating parts; and No. (CT58) A72–163 (CEB–258), Revision 5, dated May 12, 1994, that describes procedures for an improved methodology for determining hours and cycles in service for aircraft performing repetitive heavy lift (RHL) operations.

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require removal from service of compressor rear shafts, initial and repetitive inspections of ten rotating parts, and replacement if found cracked, until those parts are removed from service and replaced with improved design parts. The actions would be required to be accomplished in accordance with the SB's described previously.

There are approximately 5,550 engines of the affected design in the worldwide fleet. The FAA estimates that 380 civil engines installed on aircraft of U.S. registry and 2,600 U.S. military engines would be affected by this proposed AD. The FAA estimates that for 95 engines the compressor will need to be debladed to accomplish the inspection, that it would take approximately 40 work hours per engine to accomplish the proposed actions, that the average labor rate is $60 per work hour, and that required parts would cost approximately $100 per engine. For 285 engines, the inspection can be accomplished during scheduled maintenance, and the inspection would take an estimated 8.33 work hours, with no required parts cost. For 114 engines, the compressor would be required to be removed early, with a pro rated parts cost of $1,300 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $528,143.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

General Electric Company: Docket No. 97–ANE–15.

Applicability: General Electric Company (GE) Models CT58–100–2, –110–1/–2, –140–1/–2, and T58–GE–3/–5/–10/–100 turboshaft engines, installed on but not limited to Boeing Vertol 107 series, and Sikorsky S61 and S62 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on specific critical rotating parts, which could result in failure of the part, causing an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Determine hours time in service (TIS) and cycles in service (CIS) in accordance with the improved methodology described in GE Aircraft Engines Service Bulletin (SB) No. (CT58) A72–162 (CEB–258), Revision 5, dated May 12, 1994.

(b) For engines that have engaged in repeated heavy lift (RHL) operations, as defined in paragraph (e) of this AD, accomplish the following:

(1) For compressor rear shafts, Part Numbers (P/N's) 4000T29P01/P03, 5016T95P01/P04, and 5013T86P03, accomplish the following:

(i) For compressor rear shafts, with either 2,975 or more hours TIS, or 9,550 or more CIS, on the effective date of this AD, remove compressor rear shafts and replace with a serviceable compressor rear shaft at the next light overhaul or next exposure of compressor rear shafts after the effective date of this AD, whichever occurs first.

(ii) For all other compressor rear shafts, remove compressor rear shafts and replace with a serviceable compressor rear shaft, prior to accumulating 3,000 hours TIS, or 9,600 CIS, whichever occurs first.

(iii) For all compressor rear shafts, remove from service and replace with a serviceable, redesigned compressor rear shaft, P/N 5016T95P06, not later than December 31, 1997.

(2) Initially inspect the ten rotating parts specified in paragraph (d) of this AD for cracks at the times specified in sub-paragraphs (i) and (ii) of this paragraph, and, thereafter, inspect at each light overhaul or major overhaul until the parts are retired from service. Perform the inspections in accordance with the procedures described in GE Aircraft Engines SB No. (CT58) 72–181, CEB284, Revision 1, dated November 29, 1995. Prior to further flight, replace parts found cracked during these inspections with serviceable parts.

(i) For parts with greater than the baseline time in service (TIS) on the effective date of this AD, inspect at the earliest occurrence of the following after the effective date of this AD: the next light overhaul, the next major overhaul, or the next exposure of the affected parts.

(ii) For parts with less than or equal to the baseline TIS on the effective date of this AD, inspect within 1,000 hours TIS from the listed baseline TIS.

(c) For engines that have never engaged in RHL operations, accomplish the following:

(1) For compressor rear shafts, P/N's 4000T29P01/P03, 5016T95P01/P04, and 5013T86P03, remove compressor rear shafts and replace with a serviceable compressor rear shaft, prior to accumulating 9,600 CIS, or 9,000 hours TIS, whichever occurs first. Prior to December 31, 1999, replace compressor rear shafts with a serviceable, redesigned compressor rear shaft, P/N 5016T95P06.

(2) Initially inspect the ten rotating parts specified in paragraph (d) of this AD for cracks at the times specified in sub-paragraphs (i) and (ii) of this paragraph, and, thereafter, at each light overhaul or major overhaul until the parts are retired from service. Perform the inspections in accordance with the procedures described in GE Aircraft Engines SB No. (CT58) 72–181, CEB284, Revision 1, dated November 29, 1995. Prior to further flight, replace parts found cracked during these inspections with serviceable parts.

(i) For parts with greater than the baseline TIS on the effective date of this AD, inspect at the earliest occurrence of the following after the effective date of this AD: the next light overhaul, the next major overhaul, or the next exposure.

(ii) For parts with less than or equal to the baseline TIS on the effective date of this AD, inspect within 2,000 hours TIS from the listed baseline hours.

(d) For the purpose of performing the inspections required by paragraphs (b)(2) and

(c)(2) of this AD, the following baseline TIS are established:

(i) For compressor rotor spool assemblies, P/N's 6010T57G04 and 6010T57G08, whether or not used in RHL operations, baseline is 2,000 hours TIS.

(ii) For turbine front shafts, P/N's 5003T35P01 and 573D358P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(iii) For turbine coupling shafts, P/N's 4001T26P01 and 278D987P002, if utilized in RHL operation, baseline is 1,000 hours TIS; if never utilized in RHL operations, baseline is 2,000 hours TIS.

(iv) For turbine rear shafts, P/N's 4005T29P01 and 37D400244P101, whether or not utilized in RHL operation, baseline is 2,000 hours TIS.

(v) For Stage 1 front cooling plates, P/N's 37C300055P101, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(vi) For Stage 1 aft cooling plates, P/N's 3002T25P01 and 645C334P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(vii) For Stage 2 front cooling plates, P/N's 3000T88P02 and 645C332P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(viii) For Stage 2 aft cooling plates, P/N's 3002T27P01 and 645C336P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(ix) For Stage 1 turbine wheels, P/N 4002T17P02 TF3, if utilized in RHL operation, baseline is 1,000 hours TIS; if never utilized in RHL operation, baseline is 2,000 hours TIS.

(x) For Stage 2 turbine wheels, P/N 4002T96P02 TF3, if utilized in RHL operation, baseline is 1,000 hours TIS; if never utilized in RHL operation, baseline is 2,000 hours TIS.

(e) For the purpose of this AD, the following definitions apply:

(1) RHL operation is defined as performing more than 10 lift-carry-drop cycles per hour TIS without landing, or more than 10 takeoffs and landings per hour TIS.

(2) Light overhaul is defined as scheduled engine maintenance that allows the engine to continue in service until scheduled major overhaul time is reached.

(3) Major overhaul is defined as scheduled engine maintenance including complete engine inspections and tests with repair or replacement of parts or components as necessary.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on March 27, 1997.

James C. Jones,

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

[FR Doc. 97–8475 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–U 1

14 CFR Part 71

[Airspace Docket No. 97–AWP–14]

Proposed Revision of Class E Airspace; Sacramento, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace area at Sacramento, CA. This action removes from the Sacramento E5 airspace area description that portion of airspace defined as a surface area for Sacramento Executive Airport and corresponding references. Deleting this portion of the description which describes a surface area conforms to the E5 airspace area standard. This surface area is thoroughly and appropriately described in the Sacramento Executive Airport, CA, Class E2 airspace area. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this action is to remove overlapping descriptions of controlled airspace.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–14, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the class E airspace area at Sacramento, CA. This action removes from the Sacramento E5 airspace area

description that portion of airspace defined as a surface area for Sacramento Executive Airport and corresponding references. Deleting this portion of the description which describes a surface area conforms to the E5 airspace area standard. This surface area is thoroughly and appropriately described in the Sacramento Executive Airport, CA, Class E2 airspace area. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this action is to remove overlapping descriptions of controlled airspace. Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Sacramento, CA

Sacramento VORTAC
(Lat. 38°26′37″ N, long. 121°33′06″ W)

That airspace extending upward from 700 feet above the surface within an 11.3-mile radius of the Sacramento VORTAC and that airspace within a 33-mile radius of the Sacramento VORTAC, bounded on the west by the west edge of V–23, and clockwise along the 33-mile radius to the northeast edge of V–23 and that airspace southwest of Sacramento VORTAC bounded by a line beginning at lat. 38°16′00″ N, long. 122°05′04″ W; to lat. 38°30′00″ N, long. 121°48′04″ W; to lat. 38°16′00″ N, long. 121°39′04″ W; to lat. 38°02′00″ N, long. 121°52′04″ W, thence via lat. 38°02′00″ N, to the west edge of V–195, thence via the west edge of V–195 to lat. 38°16′00″ N, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at the point of intersection of the east edge of V–195 and the south edge of V–200, thence via the south edge of V–200, the west edge of V–23 and lat. 39°00′00″ N, to the west edge of V–165, thence via the west edge of V–165 to the north edge of V–244, thence via the north edge of V–244 to long. 120°04′04″ W, thence via long. 120°04′04″ W, to lat. 38°07′00″ N, thence via lat. 38°07′00″ N, to long. 121°37′04″ W, thence via long. 121°37′04″ W, to lat. 38°02′00″ N, thence via lat. 38°02′00″ N, to the east edge of V–195, thence via the east edge of V–195 to the point of beginning.

* * * * *

Issued in Los Angeles, California on March 4, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–8498 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–19]

Proposed Establishment of Class E Airspace; Zelienople, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Zelienople, PA. The development of a new Standard Instrument Approach Procedure (SIAP) at Zelienople Municipal Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 30, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–19, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int't Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parities are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–19''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All

comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Zelienople, PA. A GPS RWY 35 SIAP has been developed for Zelienople Municipal Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Zelienople, PA [New]

Zelienople Municipal Airport, PA
(Lat. 40°48′06″ N., long. 80°09′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Zelienople Municipal Airport, excluding the portions that coincides with the Butler, PA, and Beaver Falls, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on March 5, 1997.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–8503 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practice Rules: Request for Comments

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the ''Commission'') is requesting public comments on its Trade Regulation Rule entitled Ophthalmic Practice Rules, which requires eye care practitioners to release eyeglass prescriptions to their patients (''Prescription Release Rule''), 16 CFR Part 456. The Commission is soliciting comments about the overall costs and benefits of the rule and its overall regulatory and economic impact as part of its systematic review of all current Commission regulations and guides. The Commission is further requesting comment on several issues relating to specific provisions of the rule. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the rule.

DATES: Written comments must be submitted on or before June 2, 1997.

ADDRESSES: Written comments should be identified as ''16 CFR Part 456 Comment'' and sent to Secretary, Federal Trade Commission, Room 159, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Renee Kinscheck, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Washington, DC 20580, (202) 326–3283; Federal Trade Commission, room 200, Washington, DC 20580; e-mail address: RKinscheck@ftc.gov.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. The Commission is also seeking comment on several issues specific to the Prescription Release Rule, including: whether the Commission should modify or eliminate the prescription release requirement; whether, if it is retained, this provision should be changed to require that an eyeglass prescription be given to a patient only if the patient requests it, rather than in every instance, or whether this provision should be modified in some other way; and whether any changes should be made to § 456.2(d)'s prohibition on the use of certain waivers or disclaimers of liability. The Commission seeks comment on the costs and benefits of such proposed changes.

Part A—Background Information

The Commission promulgated the Prescription Release Rule in 1978 based on a finding that many consumers were being deterred from comparison shopping for eyeglasses because eye care practitioners refused to release prescriptions, even when requested to do so, or charged an additional fee for release of a prescription.[1]

[1] Advertising of Ophthalmic Goods and Services, Statement of Basis and Purpose and Final Trade

Continued

The rule requires an optometrist or ophthalmologist to provide the patient with a copy of the patient's eyeglass prescription immediately after the eye examination is completed at no extra cost.[2] (§ 456.2 (a) and (c).) It also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined in the rule, on a requirement that the patient agrees to purchase ophthalmic goods from the optometrist or ophthalmologist. (§ 456.2(b).)

In § 456.2(d) the rule prohibits placing on the prescription, or delivering to the patient, any waiver or disclaimer of the liability of the practitioner for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller. As the Commission made clear in its declaration of intent (§ 456.4), the rule does not impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription. By its terms, the rule proscribes only ''waivers or disclaimers'' of responsibility. The Commission has interpreted this portion of the rule to permit nondeceptive affirmative statements concerning responsibility. For example, a written statement that ''the person who dispenses your eyeglasses is responsible for their accuracy'' would not violate § 456.2(d). However, such an affirmative statement cannot be coupled with a waiver or disclaimer of the optometrist's or ophthalmologist's own liability.[3]

The rule requires eye care practitioners to release copies of the eyeglass prescriptions regardless of whether or not the patient requests the prescription. The Commission promulgated this automatic release requirement based on a finding of ''consumers' lack of awareness that the purchase of eyeglasses need not be a unitary process''—i.e., the purchasing eyeglasses can be separated from the process of obtaining an eye exam. The automatic release provision was thus imposed as a remedial measure.[4]

In 1985, the Commission published a Notice of Proposed Rulemaking (hereinafter ''NPR'') that invited comments on whether the prescription release requirement should be modified or repealed. Specifically, among other questions, the Commission asked whether: (1) the rule should be modified to require that eyeglass prescriptions be given to patients only in those instances where patients request them; (2) the rule should be modified to require eye care practitioners only to offer, rather than automatically give, eyeglass prescriptions to their patients; or (3) the rule should be extended to require the release of contact lens prescriptions.[5]

In 1989, having considered the rulemaking record, which included two surveys and comments and testimony offered by optometrists, opticians, professional associations, state boards, and consumer groups, the Commission decided to retain the automatic release aspect of the rule. In declining to modify the rule, the Commission stated that there was still significant non-compliance with the automatic release requirement and that there continued to be a lack of consumer awareness about prescription rights. Accordingly, the Commission held that it could not conclude that the remedial automatic release provision was no longer needed.[6]

The Commission also determined not to extend the Prescription Release Rule to contact lens prescriptions. In making its decision, the Commission concluded that there was not sufficient reliable evidence on the record to permit a conclusion that the practice not to release contact lens prescriptions was prevalent. The Commission further commented that even if the evidence on the prevalence of refusal to release contact lens prescriptions, and any resulting consumer injury, were satisfactorily documented, the Commission would need to consider if any countervailing benefits justified the refusal. The Commission noted in its Statement of Basis and Purpose that some commenters suggested that refusal to release contact lens prescriptions is necessary to permit the fitter to verify the fit of the lens because there is some danger that the lenses may not conform to the eye as expected. The Commission then stated that because the evidence was insufficient to evaluate this claim fully, it could not reach a conclusion that the refusal to release a contact lens prescription in an unfair act or practice.[7]

The Commission revisited the contact lens prescription release issue in 1995, in response to a petition for rulemaking by a consumer in South Carolina whose optometrist had refused to release the consumer's contact lens prescription. Although the petitioner did not provide any information or documentation suggesting that the evidence considered by the Commission during the previous rulemaking proceeding had changed in any way, the Commission, in February 1995, conducted a survey on the extent of contact lens consumers' ability to obtain their contact lens prescriptions.[8]

Regulation Rule, 43 FR 23992, 23998 (June 2, 1978) (hereinafter ''1978 Statement of Basis and Purpose''). In addition, the Commission found that some practitioners refused to conduct an examination unless the patient agreed to purchase eyeglasses from the practitioner or included potentially intimidating disclaimers of liability on the prescription itself. *Id.*

[2] An optometrist or ophthalmologist, however, may withhold the eyeglass prescription if the patient has not paid for the eye examination in full if the optometrist or ophthalmologist would have required immediate payment if the examination revealed that no ophthalmic goods, such as eyeglasses, were required.

[3] Trade Regulation Rule; Ophthalmic Practice Rules, Final Trade Regulation Rule, 54 FR 10285, 10299 (March 13, 1989) (hereinafter ''1989 Statement of Basis and Purpose''). The Commission's interpretation of this provision was originally set forth at 43 FR 46296–46297 (October 6, 1978).

[4] Statement of Basis and Purpose, 54 FR at 10302, citing, Ophthalmic Practice Rules, State Restrictions on Commercial Practice, ''Eyeglasses II,'' Report of the Staff of the Federal Trade Commission, October 1986, at pp. 251–52.

[5] Ophthalmic Practice Rules; Proposed Trade Regulation Rule; Notice of Proposed Rulemaking, 50 FR 598, 602–03 (January 4, 1985). The Commission also asked whether: (1) the rule should be repealed altogether; (2) the rule should be extended to require optometrists and ophthalmologists to provide a duplicate copy of a prescription to a patient who lost or misplaced the original; and (3) the rule should require dispensers to return the prescription after filling the prescription. *Id.*

[6] 1989 Statement of Basis and Purpose, 54 FR at 10303. The Commission did modify the definition of ''prescription'' to eliminate confusion. This term was, and is, defined as those specifications necessary to obtain lenses for eyeglasses. Thus, under the rule, the prescription that is released to the patient need only contain the data on the refractive status of the patient's eyes and any information, such as the date or signature of the examining optometrist or ophthalmologist, that state law requires in a legally fillable eyeglasses prescription. In 1989, the Commission deleted from the definition all references to contact lenses. This change was intended to end the confusion generated by the prior definition concerning the obligation of optometrists and ophthalmologists to place the phrase ''OK for contact lenses'' (or similar words) on prescriptions. No such obligation exists under the rule. 1989 Statement of Basis and Purpose, 54 FR at 10299. The change also helped to eliminate confusion over whether the rule requires the release of a contact lens prescription.

[7] 1989 Statement of Basis and Purpose, 54 FR at 10303. With respect to the other questions raised in the NPR, the Commission concluded that there was no substantial evidence to show either that practitioners refused to release duplicate copies of prescriptions to patients who lost or misplaced their original copies or that eyeglass dispensers refused to return prescriptions to patients after filling the prescription. Thus, it concluded that rulemaking in these areas would be inappropriate. *Id.*

[8] The survey consisted of telephone interviews of 2037 consumers selected from a random digit dialing probability sample of all households in the United States. These consumers were initially asked whether they had worn contact lenses within the past year. Two hundred and fifty of the 2037 consumers contacted by interviewers (approximately 10.5%) had worn contact lenses within the past year. These consumers were asked the remaining questions in the survey concerning their ability to obtain their contact lens prescription.

The survey results suggest that most consumers obtain a copy of their contact lens prescription. Approximately 60% (147/250) of those interviewees did receive a copy of their contact lens prescription either immediately after their last exam or subsequently thereafter. Moreover, the survey results indicate that nearly all practitioners who are requested to release the contact lens prescription to the consumer, do so. Approximately 92% (66/72) of those consumers who requested a copy of their contact lens prescription received the prescription either immediately after the eye examination or subsequently thereafter.[9]

Based on the results of the survey as well as the existence of industry literature continuing to raise quality of care issues relating to unsupervised use of contact lenses, the Commission denied the petition.[10]

Part B—Issues for Comments

The Commission solicits written public comments on the following questions:

1. Is there a continuing need for the rule?

a. What benefits has the rule provided to purchasers of eye exams and eyeglasses, to opticians or to others affected by the rule?

b. Has the rule imposed costs on purchasers?

2. What changes, if any, should be made to the rule to increase the benefits of the rule to purchasers, opticians or to others?

a. How would these changes affect the costs the rule imposes on eye care practitioners (optometrists and ophthalmologists) subject to its requirements?

3. What significant burdens or costs, including costs of compliance, has the rule imposed on eye care practitioners?

a. Has the rule provided benefits to such practitioners?

4. What changes, if any, should be made to the rule to reduce the burdens or costs imposed on eye care practitioners?

a. How would these changes affect the benefits provided by the rule?

5. Does the rule overlap or conflict with other federal, state, or local laws or regulations?

6. Since the rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the rule?

Section 456.2(a)—Prescription Release Requirement

7. If the rule is retained, should the Commission modify the prescription release requirement of § 456.2(a) to require that an eyeglass prescription be given to a patient only if the patient requests it, rather than in every instance, or should this provision be modified in some other way?

a. Are consumers generally aware of their ability to seek and obtain their eyeglass prescriptions?

b. To what extent are consumers able to obtain a copy of their eyeglass prescription if they request one?

c. To what extent would practitioners release eyeglass prescriptions in the absence of any federal requirement to do so?

Section 456.2(d)—Waivers and Disclaimers

8. Should any changes be made to § 456.2(d)'s prohibition on the use of certain waivers or disclaimers of liability, and/or the Commission interpretation thereof?

a. What problems, if any, has the current requirement, and/or its interpretation, caused?

b. How could any such problems be remedied?

Contact Lens Prescriptions

9. Should the rule be extended to require the release of contact lens prescriptions?

a. Are consumers able to get their contact lens prescriptions upon request?

b. What evidence is there to show that refusal to release contact lens prescriptions does or does not have benefits justifying the refusal? Specifically, are there any significant administrative costs incurred when releasing contact lens prescriptions? What evidence is there to show that there is or is not a danger that the lenses may not conform to the eye as expected, thus justifying a refusal to release contact lens prescriptions to permit the fitter to verify the fit of the lens?

List of Subjects in 16 CFR Part 456

Advertising; Medical devices; Ophthalmic goods and services; Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–8494 Filed 4–2–97; 8:45 am]

BILLING CODE 6750–01–M

[9] This survey has been placed on the public record, and is available from the Commission's Public Reference Branch, Room, 130, Washington, DC 20580; 202–326–2222; TTY for the hearing impaired 202–326–2502.

[10] The petition and the Commission's response have been placed on the public record, and are available from the Commission's Public Reference Branch, Room 130, Washington, DC 20580; 202–326–2222; TTY for the hearing impaired 202–326–2502.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA71

NARA Reproduction Fee Schedule; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rulemaking; correction.

SUMMARY: NARA is correcting a typographical error in the notice of proposed rulemaking published on March 31, 1997, setting out the proposed revised NARA reproduction fee schedule. In that document, the proposed fee for orders of additional paper-to-paper copies placed at a Washington, DC, facility was correctly stated as $5 for each additional block of *20* copies in the preamble, but was stated as $5 for each additional block of up to *10* copies in the proposed § 1258.12(b)(2)(ii).

Correction

In the proposed rule published in the **Federal Register** on March 31, 1997 (61 FR 15137), on page 15138, in the second column, proposed paragraph (b)(2)(ii) of § 1258.12 is corrected to read as follows:

§ 1258.12 [Corrected]

* * * * *

(b) * * *

(2) * * *

(ii) All other orders placed at a Washington, DC, area facility: $10 for the first 1–20 copies; $5 for each additional block of up to 20 copies.

* * * * *

Dated: April 1, 1997.

Nancy Y. Allard,

Alternate Federal Register Liaison.

[FR Doc. 97–8636 Filed 4–2–97; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN53–1b; FRL–5710–2]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve the following as revisions to the Indiana ozone State Implementation Plan (SIP): A rate-of-

progress (ROP) plan to reduce volatile organic compounds (VOC) emissions in Lake and Porter Counties by 15 percent (%) by November 15, 1996; a contingency plan to reduce VOC emissions by an additional 3% beyond the ROP plan, and an Indiana agreed order requiring VOC emission controls on Keil Chemical Division, Ferro Corporation, located in Lake County (Keil Chemical). The 15% ROP plan, 3% contingency plan, and the agreed order were submitted together on June 26, 1995. The plans will help to protect the public's health and welfare by reducing the emissions of VOC that contribute to the formation of ground-level ozone, commonly known as urban smog. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action 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 rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 5, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 19, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 97–8384 Filed 4–2–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 96–261, DA 97–440]

International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 19, 1996 the Federal Communications Commission released a Notice of Proposed Rulemaking in the matter of *International Settlement Rates*, FCC No. 96–484 (61 FR 68702, December 30, 1996). In response to a request for an extension of time, on February 27, 1997, the Commission released an order granting an extension of time for filing reply comments in this proceeding.

DATES: Reply comments must be submitted on or before March 31, 1997.

ADDRESSES: All supplemental comments and supplemental reply comments should be addressed to: Office of the Secretary, Federal Communications Commission, Washington DC 20554. All supplemental comments and supplemental reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Giusti, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1407.

SUPPLEMENTARY INFORMATION:

1. On February 21, 1997, the Republic of Panama filed a motion to extend the reply comment date in the captioned proceeding from March 10, 1997 to April 14, 1997. The Republic of Panama contends that the current schedule provides it insufficient time to prepare informed reply comments for two reasons. First, the Republic of Panama asserts that the failure of the Commission's Record Imaging Processing System (''RIPS'') has made it difficult for it and other interested parties to obtain a complete set of the comments filed in this proceeding. Second, the Republic of Panama states that it needs more time to review the recent agreement of the World Trade Organization's Group on Basic Telecommunications and assess the agreement's impact on the proposals made in this proceeding.

2. Although we do not routinely grant extensions of time, *See* 47 CFR § 1.46(a), we believe that extending the reply comment date in this case will serve the public interest by allowing the Republic of Panama and other interested parties adequate time to review and reply to any comments that they had difficulty in obtaining because of the failure of RIPS. We believe that an extension to March 31, 1997 will provide sufficient time for interested parties to complete their reply comments. Interested parties may obtain copies of the comments filed in this proceeding from the Commission's Reference Center, 1919 M Street NW., Room 239, Washington, DC 20554. Copies of the comments filed in this proceeding are also available for purchase from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), 2100 M Street NW., Suite 140, Washington, DC 20037. In order to compensate further for the RIPS outage, we will place copies of the comments filed in this proceeding in the International Bureau Reference Center, Room 102, 2000 M Street NW., Washington, DC 20554.

3. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 155(c), and sections 0.51, 0.261, and 1.46 of the Commission's rules, 47 CFR 0.51, 0.261, and 1.46, that the reply comment date in the captioned proceeding *is extended* from March 10, 1997 to March 31, 1997.

4. *It is further ordered*, pursuant to sections 4(i), 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 155(c), and sections 0.51, 0.261, and 1.46 of the Commission's rules, 47 CFR 0.51, 0.261, and 1.46, that the Republic of Panama's motion to extend the reply comment date *is granted* to the extent it requests additional time up to March 31, 1997, but *is denied* to the extent it requests additional time beyond that date.

Federal Communications Commission.

Ruth Milkman,

Deputy Chief, International Bureau.

[FR Doc. 97–8442 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–105, RM–9046]

Radio Broadcasting Services; Atlanta, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Winn Parish Broadcasting proposing the allotment of Channel 293A to Atlanta, Louisiana, as the community's first local aural transmission service. Channel 293A can be allotted to Atlanta in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at coordinates 31–48–18 NL and 92–44–36 WL.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, P.O. Box 403, Westfield, Massachusetts 01086 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–105, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8439 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–104, RM–9048]

Radio Broadcasting Services; Wellington, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Stacey Allen Austin proposing the allotment of Channel 267C3 to Wellington, Texas, as the community's first local FM service. Channel 267C3 can be allotted to Wellington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.5 kilometers (2.8 miles) southwest in order to avoid a short-spacing conflict with the licensed operation of Station KWOX(FM), Channel 266C, Woodward, Oklahoma. The coordinates for Channel 267C3 at Wellington are 34–49–13 NL and 100–14–29 WL.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stacey Allen Austin, Route 1, Box 420, Chancellor, Alabama 36316 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–104, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8438 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–102, RM–8969]

Radio Broadcasting Services; Slidell and Kenner, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Phase II Broadcasting, licensee of Station WLTS–FM, Channel 287C1, Slidell, Louisiana, proposing the reallotment of Channel 287C1 from Slidell to Kenner, Louisiana, and modification of Station WLTS–FM's license to specify Kenner as its community of license. Channel 287C1 can be allotted to Kenner in compliance with the Commission's minimum distance separation requirements at the licensed site of Station WLTS–FM. The coordinates for Channel 287C1 at Kenner are 29–58–57 and 89–57–09. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 287C1 at Kenner, Louisiana.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael Lamers, Hardy and Carey, LLP, 111 Veterans Memorial Boulevard, Suite 255, Metrairie, Louisiana 70005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–102, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8436 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–103, RM–9030]

Radio Broadcasting Services; Shawsville, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Grace Communications L.C. proposing the allotment of Channel 273A to Shawsville, Virginia, as the community's first local aural transmission service. Channel 273A can be allotted to Shawsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) west in order to avoid a short-spacing conflict with the vacant allotment of Channel 274C1 at Appomattox, Virginia. The coordinates for Channel 273A at Shawsville are 37–09–47 NL and 80–16–48 WL.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M Pelkey, Haley, Bader & Potts, Suite 900, 4350 North Fairfax Drive, Arlington, Virginia 22203–1633 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–103, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8435 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–106; RM–9044]

Radio Broadcasting Services; Cheyenne, WY and Gering, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by TSB II, Inc., proposing the allotment of Channel 280C2 at Cheyenne, Wyoming, as the community's potential seventh local FM transmission service. To accommodate the allotment, petitioner also proposes the substitution of Channel 239C3 for Channel 280C3 at Gering, Nebraska, and the modification of Station KOLT–FM's license accordingly. Channel 280C2 can be allotted at Cheyenne in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to the licensed site of Station KKNG(FM), Channel 283C3, Laramie, Wyoming. The coordinates for Channel 280C2 at Cheyenne are North Latitude 41–08–17 and West Longitude 104–48–22. *See* **SUPPLEMENTARY INFORMATION,** *infra*.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elizabeth A. Sims, Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Ave., NW., Suite 200, Washington, DC 20036–3101 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 97–106, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally, Channel 239C3 can be allotted at Gering in compliance with the Commission's minimum distance separation requirements at Station

KOLT–FM's presently licensed site. The coordinates for Channel 239C3 at Gering are North Latitude 41–51–50 and West Longitude 103–42–20.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8434 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–107, RM–9023]

Radio Broadcasting Services; Potts Camp and Saltillo, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Olvie E. Sisk, licensee of Station WCNA(FM), Channel 240C3, Potts Camp, Mississippi, proposing the reallotment of Channel 240C3 from Potts Camp to Saltillo, Mississippi, and the modification of Station WCNA(FM)'s license to specify Saltillo as its community of license. Channel 240C3 can be allotted to Saltillo in compliance with the minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) north. The coordinates for Channel 240C3 at Saltillo are 34–33–39 NL and 88–40–59 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional channel at Saltillo.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, Eleventh Floor, Rosslyn, Virginia 22209 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–107, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8433 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–101, RM–9051]

Radio Broadcasting Services; Mahnomen, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jimmy D. Birkemeyer, proposing the allotment of Channel 268C3 at Mahnomen, Minnesota, as that community's first local broadcast service. The coordinates for Channel 268C3 are 47–25–00 and 96–06–00. There is a site restriction 15 kilometers (9.3 miles) northwest of the community.

DATES: Comments must be filed on or before May 19, 1997, and reply comments on or before June 3, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jimmy D. Birkemeyer, 312 West Main Street, Ada, Minnesota 56510.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–101, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8441 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–244; RM–8936]

Radio Broadcasting Services; Madison, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed on behalf of Edward E. Guinn, which requested the allotment of Channel 266A to Madison, Indiana, as that community's second local FM transmission service, based upon the collective withdrawal of interest by all parties to the proceeding in pursuing the proposal. See 61 FR 65508, December 13, 1996. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–244, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–8440 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Santa Ana Sucker as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U. S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Santa Ana sucker (*Catostomus santaanae*) under the Endangered Species Act of 1973, as amended (Act). The Santa Ana sucker is found in small shallow streams in southern California, and although described as common in the 1970s, the species has experienced declines throughout most of its range because of urbanization, water pollution, dams, introduced non-native fishes, and other human-caused disturbances. The Service finds that the petition to list the Santa Ana sucker is warranted but precluded by other listing actions of higher priority.

DATES: The finding announced in this document was made on March 27, 1997. Comments from all interested parties may be submitted until further notice.

ADDRESSES: Data, information, comments, or questions concerning this finding should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett, Carlsbad Field Office see ADDRESSES section) (telephone 619/431–9440 or facsimile 619/431–9624).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information indicating that the petitioned action may be warranted, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(B)(iii) of the Act states that the Service may make warranted but precluded findings if it can demonstrate that an immediate proposed rule is precluded by other pending proposals and that expeditious progress is being made on other listing actions. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

Because of budgetary constraints and the lasting effects of the congressionally imposed listing moratorium, the Service is processing petitions and other listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance for fiscal year 1997 clarifies the order in which the Service will process listing activities with appropriated funds. Administrative findings for listing petitions that are not assigned to tier 1 (emergency listing actions) will be processed as a tier 3 priority (61 FR 64480). Further action on the subject petition falls within tier 3 of the current guidance. Because of pending proposed species listings (tier 2 activities), the Pacific Region (Region 1) will be primarily processing final decisions on proposed rules during fiscal year 1997 (61 FR 64477). However, as the Pacific Region nears completion of its pending tier 1 and 2 actions, the Service expects Region 1 to begin processing some tier 3 actions later this fiscal year. Priority within tier 3 will be given to new proposals for species facing high-magnitude, imminent threats (61 FR 64480), especially court-ordered proposals for such species with listing priority numbers of 1 through 3 (e.g., *Fund for Animals* v. *Babbitt*, Civ. No. 92–800 (SS) (D.D.C.)).

On September 6, 1994, the Service received a petition under the Act to list the Santa Ana speckled dace (*Rhinichthys osculus* ssp.), Santa Ana sucker (*Catostomus santaanae*), and the Shay Creek threespine stickleback (*Gasterosteus aculeatus* ssp.) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc. (located in San Francisco, California), on behalf of seven groups. The seven groups are the California-Nevada Chapter of the American Fisheries Society, The Nature School, The California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited.

A timely finding on the subject petition was precluded by higher priority listing actions and budget constraints. On May 16, 1996, the Service published a description of how it would prioritize the various listing actions for the remainder of fiscal year 1996 (61 FR 24722). Based on this listing priority guidance, the 90-day finding was designated as a tier 3 action, and the processing of tier 3 actions was not expected to begin during the remainder of fiscal year 1996. Despite requests for deference to the listing

priority guidance, however, the Service was compelled by court order to issue the 90-day finding.

On July 9, 1996, the Service published a 90-day petition finding (61 FR 36021) that substantial information had been presented indicating the requested action may be warranted for the Santa Ana sucker. This same 90-day petition finding stated that the petition did not present substantial scientific or commercial information indicating the petitioned action may be warranted for the Santa Ana speckled dace and Shay Creek threespine stickleback because it did not substantiate that the two taxa are described species, subspecies, or distinct vertebrate population segments as required under current Service policy (61 FR 4722) to be considered for listing. Furthermore, the Service presently regards the Shay Creek threespine stickleback as a population of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), a species that is already listed as endangered. While work on the 12-month finding, also a tier 3 activity, would not have been initiated under the listing priority guidance, the Service subsequently initiated a status review for the Santa Ana sucker pursuant to an October 10, 1996, court order.

The Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing the Santa Ana sucker. This analysis is documented in the Service's Administrative 12-Month Finding on a Petition to List the Santa Ana Sucker as Endangered (Finding). Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976), the species has experienced declines throughout most of its range (Moyle and Yoshiyama 1992). This apparent overall decline in population numbers is particularly surprising given the high reproductive capability and broad habitat tolerances of this species. Much of the remaining range of the Santa Ana sucker is threatened by urban encroachment, extreme alteration of river channels, degraded water quality, dam operations, water diversions, introduction of exotic predators and competitors, other human-caused factors (e.g., adverse impacts associated with human recreational activities), as well as small populations and associated genetic concerns. Of the four known populations of the Santa Ana sucker, two populations are mostly within the Angeles National Forest. Urban encroachment and alteration of river channels are not a threat to these two populations, one of which is extant upstream of the confluence of the East, West, and North forks of the San Gabriel River and may contain the most individuals of any remaining population. Therefore, the Service concludes that the magnitude of threats facing the Santa Ana sucker are moderate.

The Service determines, as a result of its status review, that sufficient information is currently available to support a proposed rule to list the species as endangered or threatened. According to Service policy published in the **Federal Register** on May 12, 1993 (58 FR 28034), such species are assigned candidate status and given a listing priority number. Guidelines for assigning listing priorities were published in the **Federal Register** on September 21, 1983 (48 FR 43098). Consequently, given the moderate threats facing the Santa Ana sucker throughout its range, the Service hereby assigns the Santa Ana sucker a listing priority number of 8.

Under the Service's current system of proposing species for listing based on the magnitude and imminence of threats facing a species, the Service considers listing species with higher listing priority numbers first. Since the moratorium was lifted on April 26, 1996, the Service has completed 131 final determinations (publication of final rules for endangered and threatened species and withdrawals of proposed rules). The Service believes that this demonstrates that expeditious progress is being made to list and delist species under the Act. Despite this progress, listing actions are currently pending for many species that have higher listing priority numbers than the Santa Ana sucker. Those species include a large number of species facing high magnitude and imminent threats (listing priority numbers of 1, 2, or 3). Given that the Santa Ana sucker has a listing priority number of 8 in light of the threats of moderate magnitude, the Service finds that listing the Santa Ana sucker is warranted but precluded by listing actions of higher priority.

References Cited

A complete list of references used in the preparation of this finding is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Paul J. Barrett, Carlsbad Field Office (see **ADDRESSES** section), telephone 619/431–9440.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 27, 1997.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 97–8450 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Public Hearing on Proposed Rule to List the Northern Population of the Bog Turtle as Threatened and the Southern Population as Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the Service's proposal to list the northern population of the bog turtle (Clemmys muhlenbergii) as threatened from New York and Massachusetts south to Maryland; and the southern population of the bog turtle, which occurs in the Appalachian Mountains from southern Virginia to northern Georgia, as threatened due to similarity of appearance to the northern population, with a special rule, pursuant to the Endangered Species Act of 1973, as amended. The bog turtle is threatened by a variety of factors which include: habitat degradation and fragmentation from agriculture and urban development; habitat succession due to invasive exotic and native plants; and illegal trade and collection.

DATES: The public hearing will be held April 21, 1997, from 7 p.m. to 9 p.m. (Eastern Standard Time). The formal comment period closes on April 29, 1997.

ADDRESSES: Comments should be sent to Supervisor, Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. The public hearing will be held in the auditorium of the Oley High School, 17 Jefferson Street, Oley, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael McCarthy at the above field office address (814/234–4090; facsimile 814/234–0748).

SUPPLEMENTARY INFORMATION:

Background

Bog turtles inhabit shallow, spring-fed fens, sphagnum bogs, swamps, marshy meadows and pastures characterized by soft, muddy bottoms; clear, cool, slow-flowing water, often forming a network of rivulets; high humidity; and an open canopy. Unless set back by fire, beaver activity, grazing, or periodic wet years, open-canopy wetlands are slowly invaded by woody vegetation and undergo a transition into closed-canopy, wooded swampland, thus becoming unsuitable for habitation by bog turtles. The northern populations extends from southern New York and western Massachusetts southward through western Connecticut, New Jersey and eastern Pennsylvania, to northern Delaware and Maryland. Disjunct populations previously occurred in western Pennsylvania and in the Lake George and Finger Lakes regions of New York. The western Pennsylvania and Lake George populations have been extirpated and only a remnant population exists at two remaining sites in the Finger Lakes region. The southern population occurs in southwestern Virginia southward through western North Carolina, eastern Tennessee, northwestern South Carolina and northern Georgia.

The northern population of the bog turtle has declined by approximately 50 percent. Illegal collection and habitat alteration/destruction constitute the primary threats to this species. The Service does not currently consider the southern population of bog turtles to be biologically threatened or endangered; however, it would be nearly impossible to prosecute illegal 'take' cases if the southern population was not also listed. The proposed special rule would exempt incidental take of bog turtles in the southern population from the prohibitions of the Act. That is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity would not be prohibited for the southern population.

On January 29, 1997, the Service published a proposal in the **Federal Register** (62 FR 4229) to list the northern population of the bog turtle as threatened and the southern population as threatened due to similarity of appearance under the Act as amended. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. A public hearing request was received within the allotted time period from Mr. Gary L. Hoffman, Chief Engineer for the Commonwealth of Pennsylvania Department of Transportation, Harrisburg, Pennsylvania. The Service has scheduled a hearing on April 21, 1997, from 7:00 to 9:00 p.m. (Eastern Standard Time), at the auditorium of the Oley High School, 17 Jefferson Street, Oley, Pennsylvania. Those parties wishing to make a statement for the record are encouraged to provide a copy of their statement to the Service at the start of the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Comments from all interested parties must be received by April 29, 1997.

Author: The primary author of this notice is Mr. Michael L. McCarthy, Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite #322, State College, Pennsylvania 16801.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: March 27, 1997.

Cathy Short,

Deputy Regional Director, Region 5.

[FR Doc. 97–8510 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970318059–7059–01; I.D. 022197B]

RIN 0648–AI82

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 12

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement portions of Amendment 12 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). Amendment 12 to the Salmon FMP would include, as management objectives for the Salmon FMP, the NMFS jeopardy standards or the objectives of NMFS recovery plans for salmon species that are listed as threatened or endangered under the Endangered Species Act (ESA) and would eliminate from the Code of Federal Regulations a table that summarizes management goals. This proposed rule would implement that change. The intended effect of this rule is to ensure that ESA listed salmon are given proper consideration in formulating management measures under the Salmon FMP.

DATES: Comments on the proposed rule must be received on or before May 19, 1997.

ADDRESSES: Comments on the proposed rule for Amendment 12 should be sent to Mr. William Stelle, Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 12 (combined with Amendment 10 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery (Groundfish FMP)), the Environmental Assessment (EA)/ Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney McInnis at 310–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. More detail appears in the EA/RIR/IRFA that the Council prepared for this action (see **ADDRESSES**).

At its October 1996 meeting, the Council adopted a package that consists of Amendment 12 to the Salmon FMP and Amendment 10 to the Groundfish FMP. Amendment 12 would allow adoption of rules to permit retention of, but not sale of, salmon bycatch in Pacific Coast groundfish trawl fisheries under a monitoring program that meets certain guidelines; specify ESA standards as management objectives for salmon species listed under the ESA;

and update the Salmon FMP, without changing the FMP management objectives. Amendment 10 would authorize modification of the regulations governing the Pacific Coast groundfish fishery to allow retention of salmon bycatch as authorized under Amendment 12.

A Notice of Availability for Amendments 12 and 10, inviting comments from the public, was published in the **Federal Register** on February 27, 1997 (62 FR 8921). Public comments on the proposed rule must be received by the end of the comment period on the amendments, April 28, 1997, to be considered in the approval/disapproval decision on the amendments.

Management Objectives for Listed Salmon Species

Amendment 12 to the Salmon FMP would specify that the Council will manage ocean salmon fisheries consistent with NMFS jeopardy standards or NMFS recovery plans for species listed under the ESA. This portion of Amendment 12 is needed to bring the Salmon FMP into compliance with the March 1996 Biological Opinion issued under section 7 of the ESA, regarding the impacts of the Pacific Coast salmon fishery on salmon stocks listed under the ESA. The Biological Opinion's first reasonable and prudent alternative (RPA) requires the Council to adopt by October 1996, and NMFS to implement by May of 1997, an amendment that includes ESA management objectives in the FMP. This portion of Amendment 12 is being implemented through this proposed rule.

Update of the Salmon FMP

The Salmon FMP has not had a comprehensive update since 1984. The Council wishes to provide a comprehensive Salmon FMP that incorporates into a single document all of the amendments that have been made to the Salmon FMP since 1984. The updated Salmon FMP has been designed to be the operative salmon FMP, rather than an amendment to any existing document. It incorporates or references all the parts required for a complete Salmon FMP but contains only the operative language necessary to understand and implement the Council's salmon management plan. If approved, this updated, comprehensive Salmon FMP would be much easier for the public to review and understand for any future amendment considerations. This comprehensive Salmon FMP update also includes a summary of specific management goals for stocks in the salmon management unit, which allows NMFS to make minor modifications to the salmon regulations. The table of management goals that currently appears in the salmon regulations at § 660.410 would be deleted from the regulations because it already exists in the Salmon FMP. In accordance with the current Salmon FMP framework procedure, future updates to stock management goals may be made without amending the Salmon FMP.

Future Proposed Regulations

Salmon Bycatch Retention

The salmon bycatch retention provisions of Amendments 10 and 12 are not being implemented in this rule. These provisions would authorize regulations to permit groundfish trawl vessels to retain, but not sell, their bycatch of Pacific salmon under a monitoring program that meets certain guidelines. The Biological Opinion under section 7 of the ESA regarding the groundfish fishery requires monitoring of the groundfish fisheries for salmon bycatch rates, but the Salmon and Groundfish FMPs and associated regulations limit flexibility in how this is done, because they do not allow for retention of trawl-caught salmon. The monitoring program has operated under an EFP for the past few years, and this plan amendment allows the Council to adopt regulations to implement appropriate monitoring. The Council has not yet developed and proposed such a program, so no implementing regulations are currently being proposed in connection with this portion of the amendments. NMFS expects that the Council will submit a proposal to implement a bycatch monitoring program for the 1998 fishery.

Classification

At this time, NMFS has not determined that the FMP Amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would implement changes to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP) to specify Endangered Species Act (ESA) standards as management objectives for salmon species listed under the ESA. It would also eliminate a table from the regulations that would be made redundant by Amendment 12.

This proposed rule to specify ESA standards as salmon management objectives would bring the Salmon FMP into compliance with the March 8, 1996, Biological Opinion on the impacts of ocean fisheries for Pacific salmon on stocks listed under the ESA. It formalizes in the FMP what was already required by the ESA. The elimination of the table is a housekeeping measure that has no substantive impact on the regulated public or other government agencies.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 27, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.410, the section heading and paragraph (a) are revised, the table ''Summary of Specific Management Goals for Stocks in the Salmon Management Unit'' is removed, and a new paragraph (c) is added to read as follows:

§ 660.410 Escapement and management goals.

(a) The escapement and management goals are summarized in Table 6–1 of the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California.

* * * * *

(c) The annual management measures will be consistent with NMFS jeopardy standards or NMFS recovery plans for species listed under the Endangered Species Act.

[FR Doc. 97–8462 Filed 4–2–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 64

Thursday, April 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Extension, Ouachita National Forest, Arkansas

AGENCY: Forest Service, USDA.

ACTION: Notice of boundary extension.

SUMMARY: The Secretary of Agriculture has extended the boundary of the Ouachita National Forest to include 106.75 acres, more or less, in Le Flore County, Oklahoma, which were recently acquired through exchange. A copy of the Secretary's establishment document which includes the legal description of the lands within the extension appears at the end of this notice.

EFFECTIVE DATE: The effective date of this boundary extension was March 11, 1997.

ADDRESSES: A copy of the map depicting the lands within the boundary extension is on file and available for public inspection in the Office of the Director of Lands, Auditor's Building, 201 14th Street, SW, Washington, DC. 20250.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, PO Box 96090, Washington, DC. 20090–6090, telephone: (202) 205–1248.

SUPPLEMENTARY INFORMATION: Pursuant to the authority under section 20(d), Winding Stair Mountain National Recreation and Wilderness Act of October 18, 1988 (16 U.S.C. 460), the Secretary of Agriculture has extended the boundary of the Ouachita National Forest. The Act provided authority to the Secretary of Agriculture to acquire by purchase, exchange, donation, or otherwise, any right, title, and interest in lands in Le Flore County, Oklahoma, which are outside the boundaries of the Ouachita National Forest. This Act also provided that the Secretary would extend the boundaries of the Ouachita National Forest to include such lands.

Dated: March 28, 1997.

Gerald Coghlan,

Acting Associate Deputy Chief, National Forest System.

Ouachita National Forest Boundary Extension

Pursuant to the Secretary of Agriculture's authority under Section 20(d), Pub. L. 100–499 (102 Stat. 2491) the Ouachita National Forest boundary is hereby extended to include the following lands.

Le Flore County, Oklahoma, Indian Meridian

Township 3 North, Range 27 East
Section 10: The North Half of the Northwest Quarter and Lot 1.

The areas described aggregate 106.75 acres more or less.

As provided by Pub. L. 100–499, the lands described shall be administered by the Secretary of Agriculture in accordance with the Act of March 1, 1911 (36 Stat. 961) and in accordance with the laws, rules, and regulations generally applicable to units of the National Forest System.

Dated: March 11, 1997.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 97–8550 Filed 4–2–97; 8:45 am]

BILLING CODE 3410–11–M

Establishment of Ramsey Creek Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of Establishment of Ramsey Creek Purchase Unit.

SUMMARY: The Secretary of Agriculture created the 2,276.39-acre Ramsey Creek Purchase Unit in Wasco County, Oregon. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Establishment of this purchase unit was effective January 28, 1997.

ADDRESSES: A copy of the map depicting the lands within the purchase unit is on file and available for public inspection in the office of the Director, Lands Staff, 201 14th Street, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090, telephone: (202) 205–1248.

Dated: March 28, 1997.

Gerald Coghlan,

Acting Associate Deputy Chief, National Forest System.

Establishment of Ramsey Creek Purchase Unit, Wasco County, Oregon

Pursuant to the Secretary of Agriculture's authority under Section 17, Pub. L. 94–588 (90 Stat. 2949), the Ramsey Creek Purchase Unit is being created in Wasco County, Oregon. The lands within the purchase unit are described as follows:

Wasco County, Oregon, Willamette Meridian

T. 2 S., R. 12 E., W.M.
Section 3 SW¼SW¼;
Section 7 S½SW¼, S½SE¼, N½S½ lying southerly of the County road;
Section 8 SE¼NW¼ lying southerly of the County road, NE¼ lying south and east of the County roads, S½ excepting beginning at the southwest corner of Section 8 and running thence easterly 240 feet; thence in a northwesterly direction to the westerly line of said Section 8 at a point 240 feet north of the starting point; thence south to the place of beginning;
Section 9 All, excepting the north 617.5 feet of the N½NW¼ and the north 617.5 feet of the NW¼NE¼;
Section 10 NW¼NW¼;
Section 16 Beginning at the northwest corner, running thence south along section a distance of 1,712 feet; thence north 80°05′ east 5,357 feet to the east boundary of said Section 16; thence north 783 feet to the northeast corner thereof; thence west one mile, to the point of beginning;
Section 17 All that part lying northerly of a line beginning at the southwest corner of the N½ of Section 17 and running thence N 80°05′ east 5,357 feet to the east boundary of Section 17, said point being 928 feet north of the southeast corner of the N½ of Section 17;
Section 18 Lots 1, 2, 3, NE¼, NE¼SW¼, E½NW¼, N½SE¼, S½SE¼.

The area described contains 2,276.39, more or less, and is adjacent to the Mt. Hood National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: January 28, 1997.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 97–8552 Filed 4–2–97; 8:45 am]

BILLING CODE 3410–11–M

Establishment of Yonah Mountain Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of Establishment of Yonah Mountain Purchase Unit.

SUMMARY: The Secretary of Agriculture created the 45.87-acre Yonah Mountain Purchase Unit in White County, Georgia. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Establishment of this purchase unit was effective January 29, 1997.

ADDRESSES: A copy of the map depicting the lands within the purchase unit is on file and available for public inspection in the office of the Director, Lands Staff, 201 14th Street, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090, telephone: (202) 205–1248.

Dated: March 28, 1997.

Gerald Coghlan,

Acting Associate Deputy Chief, National Forest System.

Yonah Mountain Purchase Unit, White County, Georgia

Pursuant to the Secretary of Agriculture's authority under the Act of March 1, 1911, as amended, and Section 17, Pub. L. 94–588 (90 Stat. 2949), the Yonah Mountain Purchase Unit is being established and is described as follows:

All that certain tract of land lying and being in Land Lots 153 & 154, District 3, White County, Georgia and more particularly described as follows:

Beginning at Corner 1, an iron pipe with aluminum cap at the northwest corner of Land Lot 153 common to Lots 154, 135 & 136 and being the same as Corner 4 of USA Tract G–256. Thence, with the line between Land Lots 153 and 136 common to USA Tract G–256, S89°47′E, 616.76 feet to Corner 2, being the same as Corner 3 of USA Tract G–256, a chestnut stump. Thence, one course into Land Lot 153 common to USA Tract G–256, South, 2002.21 feet to Corner 3, an aluminum monument set. Thence, through Land Lot 153 and into Lot 154 common to land of the Nora Black Chambers Estate, S89°33′41″W, 819.34 feet to an aluminum monument set. Thence, N15°46′E, 32.51 feet to an *iron pin* in the center of a 60 foot right-of-way easement. Thence, N30°47′15″E, 30.0 feet to a point on the northern side of the right-of-way. Thence, along and with the right-of-way, parallel with and 30 feet northeasterly from the centerline thereof, the centerline being located as follows: From the above *iron pin*, N59°12′45″W, 54.03 feet to a point of curvature. Thence, along a 58°16′01″ curve to the right having a radius of 98.33 feet, 107.75 feet to a point of tangency. Thence, N03°34′05″E, 17.99 feet to a point of curvature. Thence, along a 22°07′58″ curve to the right having a radius of 258.87 feet, 98.78 feet to a point of tangency. Thence, N25°25′54″E, 4.56 feet to a point of curvature. Thence, along a 37°51′41″ curve to the left having a radius of 151.33 feet, 78.21 feet to a point of tangency. Thence, N04°10′49″W 7.16 to a point of curvature. Thence, along a 48°34′18″ curve to the left having a radius of 117.96 feet, 77.13 feet to a point of tangency. Thence, N41°38′36″W, 93.36 feet to a point of curvature. Thence, along a 7°47′54″ curve to the left having a radius of 734.72 feet, 119.73 feet to a point of tangency. Thence, N50°58′50″W, 34.08 feet to a point of curvature. Thence, along a 23°32′21″ curve to the right having a radius of 243.41 feet, 117.65 feet to a point of tangency. Thence, N23°17′09″W, 93.35 feet to a point of curvature. Thence, along a 5°45′54″ curve to the right having a radius of 993.84 feet, 119.85 feet to a point of tangency. Thence, N16°22′34″W, 59.58 feet to a point of curvature. Thence, along a 22°46′27″ curve to the left having a radius of 251.58 feet, 117.80 feet to a point of tangency. Thence, N43°12′14″W, 84.60 feet to a point on the centerline. Thence, perpendicular to the centerline, N46°47′46″E, 30.0 feet to *Corner 5*, an aluminum monument on the eastern right-of-way of the 60 foot easement (the total distance along the eastern side of the easement being 1269.2 feet). Thence, one course common to land of the Nora Black Chambers Estate, N38°43′12″E, 1134.79 feet to the place of Beginning, containing 45.87 acres, more or less.

The area described is adjacent to the Chattahoochee National Forest, Georgia.

Dated: January 29, 1997.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 97–8551 Filed 4–2–97; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Indian Creek Watershed, Tishomingo County, Mississippi

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Indian Creek Watershed, Tishomingo County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a watershed plan for the purpose of reducing flood damages to residences and businesses belonging to disadvantaged residents in the floodplains of Indian Creek within the city of Luka. The planned works of improvement consist of 1.8 miles of channel modification.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

''(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)''

Homer L. Wilkes,

State Conservationist.

[FR Doc. 97–8527 Filed 4–2–97; 8:45 am]

BILLING CODE 3410–16–M

ARMS CONTROL AND DISARMAMENT AGENCY

The Establishment of the Director's Advisory Committee (DirAC)

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency (ACDA) announces the establishment of the Director's Advisory Committee (DirAC). The Committee will provide the Director of ACDA with a continuing source of independent insight, advice, and innovation on all aspects of arms control, disarmament, and nonproliferation. Because the successful conduct of arms control

requires a synthesis of physical science, social science, military technology and strategy, diplomacy, and politics, the committee will be composed of persons with expertise in one or more of these areas. The work of this committee will be instrumental in enabling ACDA to contribute to the reduction or elimination of some significant threats to American national security. The committee will operate for two years unless terminated sooner or renewed.

John D. Holum,

Director.

[FR Doc. 97–8451 Filed 4–2–97; 8:45 am]

BILLING CODE 6820–32–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Friday, April 25, 1997, in the Board of Directors Room, Smith College, Alumnae House, Elm Street, Northampton, Massachusetts 01063. The purpose of the meeting is to provide an orientation for new Committee members and to plan project activities for FY 1997.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Fletcher A. Blanchard, 413–586–4560, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–8456 Filed 4–2–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Thursday, May 1, 1997, at the New Jersey State House, Room 319, West State Street, Trenton, New Jersey 08625. The purpose of the meeting is to plan a project on employment discrimination as it affects Asian Americans in State government employment, invite comments from Asian American community representatives, and provide orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Irene Hill-Smith, 609–468–5546, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 28, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–8444 Filed 4–2–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 5:00 p.m. on April 18, 1997, at the Clovis Public Library, Ingram Room, 701 North Main Street, Clovis, New Mexico 88101. The purpose of the meeting is to receive information about the food stamp fraud operation in Clovis, to discuss the project on Farmington, and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynda Eaton, 505–326–4338, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 28, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–8445 Filed 4–2–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, April 23, 1997, at the Regal Maxwell House Hotel, 2025 Metro Center Boulevard, Nashville, Tennessee. The purpose of the meeting is to review Commission activity, discuss the current project on Title VI Enforcement in Tennessee; update the members on church burnings and the meeting with Governor Sundquist in December and discuss civil rights progress and problems in the State and Nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–8457 Filed 4–2–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment

and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 88–7A016.''

Wood Machinery Manufacturers of America's (''WMMA'') original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); and December 13, 1993 (58 FR 66344, December 20, 1993); August 23, 1994 (59 FR 44408, August 29, 1994); and September 20, 1996 (61 FR 50471). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, Pennsylvania 19103–1498.

Contact: Harold R. Zassenhaus, Export Director, Telephone: (301) 652–0693.

Application No.: 88–7A016.

Date Deemed Submitted: March 24, 1997.

Proposed Amendment: WMMA seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): CEMCO Inc., Whitesburg, Tennessee; and

2. Delete Mattison Machine Works, Rockford, Illinois as a ''Member'' of the Certificate.

Dated: March 31, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–8581 Filed 4–2–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[Docket No. 950407092–7049–03]

RIN 0648–XX12

NOAA Climate and Global Change Program, Program Announcement

AGENCY: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Revisions to the Notice from the National Oceanic and Atmospheric Administration, Climate and Global Change Program, FY 1997. Amendment to the Deadline Date for the GCIP (GEWEX) Continental Scale International Project Program Area.

SUMMARY: This notice serves the following purposes: To announce a potential joint initiative between NOAA and NASA to address priority problems in the GEWEX Continental Scale International Project (GCIP). This call is aimed at fostering work that supports the objectives of (GCIP) in the Mississippi River Basin, and interdisciplinary studies of other GEWEX Continental Scale Experiments. Together, NOAA and NASA are planning to fund 25 proposals from this announcement. To revise the deadline Date to Letters of Intent and full Proposals for the GCIP Program element, specified in the Program Announcement.

DATES: Letters of Intent must be received by April 30, 1997. Full Proposals must be postmarked on or before May 30, 1997.

ADDRESSES: Applications should be sent to Rick Lawford, Program Manager, GCIP (GEWEX), NOAA/OGP Programs, Silver Spring, MD, 301/427–2089 ext. 40, Internet: lawford@ogp.noaa.gov.

FOR FURTHER INFORMATION CONTACT:

Dr. James Arnold, Science Division, Mission to Planet Earth, NASA Headquarters, Code YS, 300 E. Street SW, Washington, DC, USA 20546, 202/358–0540, Fax 2770, Internet: jim.arnold@hq.nasa.gov., or Rick Lawford, Project Manager, GCIP (GEWEX), NOAA/OGP Programs, Silver Spring, MD, 301/427–2089 ext. 40, Internet: lawford@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION: OGP published the notice describing the Program and funding area descriptions on June 17, 1996. (61 FR 117). The program description, background and requirements, as well as guidelines for applications are included in that notice and are not repeated here.

Proposals are sought which make use of remotely sensed data (satellite, aircraft, surface based) through data infusion, model development or understanding of processes which address issues of the GCIP Project. An information sheet can be obtained by calling either of the Projects Managers listed above, and for details on special requirements for NASA, log into Internet at ''http/www.hq.nasa.gov/office/mtpe/''.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This notice involves information collection requirements subject to the Paperwork Reduction Act which are cleared under OMB Control Numbers 0348–0043, 0348–0044, and 0348–0046.

Authority: 49 U.S.C. 44720; 33 U.S.C. 883d, 883e, 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.*

Dated: March 28, 1997.

J. Michael Hall,

Director, Office of Global Programs.

[FR Doc. 97–8461 Filed 4–3–97; 8:45 am]

BILLING CODE 3510–12–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, April 11, 1997.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

MID-YEAR REVIEW: The staff will brief the Commission on issues related to fiscal year 1997 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: March 31, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–8717 Filed 4–1–97; 4:06 pm]

BILLING CODE 6355––01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Form: Marine Corps Advertising Awareness and Attitude Tracking Study, OMB Number 0704–0155.

Type of Request: Revision.

Number of Respondents: 1,400.

Responses Per Respondent: 2.

Annual Responses: 2,800.

Average Burden Per Response: 21 minutes.

Annual Burden Hours: 980.

Needs and Uses: This collection of information will be used by the Marine Corps to gauge the effectiveness of current advertising campaigns. The study also serves as an important planning tool in shaping the strategy for future advertising efforts. Questions are posed to sixteen to nineteen year old males and females to determine their awareness of Marine Corps advertising.

Affected Public: Individuals or households.

Frequency: Semi-Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503).

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 28, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–8484 Filed 4–2–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Concord Circuits

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Concord Circuits, a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 5,274,775 entitled ''Process Control Apparatus for Executing Program Instructions,'' filed January 22, 1991.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: March 24, 1997.

M. A. Waters,

LCDR, JAGC, USN, Alternate Federal Register Officer.

[FR Doc. 97–8452 Filed 4–2–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.255A]

Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Eligible Applicants: A State correctional agency, local correctional agency, State correctional education agency, or local correctional education agency is eligible for a grant under this program.

Deadline for Transmittal of Applications: May 19, 1997.

Deadline for Intergovernmental Review: July 18, 1997.

Available Funds: $4,439,620 for the first 12 months. Funding for the second and third years is subject to availability of funds and the approval of continuation. (See 34 CFR 75.253).

Estimated Number of Awards: 10–15.

Estimated Size of Awards: $300,000—$450,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that demonstrate ways in which eligible entities and the private sector can work together effectively to assist students who are criminal offenders under the supervision of the justice system to attain the life skills they need to make a successful transition from correctional education programs to productive employment including—(a) Work experience or apprenticeship programs; (b) Transitional worksite job training for students that is related to their occupational goals and closely linked to

classroom and laboratory instruction provided by an eligible recipient; (c) Placement services in occupations that the students are preparing to enter; (d) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or (e) Employment-based learning programs. An application that meets the invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 490.21 to evaluate applications under this competition. The program regulations in 34 CFR 490.20(b) provide that the Secretary may award up to 100 points for these criteria, including a reserved 15 points. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses:

(a) *Program factors* (25 points).

(b) *Educational significance* (20 points).

(c) *Plan of operation* (15 points).

(d) *Evaluation plan* (15 points).

(e) *Demonstration and dissemination* (10 points).

(f) *Key personnel* (5 points).

(g) *Budget and cost effectiveness* (5 points).

(h) *Adequacy of resources and commitment* (5 points).

For Applications or Information Contact: Lillian Logan, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer 4529, Washington, D.C. 20202–7242. Telephone (202) 205–5621. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1211–2.

Dated: March 31, 1997.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 97–8539 Filed 4–2–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–88–003]

Alabama-Tennessee Natural Gas Co.; Notice of Compliance Filing

March 28, 1997.

Take notice that on March 25, 1997, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with a proposed effective date of May 21, 1997:

Second Substitute Third Revised Sheet No. 101
First Revised Sheet No. 101A

Alabama-Tennessee states that the purpose of the filing is to comply with the order issued by the Commission in this proceeding on March 13, 1997 (78 FERC ¶ 61,280).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules Of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8468 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EC97–17–000, ER94–1685–012, ER95–393–012, ER95–892–011, and ER96–2652–003]

Citizens Lehman Power L.L.C.; Notice of Filing

March 21, 1997.

Take notice that on March 11, 1997, Citizens Lehman Power L.L.C., on behalf of this power marketing subsidiaries and affiliates, Citizens Lehman Power Sales, CL Hartford, L.L.C., CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CL Power Sales Three, L.L.C., CL Power Sales Four, L.L.C., CL Power Sales Five, L.L.C., CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Nine, L.L.C., CL Power Sales Ten, L.L.C. (collectively, the CLP Marketing Affiliates), filed an application pursuant to section 203 of the Federal Power Act for authorization of a transaction pursuant to which Peabody would acquire 100 percent direct ownership of CLP, and one percent direct ownership interests of Citizens Lehman Power Sales and CL Hartford, L.L.C., along with indirect control of all of the CLP Marketing Affiliates.

The filing also constitutes a notice of change in status for the CLP Marketing Affiliates as a result of the Peabody acquisition.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before April 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants participants to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8490 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–57–001]

Northern Natural Gas Company; Notice of Application to Amend

March 28, 1997.

Take notice that on March 13, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, pursuant to Section 7 of the Natural Gas Act, filed in Docket No. CP96–57–001 an application to amend its certificate of public convenience and necessity issued June 28, 1996 in Docket No. CP96–57–000, to delay abandonment of a compressor station facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern proposes to delay abandonment of certain compressor station facilities at its Owatonna compressor station and is requesting that the certificate issued in Docket No. CP96–57–000 be amended to authorize the continued operation of the Owatonna compressor facilities until its Peak Day 2000 certificate application pending Commission approval in Docket No. CP97–25–000 is granted and the new Owatonna compressor facilities proposed therein are installed.

Northern states that allowing it to continue to operate the Owatonna units also provides backup on the system should other horsepower on the system go down due to routine or non-routine maintenance and notes that Northern would avoid the costs to abandon these units at this time.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 18, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is 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 Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8464 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

Pacific Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP97–299–000]

March 28, 1997.

Take notice that on March 26, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Second Revised Sheet Nos. 37 through 39 and First Revised Sheet No. 40. PGT requested the above-referenced tariff sheets become effective April 26, 1997.

PGT asserts that the purpose of this filing is to modify the methodology used for allocating capacity in its parking and lending services (Rate Schedules PS–1 and AIS–1, respectively) from a first-come, first-served methodology to an economic dispatch methodology, with pro-rata allocation as a tie-breaker.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8469 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–304–000]

Questar Pipeline Company; Notice of Application

March 28, 1997.

Take notice that on March 24, 1997, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–304–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, a compressor and related facilities located at the Horseshoe Draw Compressor Station in Sweetwater County, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar requests authority to abandon one 1,085 horsepower gas turbine compressor, the Horseshoe Draw compressor, and associated flow-control and automation equipment, two 24 MMcf/d dehydration units, two generator sets, a 2 MMBtu/d line heater and miscellaneous valves, yard and station piping located at the junction of Questar's Jurisdictional Lateral No. 6 and Questar's Main Line No. 22 in southwestern Wyoming. It is indicated that those facilities have not been used during the past five years.

Questar states that, upon receipt of the requested abandonment authority, the Horseshoe Draw compressor will be physically removed from its present location, restaged and installed at Questar's existing Nightingale-Kanda-Coleman Compressor Complex also located in Sweetwater County, Wyoming. (Questar indicates its intent to install the Horseshoe Draw compressor at the Nightingale Station pursuant to 18 CFR 2.55(b). It is stated that related flow control and automation equipment will also be relocated to the Nightingale-Kanda-Coleman Compressor Complex, while the balance of the facilities at Questar's Horseshoe Compressor site will be abandoned, physically removed and scrapped. It is stated that the gross book and net book value of the facilities to be abandoned, total $782,570 and $457,804 respectively.

Further, Questar explains that the removal of the above-described facilities will have no adverse impact on transmission services provided by Questar. Questar asserts that its abandonment project does not constitute a major Federal action that could significantly affect the quality of the human environment, since all principal facilities to be removed are skid-mounted, and all abandonment activities will take place within the confines of the existing Horseshoe Draw Compressor Station yard.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8465 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–303–000]

Texas Gas Transmission Corp.; Notice of Request Under Blanket Authorization

March 28, 1997.

Take notice that on March 24, 1997, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in the above docket, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (N.A.) (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point in Gibson County, Indiana, for Southern Indiana Gas and Electric Company (SIGECO), a local distribution company, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is filed with the Commission and open to public inspection.

Texas Gas states that the proposed delivery point will be known as the Toyota-Ft. Branch Delivery Point and will be located on Texas Gas' Slaughters-Montezuma System in Gibson County, Indiana. Texas Gas states that this new delivery point will enable SIGECO to receive natural gas to be delivered by Texas Gas for the account of a new customer, Toyota Motor Manufacturing North America, Inc. (Toyota).

Texas Gas states that it will install, own, operate and maintain two side valves with 6-inch tie-over piping on its Slaughters-Montezuma 12-inch and 20-inch Lines and a dual 3-inch meter station with electronic flow measurement, telemetry and related facilities to be located on a site to be acquired by SIGECO, all near Mile 55 on Texas Gas' Slaughters-Montezuma System. Texas Gas states that the estimated costs of the facilities is $136,975 and SIGECO will reimburse Texas Gas for the cost of the facilities to be installed by Texas Gas.

This service will be provided by Texas Gas pursuant to the authority of its blanket certificate issued in Docket No. CP88–686–000 and section 284.223 of the Commission's Regulations.

Texas Gas states that since no increase in contract quantities has been requested by SIGECO and because Toyota intends to utilize existing mainline capacity on Texas Gas' system, the above proposal will have no significant effect on Texas Gas' peak day and annual deliveries, and service through this point can be accomplished without detriment to Texas Gas' other customers.

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 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 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. 97–8463 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT97–7–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

March 28, 1997.

Take notice that on March 25, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 1–A, revised tariff sheets, with a proposed effective date of March 25, 1997.

Williston Basin states that the instant filing includes revised tariff sheets to reflect changes in shared operating personnel and facilities as a result of Prairielands Energy Marketing, Inc., (Prairielands) which had been a wholly-owned subsidiary of Centennial Energy Holdings, Inc., the parent of Williston Basin, becoming a wholly-owned subsidiary of Williston Basin as of January 1, 1997. In addition, Williston Basin states that Prairielands has been designated as an agent by Williston Basin to manage and develop Williston Basin's gas production reserves and appurtenant facilities.

Williston Basin also states that the revised tariff sheets reflect that on January 1, 1997, WBI Gas Services Co. (WBI–Gas), Williston Basin's merchant sales division, was renamed WBI Production (WBI–Prod).

In addition, Williston Basin states that it has revised Sheet No. 188 of its FERC Gas Tariff, Second Revised Volume No. 1 to reflect the deletion of the Baker District Office in Baker, Montana from the list of locations which have possible shared personnel occupying office space in the same building as Williston Basin personnel.

Williston Basin states that it will continue to comply with the Standards of Conduct for Interstate Pipelines with Marketing Affiliates as established under Order No. 566, et seq., and in Section 161.3 of the Commission's Regulations. In accordance with Section 161.3(g) of the Commission's Regulations, Williston Basin's operating employees and the operating employees of Prairielands will function independently of one another to the maximum extent practicable.

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, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8466 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–399–000, et al.]

Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 27, 1997.

Take notice that the following filings have been made with the Commission:

1. Montana Power Company

[Docket No. ER97–399–000]

Take notice that on February 28, 1997, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Company

[Docket No. ER97–1343–000]

Take notice that on March 12, 1997, El Paso Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power & Light Company

[Docket No. ER97–1529–000]

Take notice that on March 7, 1997, Dayton Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Co.

[Docket No. ER97–1945–000]

Take notice that on March 24, 1997, Louisville Gas and Electric Company tendered for filing revised copies of a Service Agreement between Louisville Gas and Electric Company and PanEnergy Trading and Market Services which had been originally filed in the above-cited docket on February 26, 1997.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER97–2098–000]

Take notice that on March 14, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission changes to their respective Market-Based Power Sales Tariffs, FERC Electric Tariff, Original Volume Nos. 7 & 9 (Tariffs). The Companies are filing these changes in compliance with the Commission's February 27, 1997 order in Docket No. ER97–1068–000.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER97–2101–000]

Take notice that on March 14, 1997, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule for service to Golden Spread Electric Cooperative, Inc. (Golden Spread) for service to Deaf Smith Electric Cooperative, Inc (Deaf Smith).

The proposed amendment reflects a new delivery point for service to Golden Spread and a one time contribution in aid of construction for transmission switches.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–2102–000]

Take notice that on March 14, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with American Energy Solutions, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Louisiana Electric Co. Inc.

[Docket No. ER97–2103–000]

Take notice that on March 14, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Southern Energy Trading and Marketing, Inc. under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Southern Energy Trading and Marketing, Inc.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Louisiana Electric Co., Inc.

[Docket No. ER97–2104–000]

Take notice that on March 14, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Minnesota Power and Light Company under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Minnesota Power and Light Company.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Co., Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–2105–000]

Take notice that on March 14, 1997, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and The Utility—Trade Corp. (UTC), dated January 13, 1997. This Service Agreement specifies that UTC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and UTC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date

of January 13, 1997 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Co., Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–2106–000]

Take notice that on March 14, 1997, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Niagara Mohawk Power Corporation (NIMO), dated March 12, 1997. This Service Agreement specifies that NIMO has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NIMO to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 12, 1997 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas & Electric Corporation

[Docket No. ER97–2151–000]

Take notice that Central Hudson Gas & Electric Corporation (CHG&E), on March 17, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Cinergy Services, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Central Hudson Gas & Electric Corporation

[Docket No. ER97–2152–000]

Take notice that Central Hudson Gas & Electric Corporation (CHG&E), on March 17, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Orange & Rockland Utilities, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. OA97–420–000]

Take notice that on March 24, 1997, MidAmerican Energy Company (MidAmerican) submitted for filing with the Commission an amendment to its initial filing in this proceeding consisting of copies of the First Amendment dated December 30, 1996 to Lehigh-Webster Transmission and Webster Terminals Facilities and Operating Agreement and the Second Amendment dated December 30, 1996 to Transmission Facilities and Operating Agreement George Neal Generating Unit No. 4 Transmission with both contract amendments reflecting execution by all parties.

MidAmerican states that when it made its initial filing in this proceeding, certain of the municipal utilities who are parties to the aforementioned contract amendments submitted with the initial filing had not executed the contract amendments at the time of the filing. MidAmerican states that since the initial filing all of those municipal utilities have executed the contract amendments and provided MidAmerican with signature pages. MidAmerican states that the purpose of this amendment to the initial filing is to submit to the Commission copies of such contract amendments reflecting the execution by all parties thereto.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. OA97–461–000]

Take notice that on March 21, 1997, Tampa Electric Company (Tampa Electric) filed a supplement to its initial filing in this docket. Tampa Electric states that the supplemental filing provides additional information concerning Tampa Electric's implementation of the Standards of Conduct in Section 37.4 of the Commission's Regulations.

A copy of the supplemental filing has been served on each person on the official service list in this docket, and the Florida Public Service Commission.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. OA97–476–000]

Take notice that on March 3, 1997, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to the original filing of a contract and rate schedule documents under which Morgan Stanley Capital Group, Inc. (MS) will take over certain of WPS's power supply commitments to Oconto Electric Cooperative (Oconto) beginning on January 1, 1997. Both MS and Oconto have consented to the restructured power supply arrangement.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Michigan South Central Power Agency

[Docket No. OA97–559–000]

Take notice that on March 5, 1997, the Michigan South Central Power Agency has filed a request for waiver of Open Access Same-Time Information System (OASIS) and separation of functions requirements under Order Nos. 888 and 889.

Comment date: April 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Nelson Industrial Steam Company

[Docket No. QF95–41–000]

On March 24, 1997, Nelson Industrial Steam Company (Applicant) tendered

for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership of the small power production facility.

Comment date: April 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8489 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–2108–000, et al.]

Virginia Electric Power Company, et al. Electric Rate and Corporate Regulation Filings

March 28, 1997.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Company

[Docket No. ER97–2108–000]

Take notice that on March 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing unexecuted Service Agreements between Virginia Electric and Power Company and ConAgra Energy Services, Inc. and Valero Power Services Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to ConAgra Energy Services, Inc. and Valero Power Services Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Destec Energy, Inc., NGC Corporation

[Docket No. EC97–20–000]

Take notice that on March 17, 1997, Destec Energy, Inc. (Destec Energy), and NGC Corporation (NGC) (together, the Applicants) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and Part 33 of the Commission's Regulations, 18 CFR Part 33, an application for such approvals as may be needed to consummate their merger. Destec Energy and NGC own Destec Power Services, Inc., and Electric Clearinghouse, Inc., respectively, both of which are public utilities. Wholly-owned subsidiaries of Destec Energy own 50 percent interests in both Commonwealth Atlantic Limited Partnership and Hartwell Energy Limited Partnership, both of which also are public utilities.

Comment date: May 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PG&E Corporation and Valero Energy Corporation

[Docket No. EC97–22–000]

Take notice that on March 24, 1997, PG&E Corporation and Valero Energy Corporation (Valero), on behalf of their respective public utility subsidiaries (collectively the Applicants), tendered for filing pursuant to Section 203 of the Federal Power Act (the FPA), 16 U.S.C. 824b, Part 33 of the Commission's Regulations, 18 CFR Part 33, and 18 CFR 2.26, an Application for an order approving the proposed merger of PG&E Corporation and Valero.

Applicants state that pursuant to an Agreement and Plan of Merger dated as of January 31, 1997, PG&E Corporation and Valero will merge through an exchange of stock. They state that after consummation of the merger, Valero will become a direct wholly-owned subsidiary of PG&E Corporation. The Applicants state that they have submitted the information required by Part 33 of the Commission's Regulations, and by the Commission's *Merger Policy Statement,* Order No. 592, *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement,* III FERC Stats. & Regs. ¶ 31,044 (1996) (codified at 18 CFR 2.26), in support of the Application. Applicants request expeditious review of the Application and approval of the merger by July 1, 1997.

Applicants state that copies of the Application and a diskette containing the data relied upon to perform the competitive screen analysis required by the Merger Policy Statement are being served on the Public Utilities Commission of the State of California and the bulk power and transmission customers of Pacific Gas and Electric Company by overnight delivery. In addition, copies of the Application and the diskette are being served by overnight delivery upon the Texas Railroad Commission and the Texas Public Utilities Commission, although neither agency regulates the public utility subsidiaries of the merging companies.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Trust Known as EZH Facility Trust No. 1997–A5, Created Pursuant to a Trust Agreement Dated as of March 20, 1997 With Resources Capital Management Corporation

[Docket No. EG97–46–000]

On March 25, 1997, the Trust known as EZH Facility Trust No. 1997–A5, Created Pursuant to a Trust Agreement Dated as of March 20, 1997, with Resources Capital Management Corporation (Applicant), c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations. The Applicant will lease an undivided interest in the following eligible facility in the Netherlands: the electric generating facility known generally as Maasvlakte Centrale MV1 with a net power capacity of 520 megawatts.

Comment date: April 11, 1997, 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.

5. The Trust Known as EZH Facility Trust No. 1997–A4, Created Pursuant to a Trust Agreement Dated as of March 20, 1997 With Resources Capital Investment Corp.

[Docket No. EG97–47–000]

On March 25, 1997, the Trust known as EZH Facility Trust No. 1997–A4,

Created Pursuant to a Trust Agreement Dated as of March 20, 1997 With Resources Capital Investment Corporation (Applicant), c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations. The Applicant will lease an undivided interest in the following eligible facility in the Netherlands: the electric generating facility known generally as Maasvlakte Centrale MV1 with a net power capacity of 520 megawatts.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

6. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–2107–000]

Take notice that on March 14, 1997, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Plum Street Energy Marketing, Inc. (PSE), dated March 12, 1997. This Service Agreement specifies that PSE has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and PSE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 12, 1997 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–2109–000]

Take notice that on March 14, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 13 to add Atlantic City Electric Company and NIPSCO Energy Services, Inc. to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is March 13, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Company

[Docket No. ER97–2110–000]

Take notice that on March 14, 1997, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule with Golden Spread Electric Cooperative, Inc. for service to South Plains Electric Cooperative, Inc. (South Plains).

The proposed amendment reflects a new delivery point and one time contribution in aid of construction for service to Golden Spread.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Public Service Company

[Docket No. ER97–2111–000]

Take notice that on March 14, 1997, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule for service to Golden Spread Electric Cooperative, Inc. (Golden Spread) for service to Rita Blanca Electric Cooperative, Inc. (Rita Blanca).

The proposed amendment reflects a new delivery point for service to Golden Spread.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER97–2112–000]

Take notice that on March 14, 1997, PECO Energy Company (PECO), filed a Service Agreement dated March 5, 1997 with Atlantic City Electric Company (ACE) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds ACE as a customer under the Tariff.

PECO requests an effective date of March 5, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to ACE and to the Pennsylvania Public Utility Commission.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER97–2114–000]

Take notice that on March 17, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Citizens Lehman Power Sales, L.L.C. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1997.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER97–2115–000]

Take notice that on March 17, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Wisconsin Electric Power Company 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.

Illinois Power has requested an effective date of March 10, 1997.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER97–2116–000]

Take notice that on March 17, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur,

Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Central Illinois Public Service Company 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.

Illinois Power has requested an effective date of March 15, 1997.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER97–2117–000]

Take notice that on March 17, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which WPS Energy Services, 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.

Illinois Power has requested an effective date of March 10, 1997.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER97–2118–000]

Take notice that on March 17, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Centerior Energy 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.

Illinois Power has requested an effective date of March 11, 1997.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–2119–000]

Take notice that on March 18, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Duquesne Light Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER97–2120–000]

Take notice that on March 17, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a one month firm transmission service agreement under FERC Electric Tariff, Original Volume No. 7. The agreement with Wisconsin Public Service Corporation (WPSC) will allow the transmission of 4 MW of power arranged by Morgan Stanley from Northern States Power Company (NSP) to Oconto Electric Power Cooperative (OEC), Oconto Falls, Wisconsin. Wisconsin Electric respectfully requests an effective date of March 1, 1997 in order to effectuate the transaction. Wisconsin Electric is authorized to state that WPSC and OEC join in the requested effective date.

Copies of the filing have been served on OEC, WPSC, NSP, and the Public Service Commission of Wisconsin.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER97–2121–000]

Take notice that on March 17, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement and confirmation letter under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Consolidated Edison Company of New York, Inc.

Cinergy and Consolidated Edison Company of New York, Inc. are requesting an effective date of February 18, 1997.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER97–2123–000]

Take notice that on March 17, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Commonwealth Edison Company (CE); as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon CE and the South Carolina Public Service Commission.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Co.

[Docket No. ER97–2124–000]

Take notice that on March 17, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and PanEnergy Power Services under Rate GSS.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Toledo Edison Company

[Docket No. ER97–2125–000]

Take notice that on March 17, 1997, The Toledo Edison Company (TE) filed Electric Power Service Agreements (Agreements) between TE and PECO Energy Company and PacifiCorp Power Marketing, Inc.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. The Cleveland Electric Illuminating Company

[Docket No. ER97–2126–000]

Take notice that on March 17, 1997, The Cleveland Electric Illuminating Company filed Electric Power Service Agreements (Agreements) between CEI and PECO Energy Company, Valero Power Services Company and Western Power Services, Inc.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. The Cleveland Electric Illuminating Company

[Docket No. ER97–2127–000]

Take notice that on March 17, 1997, The Cleveland Electric Illuminating Company filed an amendment to its filing in this proceeding.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER97–2128–000]

Take notice that on March 17, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated as of February 27, 1997 (the Service Agreement) between Koch Energy Trading, Inc. (Koch Energy) and OVEC. OVEC proposes an effective date of January 6, 1997, or in the alternative March 14, 1997, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-

firm transmission service by OVEC to Koch Energy.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Koch Energy.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Southern Company Services, Inc.

[Docket No. ER97–2129–000]

Take notice that on March 17, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed one (1) service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: American Energy Solutions, Inc. SCSI states that the service agreement will enable Southern Companies to engage in short-term market-based rate sales to this non-utility marketer/broker.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Commonwealth Edison Company

[Docket No. ER97–2130–000]

Take notice that on March 17, 1997, Commonwealth Edison Company (ComEd) submitted for filing Service Agreements for various firm transactions establishing Enron Power Marketing, Inc. (Enron), as a transmission customer under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates, corresponding to the date each service agreement was entered into, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Enron, and the Illinois Commerce Commission.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Pool

[Docket No. ER97–2131–000]

Take notice that on March 17, 1997, the New England Power Pool (NEPOOL), filed a Service Agreement for Through or Out or Other Point-to-Point Transmission Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of the Service Agreement will permit NEPOOL to provide transmission service to Northeast Utilities Service Company in accordance with the provisions of the NEPOOL Transmission Tariff filed with the Commission on December 31, 1997 under the above-referenced docket. NEPOOL requests an effective date of March 1, 1997 for commencement of transmission service. Copies of this filing were served upon New England Public Utility Commissioners and all NEPOOL members.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Atlantic Energy, Inc.

[Docket No. ER97–2132–000]

Take notice that on March 17, 1997, Atlantic Energy, Inc. (Atlantic Energy) petitioned the Commission for acceptance of Atlantic Energy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Atlantic Energy provides energy information systems and controls in the United States.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Minnesota Power & Light Company

[Docket No. ER97–2133–000]

Take notice that on March 17, 1997, Minnesota Power & Light Company, tendered for filing a signed Backup Radial Feeder Line Agreement between the City of Wadena, MN, Cooperative Power Association and Minnesota Power & Light Company. This filing is made to recover the Company's direct assignment costs resulting from Wadena and Cooperative Power Association's desire to have Minnesota Power rebuild and construct a backup radial feeder subtransmission line facility.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Orange and Rockland Utilities, Inc.

[Docket No. ER97–2134–000]

Take notice that on March 17, 1997, Orange and Rockland Utilities, Inc. (O&R), filed Service Agreements between O&R and Coral Power, L.L.C., LG&E Power Marketing, New York State Electric and Gas Corporation and Southern Energy Marketing, Inc. These Service Agreements specify that the customers have agreed to the rates, terms and conditions of the O&R Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

O&R requests waiver of the Commission's sixty-day notice requirements and an effective date of March 3, 1997 for the Service Agreements. O&R has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Pacific Gas and Electric Company

[Docket No. ER97–2135–000]

Take notice that on March 17, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing, a request for termination of the Scheduling Services Agreement between PG&E and USGen Power Services, L.P. (USGenPS), originally dated April 24, 1996 and amended October 24, 1996 (Agreement). The Agreement was initially accepted by the Commission by letter dated December 18, 1996 and designated as PG&E Rate Schedule FERC No. 197.

Copies of this filing have been served upon USGenPS and the California Public Utilities Commission.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Minnesota Power & Light Company

[Docket No. ER97–2136–000]

Take notice that on March 17, 1997, Minnesota Power & Light Company, tendered for filing signed Service Agreements with the following:

American Electric Power Service Corporation
Aquila Power Corporation
ConAgra Energy Services, Inc.
Northwestern Wisconsin Electric Company
Ohio Edison Company
Southern Indiana Gas and Electric Company

under its cost-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Duke Power Company

[Docket No. ER97–2137–000]

Take notice that on March 17, 1997, Duke Power Company (Duke), tendered for filing an erratum to its March 14, 1997, filing of a Network Integration Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and the City of Seneca, South Carolina and Southern Company

Services, Inc, acting as agent for the City of Seneca, South Carolina, (collectively, ''Transmission Customer'').

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Atlantic City Electric Company

[Docket No. ER97–2138–000]

Take notice that on March 18, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Ohio Edison and South Carolina Public Service Authority under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreements be accepted to become effective on March 19, 1997.

Atlantic Electric states that a copy of the filing has been served on Ohio Edison and South Carolina Public Service Authority.

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Entergy Services, Inc.

[Docket No. ER97–2139–000]

Take notice that on March 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and WPS Energy Services, Inc. (WPS Energy).

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Entergy Services, Inc.

[Docket No. ER97–2140–000]

Take notice that on March 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Tennessee Power Company (TPC).

Comment date: April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Entergy Services, Inc.

[Docket No. ER97–2141–000]

Take notice that on March 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Illinois Power Company (IPC).

Comment date: April 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. MidAmerican Energy Company

[Docket No. ES97–26–000]

Take notice that on March 20, 1997, MidAmerican Energy Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue promissory notes and other evidences of indebtedness, from time to time, in an aggregate principal amount of not more than $400 million outstanding at any one time, during the period ending April 15, 1999, with a final maturity date no later than April 15, 2000.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8488 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11437–001 North Carolina]

Hydro Matrix Partnership Ltd.; Notice of Availability of Final Environmental Assessment

March 28, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for initial license for the Jordan Dam Hydroelectric Project, located on the Haw River, in Chatham County, North Carolina, and has prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available for in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8467 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5805–8]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meetings; April 1997

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Daylight Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come, first-served basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. The Environmental Goals Subcommittee

The Environmental Goals Subcommittee, an ad hoc Subcommittee of the Science Advisory Board's (SAB's) Executive Committee, will conduct a public meeting by teleconference on Thursday, April 17, 1997, from 3 pm to 5 pm inclusive. Members of the public in the Washington DC area may attend the meeting in person in the Science Advisory Board's Conference Room,

Room 2103-Waterside Mall, U.S. Environmental Protection Agency Headquarters Building, 401 M St. SW, Washington, DC 20460. The meeting is open to the public, however, teleconference lines are limited. Please call Dr. Jack Fowle (202) 260–8325 if you are interested in participating in the call and to obtain the dial-in number. Seating in Room 2103 is limited and is available on a first come, first served basis. During this teleconference, the Environmental Goals Subcommittee will discuss their draft report on the Agency's draft Environmental Goals for America With Milestones for America.

For Further Information: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Dr. Jack Fowle, Designated Federal Official for the Environmental Goals Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202) 260–8325; fax (202) 260–7118; or via Email at: fowle.jack@epamail.epa.gov. Requests for oral comments must be in writing to Dr. Fowle and be received no later than noon Eastern Time on Friday April 11, 1997. Copies of the draft meeting agenda can be obtained from Ms. Priscilla Tillery-Gadson at (202) 260–8414 or at the above fax number or by Email to tillery.priscilla@epamail.epa.gov. For copies of the draft Environmental Goals report, please contact Mr. Peter Truitt at (202) 260–8214, by fax at (202) 260–4903 or by Email to: truitt.peter@epamail.epa.gov.

2. Integrated Risk Project Steering Committee

The Integrated Risk Project (IRP) Steering Committee, an *ad hoc* committee established by the Executive Committee of the Science Advisory Board, will meet on April 21–23, 1997, at the Embassy Suites-Georgetown, 1250 ''22nd'' Street, NW, Washington, DC 20037, telephone (202) 857–3388. The meeting will begin at 8:30 am on April 21, and at 8 am on April 22 and 23, and end no later than 5:30 pm each day. Seating will be limited and available on a first-come, first-served basis. The purpose of the meeting is to receive reports and initial products from the Subcommittees of the IRP and to discuss an integrated model for decision-making that incorporates information on risks to ecosystems and humans, risk reduction options, and their economic implications.

Background on the Integrated Risk Project (IRP)

In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (a) Develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (b) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (c) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (d) identify the uncertainties and data quality issues associated with the relative rankings. The project will be conducted by several SAB panels, working at the direction of an *ad hoc* Steering Committee established by the Executive Committee.

Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–8414, fax at (202) 260–7118, or via Email at: pozun.diana@epamail.epa.gov.

Anyone wishing to make a brief oral presentation at the IRP meeting must contact Ms. Stephanie Sanzone, Designated Federal Official for the Steering Committee in writing, no later than 4 pm on April 14, 1997, at fax: (202) 260–7118 or via Email at sanzone.stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Ms. Sanzone no later than the time of the presentation for distribution to the Committee and the interested public. For further information, you may also reach Ms. Sanzone by phone on (202) 260–6557. See below for additional information on providing comments to the SAB.

3. Executive Committee

The Science Advisory Board's (SAB's) Executive Committee will conduct a public meeting on Thursday and Friday, April 24–25, 1997. The meeting will convene each day at 8:30 am in the Administrator's Conference Room, Room 1103—West Tower, U.S. Environmental Protection Agency Headquarters Building, 401 M St. SW, Washington, DC 20460 and adjourn no later than 5:30 pm each day. The meeting is open to the public, however, seating is limited and available on a first-come, first-served basis. At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. *Expected* drafts include: (a) Ecological Processes Effects Committee (Advisory on Watershed EcoRisk Case Studies, and Report on Lakes Biocriteria); (b) Environmental Engineering Committee (Report on the Review of the Superfund Innovative Technologies Evaluation (SITE) Program); and (c) Environmental Health Committee (Review of the Neurotoxicity Guidelines). Please check with the Executive Committee Designated Federal Official or Secretary (see below) prior to the meeting to ensure that a given report will be discussed.

Other items on the agenda tentatively include, but are not limited to, the following: (a) Discussion with Deputy Administrator Fred Hansen on scientific issues confronting the Agency; (b) Discussion with the Director of the Office of Children's Health, Dr. Phillip Landrigan, about his plans for the Office; (c) Discussion with a member of the Commission on Risk Assessment and Risk Management, Dr. Bernard Goldstein, regarding the recently released reports from the Commission; (d) An update of the futures activities of the SAB, including the recent G–7 Environmental Futures Forum and the Board's plans for a Lookout Panel session in July; and (e) An update on the SAB's Integrated Risk Project

For Further Information: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202) 260–4126; fax (202) 260–9232; or via Email at: barnes.don@epamail.epa.gov. Requests for oral comments must be made in writing to Dr. Barnes and be received no later than noon Eastern Time on Friday, April 18, 1997. Copies of the draft meeting agenda and available draft reports listed above can

be obtained from Ms. Priscilla Tillery-Gadson at the above phone and fax numbers, or via Email at: tillery.priscilla@epamail.epa.gov.

4. Environmental Engineering Committee (EEC) Subcommittees

Two Subcommittees of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC) will each conduct a public meeting. On Tuesday, April 29, 1997, the EEC's Special Topics Subcommittee will meet from 8:30 am to 6 pm in the Science Advisory Board Conference Room, Room 2103, U.S. Environmental Protection Agency Headquarters Building, 401 M Street SW, Washington, DC 20460. On Wednesday and Thursday, April 30–May 1, 1997, the EEC's Surface Impoundments Study Subcommittee will meet from 8:30 am to no later than 5 pm each day in Conference Room C on the second floor of EPA's Crystal Station Building, 2805 Crystal Drive in the Crystal City section of Arlington, Virginia.

Purpose of the Meetings

(a) *Special Topics Subcommittee:* On April 29, 1997, the Special Topics Subcommittee with review proposed national guidance on field filtration of ground water samples taken for metals analysis from monitoring wells for Superfund site assessment. Copies of this seven-page review document can be obtained from Mr. Daniel Thornton of the EPA's Office of Emergency and Remedial Response, phone (703) 603–8811. The current charge for this review is to, ''provide a technical review of the proposed guidance, evaluate consistency with other Agency programs, and provide guidance on the appropriateness and potential impacts of the document. Specific issues include: (a) Technical considerations, such as colloidal mobility and transport mechanisms; phase-changes; and fate and transport of inorganic contaminants; and (b) policy issues, including guidance from other Federal programs, and potential adverse impact on other guidance or work in progress.''

The Special Topics Subcommittee will also review documents relating to the use of toxicity weighting in the Office of Enforcement and Compliance Analysis Sector Facility Indexing Project (SFIP). Copies of these review documents can be obtained from Ms. Maria Eiseman in the Manufacturing, Energy, and Transportation Division of OECA, phone (202) 564–7016; please note that some documents may be available before others. The Agency asked that the SAB address the following questions: (1) The SFIP uses chronic human health toxicity weights adopted from the TRI Relative Risk Environmental Indicators. Does the modified Hazard Ranking System scoring methodology used by the Indicators reflect accepted scientific procedures and evidence regarding the relative ranking of chemical toxicity?; and (2) EPA currently uses unweighted TRI pounds to evaluate pollutant releases from individual facilities. As a first step towards incorporating relative risk in this evaluation, is it acceptable to use toxicity weights to provide additional contextual information regarding the human health hazards associated with pollutant releases?

(b) *Surface Impoundments Study Subcommittee:* On April 30–May 1, 1997, the Surface Impoundments Study Subcommittee will review the Office of Solid Waste's proposed plan for a Congressionally required study of surface impoundments. Copies of the review documents can be obtained from Ms. Becky Cuthbertson in the Economics, Methods, and Risk Analysis Division, phone (703) 308–8447; please note that some documents may be ready before others. In summary, the tentative charge for this review is to comment on the technical merits of the overall study structure; to comment on the technical merits of the proposed risk assessment; and to comment upon appropriate points in the study design and implementation for involvement of outside technical experts.

The full Environmental Engineering Committee anticipates being briefed on the reports of these Subcommittee reviews at a meeting to be held in Cincinnati June 30–July 3, 1997. A future **Federal Register** Notice will announce this meeting.

For Further Information: After April 4, 1997, agendas and rosters for both Subcommittees can be obtained from the Subcommittee Secretary, Mrs. Dorothy Clark, tel. (202) 260–8414, fax (202) 260–7118, or by Email: clark.dorothy@epamail.epa.gov. Members of the public desiring additional information about the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, Environmental Engineering Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–2558; fax at (202) 260–7118; or via Email at: conway.kathleen@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation to either Subcommittee must contact Mrs. Conway in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, April 23, 1997, in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1996 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa/science1/.

Dated March 28, 1997.

John R. Fowle, III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 97–8508 Filed 4–2–97; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Extension Request and Change in Filing Requirements.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, agencies are required to submit proposed information collection requests to the Office of Management and Budget (OMB) for review and approval, and to publish a notice in the **Federal Register** announcing to the public that the agency has made such a submission. The Commission has requested an extension of an existing collection, State and Local Government Information (EEO–4), with the following change in reporting requirements. Governments with from 250 to 999 full-time employees will now submit a separate EEO–4 report only for those functions with 100 or more employees and one aggregate report that includes all the remaining functions with fewer than 100 full-time employees. All other state and local governments will continue to file their EEO–4 reports as they have in the past.

ADDRESSES: The Request for Clearance (SF83–l), supporting statement, and other documents submitted to OMB for review may be obtained from: Margaret Ulmer Holmes, EEOC Clearance Officer, 1801 L Street, NW, Room 2928, Washington, DC, 20507.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION:

Type of Review: Notice and Change in Filing Requirements.

Collection Title: State and Local Government Information (EEO–4).

OMB Control Number: 3046–0008.

Form Number: EEOC Form 164.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees and a rotating probability sample of jurisdictions with from 15 to 99 full-time employees.

Standard Industrial Classification (SIC) Codes: 911–965.

Description of Affected Public: State and local governments.

Responses: 10,000.

Reporting Hours: 40,000.

Federal Cost: $47,000.

Number of forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(e), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the Commission. Pursuant to 29 CFR Section 1602.32, state and local governments have been required to submit EEO–4 reports to the Commission since 1973 (biennially in odd-numbered years since 1993). Currently all state and local governments with 250 or more full-time employees submit a separate report for each function, up to a maximum of 15 functions, which the government performs. All other governments in the EEO–4 survey file one report, covering all functional activities. On December 23, 1996, the Commission solicited public comment in the **Federal Register** concerning a change in the EEO–4 collection that requires governments with from 250 to 999 full-time employees to submit a separate EEO–4 report only for those functions with 100 or more full-time employees and one aggregate report that includes the employment in all the remaining functions with fewer than 100 full-time employees. All other state and local governments will continue to file their EEO–4 reports as they have in the past. The Commission did not receive any public comments to this notice. This reporting change will thus become effective beginning with the 1997 EEO–4 survey.

EEO–4 data are used by the Commission to investigate charges of employment discrimination against state and local governments and in the Commission's systemic program. The data are shared with several Federal government agencies. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with approximately 83 State and Local Fair Employment Practices agencies. Aggregate data are used by researchers and the general public.

Burden Statement: This change is being taken in the interest of streamlining the EEO–4 survey process and reducing the burden on state and local governments, while still maintaining sufficient data to meet the program needs of the Commission and other agencies that use these data. The change will result in a reduced expense and reporting burden for state and local governments as required under the Paperwork Reduction Act of 1995, 44 U.S.C. 3502(i). It is estimated that on an annual basis the total number of responses in this data collection will be 10,000 responses. The estimated burden hours will be reduced to approximately 40,000 hours. The number of respondents will remain at about 5,000 state and local governments.

The reporting burden for this collection is based upon an average estimate per response and takes into consideration the large number of state and local governments that submit their reports on magnetic tapes. Burden hours for any particular government may differ from this average estimate depending on the accessibility of information and the degree of automation. The burden estimate includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information.

Regulatory Flexibility Act

The Commission certifies pursuant to 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act, Pub. L. No. 96–354, that this change will not have a significant impact on small employers or other entities because the change involves elimination of reporting requirements, and that a regulatory flexibility analysis therefore is not required.

Dated: March 27, 1997.

For the Commission.

Maria Borrero,

Executive Director.

[FR Doc. 97–8536 Filed 4–2–97; 8:45 am]

BILLING CODE 6570–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the April 10, 1997 regular meeting of the Farm Credit Administration Board (Board) will not be held. A special meeting of the Board is scheduled for Thursday, April 24, 1997 at 9:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: April 1, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–8709 Filed 4–1–97; 4:05 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

March 28, 1997.

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 information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. 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 estimate; (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: Persons wishing to comment on this information collection should submit comments June 2, 1997.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0742.

Title: Telephone Number Portability, First R&O and FNPRM.

Form No.: N/A.

Type of Review: Revision.

Respondents: Businesses or other for profit.

Number of Respondents: 237.

Estimated Time Per Response: 4.74 hours (avg.).

Total Annual Burden: 1,125.

Needs and Uses: The Commission has released a Memorandum Opinion and Order on Reconsideration in the number portability proceeding. The MO&O on Reconsideration affirms and clarifies the Commission's rules established in the First Report and Order implementing Section 251(b)(2) of the Communications Act of 1934, as amended, which requires all LECs to offer number portability in accordance with requirements prescribed by the Commission. Performance guideline number 4, prohibiting carrier's reliance on other carriers databases, facilities or services is being deleted. QOR violates guideline number 6. Limited extensions for deployment of Phase I and II are granted. Deployment is limited to requested switches.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–8481 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

March 28, 1997.

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. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. 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 May 5, 1997. 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 Street, NW., Washington, DC 20503 or fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT:

For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0055.

Title: Application for Cable Television Relay Station Authorization.

Form No.: FCC Form 327.

Type of Review: Extension of expiration date of a currently approved information collection.

Respondents: Business or other for-profit, individuals, and state, local or tribal governments.

Number of Respondents: In 1996, the Commission received approximately 973 FCC Form 327 filings.

Estimated Time Per Response: 3.166 hours per average response.

Total Annual Burden: 3,081 hours (973×3.166 hours).

Total Costs to all Respondents: $184,870 ($190×973 annual filings). There is a $190 service fee associated with each Form 327 filing.

Needs and Uses: The FCC Form 327 is filed by cable system owners or operators, cooperative enterprises owned by cable system owners or operators, and MMDS operators (wireless cable system operators) when applying for a cable television relay service (CARS) station license, as well as a modification, reinstatement, amendment, assignment, renewal, and transfer of control of a CARS station license. FCC Form 327 filings are reviewed by Commission staff to determine whether applicants meet basic statutory requirements and are qualified to become or continue as a Commission licensee of a CARS station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–8480 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Wednesday, April 9, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Community Support Revisions—Final Rule
- Community Investment—Cash Advance Proposed Rulemaking

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Bruce A. Morrison,

Chairman.

[FR Doc. 97–8690 Filed 4–1–97; 2:42 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 17, 1997.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105-1579:

1. Zubair and Khatija Kazi, Studio City, California; to acquire up to 34.65 percent, and Yahia and Magda Abdul-Rahman, Pasadena, California, to acquire up to 20.35 percent, of the voting shares of Greater Pacific Bancshares, Whittier, California, and thereby indirectly acquire Bank of Whittier, N.A., Whittier, California.

Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8485 Filed 4-2-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. BNB Bancorp, Inc., Brookville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Brookville National Bank, Brookville, Ohio.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Bay Bankcorp, Inc., St. Paul, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Baybank, Gladstone, Michigan.

2. Sankovitz Family Limited Partnership, and Frankson Investment Corporation, both of Waseca, Minnesota; to acquire 100 percent of the voting shares of Bank of Ellendale, Ellendale, Minnesota.

Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8486 Filed 4-2-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT), April 14, 1997.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 10, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 31, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–8607 Filed 4–1–97; 10:47 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3698]

Budget Marketing, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, an Iowa-based telemarketer of magazine subscriptions and 11 of its dealers from misrepresenting either that they are selling magazines or the cost and conditions of the subscriptions they are selling. The consent order also prohibits the respondents from: threatening and harassing consumers in order to collect payments; failing to honor offers that allow cancellation; and

violating the Electronic Fund Transfer Act.

DATES: Complaint and Order issued December 13, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Joseph Koman, FTC/S–4302, Washington, D.C. 20580. (202) 326–3014.

SUPPLEMENTARY INFORMATION: On Friday, October 11, 1996, there was published in the **Federal Register**, 61 FR 53378, a proposed consent agreement with analysis In the Matter of Budget Marketing, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 1693 *et seq.*; 12 CFR 205)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–8491 Filed 4–2–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3706]

Conopco, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, Conopco, Inc., a New York-based manufacturer of margarine and spreads, doing business as Van Den Bergh Foods Company, from misrepresenting the amount of fat, saturated fat, cholesterol or calories in any spread or margarine; and requires the respondent to have adequate scientific substantiation for claims that any margarine or spread reduces the risk of heart disease, or causes or contributes to a risk factor for any disease or health-related condition. In addition, the consent order requires, for three years, that advertisements for Promise margarine or spreads must include the total fat disclosure and must disclose either the percentage of calories derived from fat or the fact that the product is not low in fat.

DATES: Complaint and Order issued January 23, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Anne Maher, FTC/S–4002, Washington, D.C. 20580. (202) 326–2987.

SUPPLEMENTARY INFORMATION: On Friday, November 15, 1996, there was published in the **Federal Register**, 61 FR 58562, a proposed consent agreement with analysis In the Matter of Conopco, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–8492 Filed 4–2–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3707]

Universal Merchants, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based dietary supplement manufacturer and its president from claiming, without competent and reliable scientific substantiation, that any food, dietary supplement or drug reduces body fat, causes weight loss, increase lean body mass, or controls appetite or craving for sugar; from misrepresenting the results of any test, study or research; and from representing that any testimonial or endorsement is the typical experience of users of the advertised product, unless the claim is substantiated or the respondent discloses the generally expected results clearly and prominently.

DATES: Complaint and Order issued January 23, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC/H–466, Washington, DC 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: On Friday, November 15, 1996, there was published in the **Federal Register**, 61 FR 58563, a proposed consent agreement with analysis In the Matter of Universal Merchants, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–8493 Filed 4–2–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Draft Environmental Impact Statement For The Lease Construction and Consolidation of the Immigration and Naturalization Service (INS) Miami, Dade County, Florida; Notice of Availability

March 19, 1997.

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4B, GSA announces the availability of the Final Environmental Impact Statement (FEIS) for the lease construction to consolidate the Immigration and Naturalization (INS).

The DEIS was available for 45-days of public comment that closed on March 10. A public meeting was held in Miami

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

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on February 12, 1997. The FEIS examined the short and long term impacts on the natural and built environments of developing and operating a consolidated INS facility at 9300–9499 NW 41st Street, Miami, FL 33172. The FEIS also addresses issues that were raised at the public meeting and issues that were expressed in writing during the comment period that closed in March 10, 1997. GSA continued to accept and address comments received until close of business on March 18. Issues addressed included impacts to public facilities & infrastructure, parking, traffic, property values, the community, and neighborhood & economic issues. The FEIS also examined and considered measures to mitigate unavoidable adverse impacts of the proposed action.

GSA's proposed action is to lease a newly constructed building for the INS consolidation on the vacant parcel of land consisting of approximately 7.31 acres at 9300–9499 NW 41st Street, Miami, FL 33172. The proposed facility would consist of an office building containing a total occupiable area of approximately 214,600 square feet, along with supporting site improvements and 885 parking spaces. The subject site fronts for 390 feet along NW 41st Street and spans to the back to Dressels Canal (approximately 1150 feet south from 41st Street at the deepest point). The proposed facility would accommodate the INS by consolidating the District Office, the Asylum Office, and the Executive Office of Immigration Review (EOIR). The Krome Detention Center is a high-security containment facility located in Western Dade county and its location, function, and purpose will be unchanged as a result of the proposed action.

GSA has identified and screened from consideration, over 20 alternatives to the proposed action since 1993. GSA has identified the following alternatives to be examined in the EIS:

- ''No Action,'' that is, take no action and continue to house the INS at its current locations.
- Lease construction of a consolidated facility of 214,600 occupiable square feet (osf) at the proposed site at 9300–9499 NW 41st Street, Miami, Florida 33172. This is the GSA preferred alternative.

A final 30-day comment period will close on April 28, 1997. Comments on the FEIS should be provided in writing to the address below by close of business on Monday, April 28, 1997. Copies of the FEIS were distributed on Wednesday, March 19. A copy of the FEIS and one copy of all of the public comments are available for inspection at the Metro-Dade Public Library Fairlawn Branch located at 6869 SW 8th Street, Miami, FL 33144. Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3050, Atlanta, GA 30365. FAX: Mr. Phil Youngberg at 404–331–4540. Comments should be received no later than Monday, April 28, 1997. All comments must be in writing.

Dated: March 19, 1997.

Phil Youngberg,

Regional Environmental Officer (PT).

[FR Doc. 97–8448 Filed 4–2–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–5:15 p.m., April 30, 1997.

Place: Sheraton Washington Hotel, Warren Room, 2660 Woodley Road, NW, Washington, DC 20008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters To Be Discussed: Agenda items include a report from the Director of NIOSH, Interagency Relationships, National Occupational Research Agenda, Exposure Control vs. Exposure Prevention, NIOSH Health Communications Program, Child Labor Update, NIOSH/NCI Diesel Study, and future activities of the Board.

The Board will consider further the NIOSH/National Cancer Institute (NCI) study entitled ''A Cohort Mortality Study with a Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among Non-Metal Miners'' (''diesel study''). At its January 14, 1997, meeting, the Board and members of the public provided comments to NIOSH and NCI on the August 1995 draft protocol for the diesel study. As provided for in the **Federal Register** notice announcing the meeting (61 FR 66052), the agencies also accepted written comments on the diesel study. NIOSH and NCI have reviewed all comments received, both written and oral, and prepared a summarization of those comments with responses to each. At this April 30, 1997, meeting the Board will consider the proposed Agency responses to comments and their impact on the study protocol. Following this April 30, 1997, meeting, the agency will prepare a revised diesel study protocol which then will be reviewed by the Board at a future meeting to be announced. At the April 30, 1997, meeting members of the public will have the opportunity to make limited oral statements, time permitting. Persons who wish to make oral statements should make a written request to Bryan D. Hardin, Ph.D., Executive Secretary, NIOSH, Room 715–H, Hubert H. Humphrey Building, 200 Constitution Avenue, SW, Washington, DC 20201, telephone 202/205–8556, FAX 202/260–4464, Internet address: bdh1@cdc.gov.

Copies of the agencies' summary of comments on the diesel study protocol may be obtained from Michael Attfield, Ph.D., NIOSH Project Director, Division of Respiratory Disease Studies, NIOSH, Mailstop 234, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5751, Internet address: mda1@cdc.gov.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Bryan D. Hardin, Ph.D., Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW, Humphrey Building, Washington, DC 20201, telephone 202/205–8556.

Dated: March 28, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–8479 Filed 4–2–97; 8:45 am]

BILLING CODE 4163–19–P

Administration for Children and Families

Regional Offices; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (61 FR 68045), as last amended, December 26, 1996. This Notice reflects the organizational changes for Regions 8 and 9 and the reorganization for Region 4.

I. Amend Chapter KD as follows:

KD.10 Organization. Delete in its entirety and replace with the following:

KD.10 Organization. Regions 8 and 9 are organized as follows:

Office of the Regional Administrator (KD8A)
Office of the Regional Hub Director (KD9A)
Office of Financial Operations (KD8B and KD9B)
Office of Family Security (KD8C and KD9C)
Office of Family Supportive Services (KD8D and KD9D)

II. After the end of KD3.20 Functions (61 FR 68045, 12/26/96), Paragraph D, and before KD5.10 Organization (60 FR 34284, 06/30/95), insert the following:

KD 4.10 Organization. The Administration for Children and Families, Region 4, is organized as follows:

Office of the Regional Hub Director
Office of the Deputy Regional Administrator
Division of Community Programs
Division of State Programs

KD4.20 Functions. A. The Office of the Regional Hub Director is headed by the Hub Director who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. The Office is responsible for the Administration for Children and Families' key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies and focuses on State agency culture change, more effective partnerships, and improved customer service. With the assistance of the executive staff, the Office of the Regional Hub Director provides executive leadership and direction to state, county, city, and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan approval, where applicable. The Office contributes to the development of national policy based on perspectives on all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that ACF goals are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office provides executive representation for ACF in regional external communications, and serves as ACF liaison with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

The Administrative staff, headed by an Executive Officer, provides day-to-day support for regional administrative functions, including internal ACF regional budget and financial management, performance management, procurement, property management, internal systems, employee relations, and training and human resource development activities. An Information Officer within the Office serves as the clearinghouse for responding to all media inquiries.

The Office oversees the management and coordination of the internal automation systems in the Southeast Regional Hub, maintaining and ensuring proper function of all servers, computers and associated software and network capabilities, including maintaining proper interface between ACF Region IV and Central Office systems and networks.

B. The Office of the Deputy Regional Administrator consists of the Deputy, a Secretary, a Special Assistant and the Grants Officer. The Developmental Disabilities (DD) function also resides in this Office. Developmental Disabilities staff assist states and tribes in the design and implementation of a comprehensive and continuing plan for providing quality services to persons with developmental disabilities. This office also serves as a resource for information for service providers at the regional, state and local level in the development of policies and programs to reduce or eliminate barriers experienced by developmentally disabled persons; and supports and encourages programs or services to prevent developmental disabilities.

The Deputy Regional Administrator serves as the full deputy or ''alter ego'' to the Regional Hub Director, Administration for Children and Families. The Deputy assists the Director with responsibility for providing executive direction, leadership and coordination to all ACF programs, financial operations and related activities in the Hub region. The Deputy has primary responsibility for overseeing day-to-day program operations. In the absence of the Director, the Deputy Director acts on all matters within the jurisdiction of the Director, with full authority.

The Grants Officer, functioning independently of all program offices, provides program staff with expertise in the technical and other non-programmatic areas of grants administration, and provides appropriate internal control and checks and balances to ensure financial integrity in all phases of the grants process.

C. The Division of Community Programs is headed by a Director who reports to the Deputy Regional Administrator. The Division is responsible for the ACF oversight and technical administration of the Head Start and Runaway and Homeless Youth grants, discretionary and formula grants funded directly from ACF to community-based grantees. The Division provides policy guidance to county, city, town or tribal governments and public and private organizations to assure consistent compliance with federal requirements and the adoption of appropriate policies and procedures. The Division performs systematic on-site reviews of grantees to determine compliance with applicable federal requirements, requiring correction of identified deficiencies and, where necessary, adverse actions including defunding of dysfunctional grantees.

The Division performs systematic fiscal reviews, makes recommendations to the Deputy Regional Administrator and Hub Director/RA to approve or disallow costs under the ACF discretionary grant regulations, and makes recommendations regarding grant approval and disapproval. The Division issues discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. The Division makes recommendations on the clearance and closure of grantee audits, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of program service delivery to customers, and taking steps to monitor the resolution of such deficiencies. The Division oversees the management and coordination of the Head Start automation systems such as PC Cost and Head Start Cost systems for budget analysis on Head Start refunding applications, and to monitor grantee systems projects such as the Head Start Program Information Report (PIR), Child Plus, Head Start Management Tracking System and the Head Start Bulletin Board.

The Division represents the Hub Director/RA in dealing with grantees on all matters of program policy and financial matters under its jurisdiction, providing early warnings on problems

or issues that may have significant implications for ACF programs operated by local grantees.

D. The Division of State Programs is headed by a Director who reports to the Deputy Regional Administrator. The Division is responsible for providing centralized management, financial management services, and technical administration of ACF formula, block and entitlement programs including Temporary Assistance for Needy Families (TANF), Child Care, Child Support Enforcement, Foster Care and Adoption Assistance, Child Welfare, Family Preservation and Support Services, and Child Abuse and Neglect.

The Division oversees the management and coordination of external automated systems in the region, and provides data management and statistical analysis support to all regional office components. Data management responsibilities include the development of automated system applications to support and enhance program, fiscal, administrative operations, and the compilation and analysis of data on demographic and service trends that assist in ACF monitoring and oversight responsibilities. The Division's external systems responsibilities include monitoring state systems projects and providing technical assistance to states on the development and enhancement of automated systems. The Division represents the Regional Hub Director on State systems matters with ACF central office, states, and contractors.

The Division provides policy guidance to state, county, city, town or tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing ACF grants. State plans are reviewed and recommendations made to the Regional Hub Director concerning state plan approval or disapproval. The Division provides technical assistance to entities responsible for administering ACF grants, resolving identified problems and ensuring adoption of appropriate procedures and practices that promote policy compliance and program efficiency and effectiveness.

The Division provides financial management oversight for ACF grants under its jurisdiction, reviews cost allocation plans, program objectives, budget projections, cost estimates, and reports. The Division performs systematic fiscal reviews and makes recommendations to the Regional Hub Director to approve, defer, or disallow claims for financial participation in ACF grants. As applicable, the Division makes recommendations regarding the clearance and closure of audits, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of ACF programs and closely monitors the resolution of such deficiencies.

The Division represents the Regional Hub Director in dealing with entities receiving ACF funding on all matters under its jurisdiction, and in providing early warnings on problems or issues that may have significant implications for ACF programs.

Dated: March 27, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

BILLING CODE 4184–01–P

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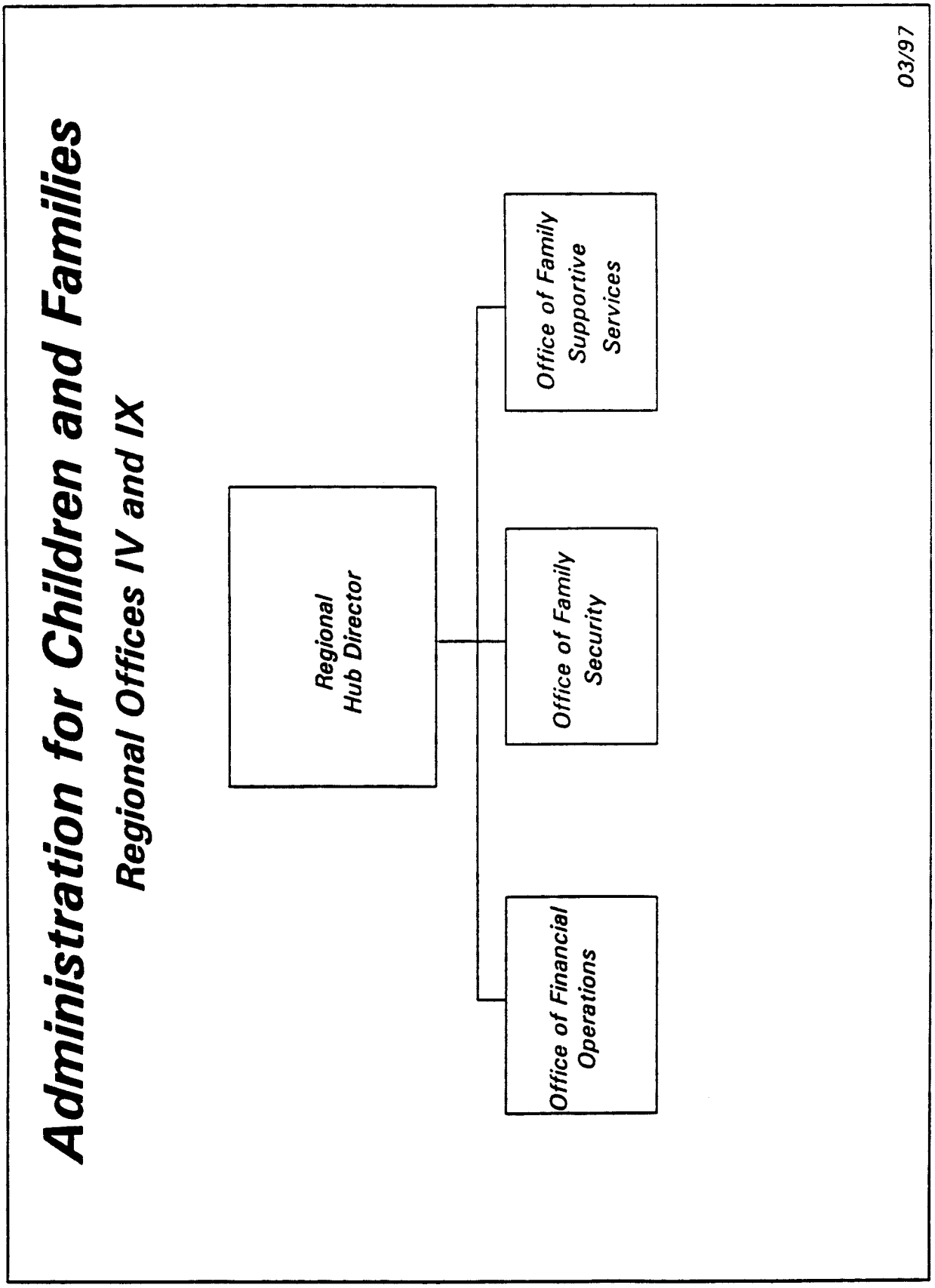
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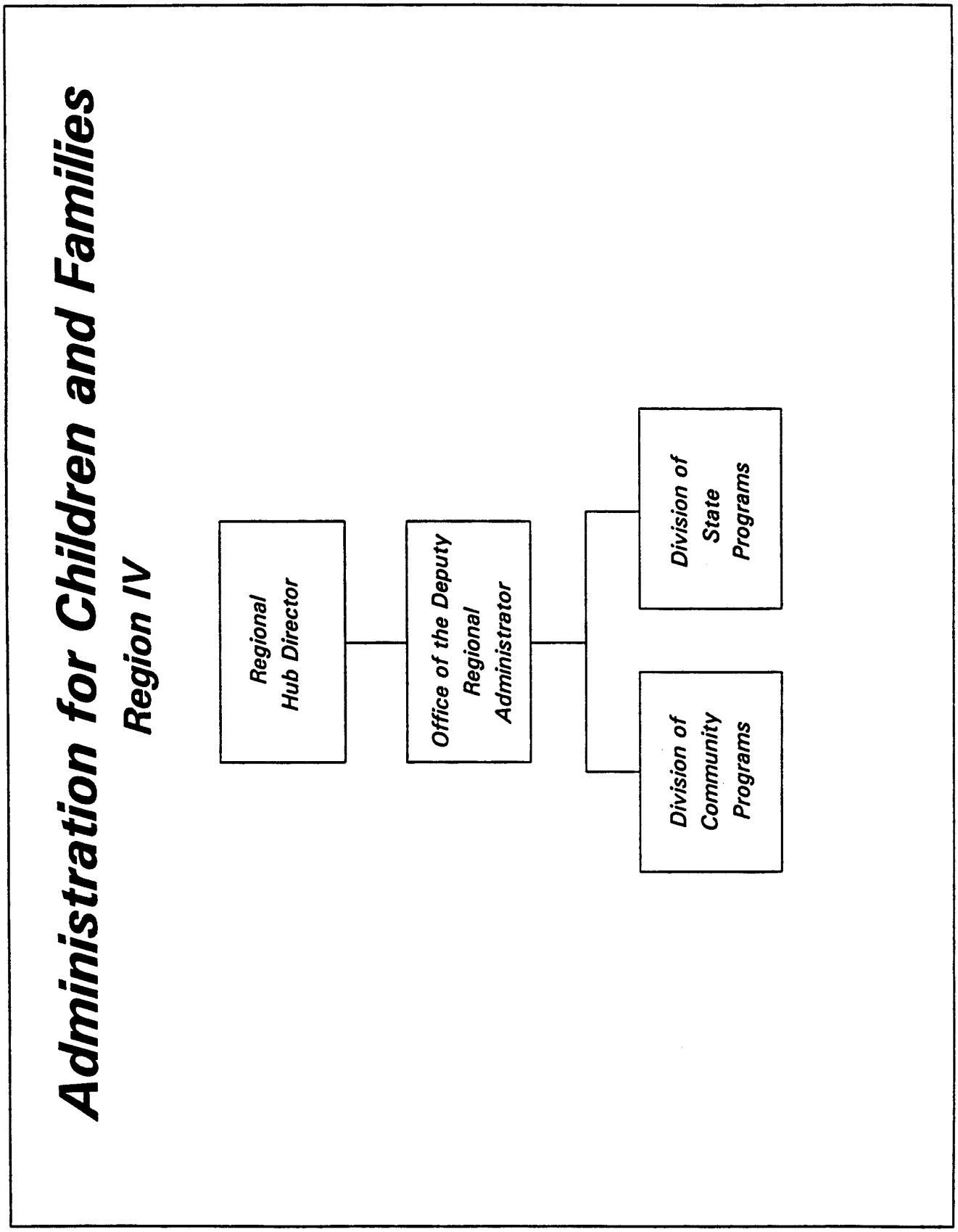

[FR Doc. 97–8534 Filed 4–2–97; 8:45 am]
BILLING CODE 4184–01–C

Food and Drug Administration

[Docket No. 93N–0457]

Robert Elbert; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denies Robert Elbert's request for a hearing and issues a final order permanently debarring Robert Elbert, 15000 SW. David Lane, apt. G–61, Lake Oswego, OR 97035, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on its finding that Mr. Elbert was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the Federal Food, Drug, and Cosmetic Act (the act).

EFFECTIVE DATE: April 3, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 1991, the United States District Court for the District of Oregon entered judgment against Mr. Robert Elbert, doing business as Thrifty Drug Store, under a plea of guilty, for one count of knowingly selling, purchasing, and trading drug samples, a Federal felony offense under sections 301(t) of the act (21 U.S.C. 331(t)), 303(b)(1) of the act (21 U.S.C. 333(b)(1)), and 503(c)(1) of the act (21 U.S.C. 353(c)(1)).

In a certified letter received by Mr. Elbert on September 14, 1994, the then-Acting Deputy Commissioner for Operations offered Mr. Elbert an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act (21 U.S.C. 335a(a)) debarring him from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Mr. Elbert on its finding that he had been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

The certified letter informed Mr. Elbert that his request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also notified Mr. Elbert that, if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated October 11, 1994, Mr. Elbert requested a hearing, and in a letter dated November 9, 1994, Mr. Elbert submitted arguments and information in support of his hearing request. In his request for a hearing, Mr. Elbert does not dispute that he was convicted of a felony under Federal law as alleged by FDA. He argues, however, that the agency's proposal to debar him is unconstitutional because a retroactive application of the debarment provisions would violate the U.S. Constitution's ex post facto, due process, and equal protection clauses.

The Deputy Commissioner for Operations has considered Mr. Elbert's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. The legal arguments that Mr. Elbert offers do not create a basis for a hearing (see 21 CFR 12.24(b)(1)). Mr. Elbert's arguments are discussed below.

II. Mr. Elbert's Arguments in Support of a Hearing

A. Ex Post Facto Argument

Mr. Elbert first argues that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Mr. Elbert's criminal conduct. The Generic Drug Enforcement Act (GDEA) of 1992, including section 306(a)(2), was enacted on May 13, 1992, and Mr. Elbert was convicted on December 13, 1991.

An ex post facto law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866); *Collins* v. *Youngblood*, 497 U.S. 37 (1990)).

Mr. Elbert's claim that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive, because the intent of debarment is remedial, not punitive. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is ''to restore and ensure the integrity of the abbreviated new drug application (ANDA) approval process and to protect the public health.'' (See section 1, Pub. L. 102–282, GDEA of 1992.)

In a suit challenging a debarment order issued by FDA (58 FR 69368, December 30, 1993), the constitutionality of the debarment provision was upheld against a similar challenge under the ex post facto clause. The reviewing court affirmed the remedial character of debarment:

> Without question, the GDEA serves compelling governmental interests unrelated to punishment. The punitive effects of the GDEA are merely incidental to its overriding purpose to safeguard the integrity of the generic drug industry while protecting public health.

Bae v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995); see also, *DiCola* v. *Food and Drug Administration*, 77 F.3d 504 (D.C. Cir. 1996)

Because the intent of the GDEA is remedial rather than punitive, Mr. Elbert's argument that the GDEA violates the ex post facto clause must fail. (See *Bae* v. *Shalala*, 44 F.3d at 496–497.)

B. Due Process and Equal Protection Arguments

Mr. Elbert further argues that an ''ex post facto application of later enacted statutory provisions to prior conduct and convictions of an individual is violative of the express provisions of Amendment V, forbidding that any person be deprived of 'life, liberty, or property without due process of law.''' In his discussion, Mr. Elbert refers to ''the loss of his right and ability to be able to provide services to a person who has an approved or pending drug product application,'' which suggests that he may also be making a ''takings'' argument under the Fifth Amendment.

Mr. Elbert's argument that his due process rights under the Fifth Amendment would be violated by debarment based upon a conviction entered prior to enactment of the GDEA is not persuasive. In *Usery* v. *Turner Elkhorn Mining Co.*, 96 S. Ct. 2882, 2893 (1976), the Court held that the retroactive application of a remedial statute designed to compensate disabled coal miners did not violate the due process clause of the Fifth Amendment. Legislation adjusting rights and burdens is not unlawful even if the effect of the

legislation is to impose a new duty or burden based upon past acts (*id.* (citations omitted)). The Court noted, however, that it would ''hesitate to approve the retrospective imposition of liability on any theory of deterrence * * * or blameworthiness'' (*id.* (citations omitted)). Neither exception applies to debarment.

As discussed above, debarment is remedial, in that it prohibits certain individuals from providing services to a person that has an approved or pending drug product application, in order to meet the legitimate regulatory purpose of restoring the integrity of the drug approval and regulatory process and protecting the public health. In addition, the remedial nature of the GDEA is not diminished simply because the GDEA deters debarred individuals and others from future misconduct (*U. S.* v. *Halper*, 109 S. Ct. 1892, 1901, n.7 (1989); *Bae* v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995)). Thus, debarment for a 1991 conviction does not violate Mr. Elbert's due process rights.

With regard to his ''takings'' assertion, Mr. Elbert has not established that his debarment affects any property interest protected by the Fifth Amendment. The expectation of employment is not recognized as a protected property interest under the Fifth Amendment (*Hoopa Valley Tribe* v. *Christie*, 812 F.2d 1097, 1102 (9th Cir. 1986); *Chang* v. *United States*, 859 F.2d 893, 896–897 (Fed. Cir. 1988)). One who voluntarily enters a pervasively regulated industry, such as the pharmaceutical industry, and then violates its regulations, cannot successfully claim that he has a protected property interest when he is no longer entitled to the benefits of that industry (*Erikson* v. *United States*, 67 F.3d 858 (9th Cir. 1995)).

Mr. Elbert further alleges that his debarment denies him ''equal protection of law,'' insofar as persons other than individuals are subject to debarment for acts occurring after enactment of the GDEA, and individuals are subject to debarment for acts and convictions that occurred prior to enactment of the statute as well. This argument also must fail. A statutory classification, such as that made in the GDEA between individuals and persons other than individuals, that neither burdens a fundamental right nor targets a suspect class, will be sustained if the classification bears a rational relationship to a legitimate legislative end (*Romer* v. *Evans*, 116 S. Ct. 1620, 1627 (1996)). The classification will be upheld even if it works to the disadvantage of a particular group (*id*). Moreover, under the rational basis standard of review, Congress need not articulate the rationale supporting its classification (*FCC* v. *Beach*, 113 S. Ct. 2096, 2102 (1993)). The distinction drawn between individuals and persons other than individuals may well have been supported by the fact that Congress had before it evidence from hearings that at least one company that had been found guilty or had admitted to fraud had obtained new management prior to passage of the GDEA (*Generic Drug Enforcement: Hearing on H.R. 2454 Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 102d Cong., 60–61 (1991) (statement of Dee Fensterer, President, Generic Pharmaceutical Industry Association)).

Mr. Elbert does not dispute the fact that he was convicted as alleged by FDA. Under section 306(l)(1)(B) of the act, a conviction includes a guilty plea. The facts underlying Mr. Elbert's conviction are not at issue. Mr. Elbert's legal arguments do not create a basis for a hearing. Accordingly, the Deputy Commissioner for Operations denies Mr. Elbert's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act and under authority delegated to him (21 CFR 5.20), finds that Robert Elbert has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Robert Elbert is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective April 3, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Elbert, in any capacity, during his period of debarment, will be subject to a civil money penalty (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Elbert, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any ANDA or abbreviated antibiotic drug application submitted by or with the assistance of Mr. Elbert during his period of debarment.

Mr. Elbert may file an application to attempt to terminate his debarment under section 306(d)(4) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 93N–0457 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–8555 Filed 4–2–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0171]

Discovery Experimental and Development, Inc.; Denial of a Hearing and Refusal to Approve a New Drug Application for Deprenyl (Deprenyl Citrate) Gelatin Capsules and Liquid; Final Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs (the Commissioner) is denying a request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) refusing to approve a new drug application (NDA) for Deprenyl (deprenyl citrate) submitted by Discovery Experimental and Development, Inc., 29949 S.R. 54 West, Wesley Chapel, FL 33543 (Discovery). Discovery requested an opportunity for a hearing after the Food and Drug Administration (FDA) issued a proposal to refuse to approve the firm's NDA for Deprenyl. FDA is denying Discovery's request for a hearing because Discovery failed to raise any genuine and substantial issue of fact that would entitle it to such a hearing. FDA bases this order refusing to approve Discovery's product on a finding that, among other deficiencies in the application, there is insufficient information to determine whether Discovery's deprenyl citrate is safe for use or will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling.

EFFECTIVE DATE: April 3, 1997.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1698.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1991, Discovery submitted NDA 20–242 for deprenyl citrate (also referred to in Discovery's response to the notice of opportunity for a hearing (NOOH) as deprenyl and selegiline), proposing to label it for the treatment of Alzheimer's disease.[1] On December 7, 1992, Discovery submitted an amendment to the NDA.

In a letter dated January 17, 1992, FDA notified Discovery that it was not filing NDA 20–242, under § 314.101(d) (21 CFR 314.101(d)), because the application did not contain information necessary to permit a substantive review. In the letter, FDA listed the reasons for its refusal as required by § 314.101. In its reply letter dated January 23, 1992, Discovery requested an informal conference with FDA. Following subsequent communications with Discovery regarding the scheduling of the hearing,[2] the conference was held on November 16, 1992.

At the conference, FDA informed Discovery of its (Discovery's) options in light of FDA's refusal to file the NDA. In a letter dated November 24, 1992, FDA reiterated that Discovery's application could be filed over protest under § 314.101(c),[3] which Discovery requested on December 7, 1992.

In a letter dated December 31, 1992, FDA notified Discovery that FDA would file the NDA over protest; that the application would be reviewed ''as filed;'' that, in accordance with § 314.101(c), any amendment received after December 10, 1992, would not be considered; and that FDA considered Discovery's December 7, 1992, amendment, to be a ''major amendment'' within the meaning of § 314.60(a) (21 CFR 314.60(a)), requiring 180 days for its review.

In a letter dated August 20, 1993, and in accordance with § 314.120 (21 CFR 314.120), FDA advised Discovery that NDA 20–242 was not approvable. In the letter, FDA explained in detail the reasons for its judgment. Discovery responded by letter dated September 1, 1993, and, under § 314.120(a)(5), requested an extension of 180 days to consider its options with respect to the NDA. FDA granted the extension. In a letter dated March 1, 1994, Discovery requested an opportunity for a hearing under § 314.120(a)(3) on the question of whether there were grounds for FDA's refusal to approve NDA 20–242.

In the NOOH of May 19, 1994, FDA proposed to refuse to approve Discovery's NDA and offered Discovery an opportunity for a hearing. FDA's NOOH informed Discovery that if it requested a hearing, it could not rest on mere allegations or denials but would have to present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The NOOH also stated that if it conclusively appeared from the face of the data, information, and factual analysis submitted in support of a hearing request that there was no genuine and substantial issue of fact precluding the refusal to approve the NDA, or if the request for a hearing was not made in the required format with the required analyses, the Commissioner would enter summary judgment against Discovery, denying its request for a hearing. In a letter filed on June 14, 1994, Discovery submitted a request for a hearing and supporting arguments (Discovery's response).[4]

I have reviewed Discovery's arguments and find that Discovery has not raised a genuine and substantial issue of fact requiring a hearing under §§ 12.24(b) and 314.200(g) (21 CFR 12.24(b) and 314.200(g)), and that summary judgment should be granted against Discovery. Moreover, on the basis of all, or any one of, the numerous deficiencies in Discovery's NDA, I find that I cannot approve NDA 20–242, under section 505(d) of the act (21 U.S.C. 355(d)). The reasons for my decision are described below.

II. Discovery's Response to the NOOH

A. Discovery's General Allegations

Before responding to the specific deficiencies in NDA 20–242 cited by FDA in the NOOH, Discovery made numerous preliminary allegations and accusations against FDA in its request for a hearing.[5] Generally, Discovery alleged that FDA was biased, misused its power, and violated numerous regulatory requirements, as well as Discovery's constitutional rights, during its review of NDA 20–242. In sections II.A.1 through II.A.3 of this document, I address allegations that Discovery made on pp. 2–26 of its response, all of which in some way challenge the statutory or regulatory requirements for the approval of new drugs. In section II.A.4 of this document, I address Discovery's allegations of agency bias and incompetency with respect to FDA's review of NDA 20–242, contained in pp. 18–20 of its response. In section II.A.5 of this document, I address 13 specific ''illegalities'' that Discovery alleged were committed by FDA, and which are listed on pp. 27–29 of Discovery's response.

1. FDA has misused its power as a government agency by enforcing its regulations ''as if they were laws enacted by Congress.''

Discovery's allegation is a legal argument that does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Regulations issued under the act and under the notice and comment provisions of the Administrative Procedures Act (5 U.S.C. 553) have the force and effect of law. It is appropriate for FDA to enforce them as having such effect (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); *National Ass'n of Pharmaceutical Mfrs.* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 877 (2d Cir. 1981)). Therefore, there is no misuse of power by FDA, and there is no merit to Discovery's allegation.

2. ''The Commissioner has the power to approve or disapprove any pharmaceutical, without conducting any trials, or without following any regulations, simply with the stroke of a pen.''

The first part of Discovery's allegation, that FDA can approve or disapprove a new drug without it conducting any trials, is true. The act places the burden of conducting the trials required for the approval of a new drug on the applicant, not FDA (section 505(b) of the act). However, this fact has no probative value in the case. It only raises the question whether the necessary trials have been done.

As to the second part of Discovery's assertion, that the Commissioner does not have to follow any regulations, while the Commissioner has the authority to use discretion in the enforcement of the act and its implementing regulations, and while certain criteria that apply to clinical investigations may be waived (e.g., § 314.126(c) (21 CFR 314.126(c))), the

[1] An NDA for another deprenyl product, selegiline hydrochloride (Eldepryl®), was approved by FDA on June 5, 1989, for the treatment of Parkinson's disease. The NDA is held by Somerset Pharmaceuticals, Inc., Tampa, FL (hereinafter referred to as Somerset).

[2] Subsequent communication occurred in letters dated: March 4, 1992; March 17, 1992; March 19, 1992; August 26, 1992; September 16, 1992; September 21, 1992; September 23, 1992; October 8, 1992; October 9, 1992; October 13, 1992; October 20, 1992; and October 28, 1992.

[3] Now codified in § 314.101(a)(3).

[4] On p. 1 of its response, Discovery stated that it was addressing its NADA's 20–242 and 20–244. However, as stated by Discovery on pp. 4 and 5 of its response, it had not yet filed NDA 20–244. The NOOH pertained only to NDA 20–242.

[5] In its response, Discovery refers to itself by its acronym, DEDI.

Commissioner may not disregard the statutory standards for the approval of new drugs (section 505(d) of the act (requiring that the Commissioner *shall* issue an order refusing to approve an NDA if he finds certain information lacking) (emphasis added); *Edison Pharmaceutical Co., Inc.* v. *FDA,* 600 F.2d 831 (D.C. Cir. 1979); *Hoffman-LaRoche, Inc.* v. *Weinberger,* 425 F. Supp. 890 (D.D.C. 1975); see also, § 314.200(e)(3)). New drugs are to be approved on the basis of substantial evidence consisting of adequate and well-controlled investigations, including clinical investigations (section 505(b) of the act). Indeed, FDA's new drug approval process has been upheld by the Supreme Court as a constitutional means of protecting the public from unsafe or ineffective drugs (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609 (1973)). Discovery's response, therefore, is not correct as a matter of law. It does not present an issue of fact for resolution at a hearing, §§ 12.24(b)(1) and 314.200(g), and is without merit.

3. ''FDA requires a drug to be tested in a multitude of phases with the most absurd required testing being the double blind, placebo based clinical trial,'' and that this requirement is unconstitutional.

The act requires an applicant to submit substantial evidence of safety and effectiveness and defines substantial as consisting of well-controlled studies (section 505(b) and (d) of the act). FDA regulations in turn identify the characteristics of a well-controlled study, advising applicants that one hallmark of a well-controlled study is the use of procedures to minimize bias, such as blinding and use of placebos (§ 314.126). Discovery's allegations, therefore, challenge the statutory and regulatory requirements of the act for the approval of a new drug. As such, they are legal arguments, which do not raise an issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Nor do these arguments have any merit. FDA's testing requirements have been specifically upheld by the Supreme Court (*Weinberger* v. *Hynson, Westcott, & Dunning, supra*).

4. FDA is arrogant, incompetent, and biased; and has conspired with the drug industry and the American Medical Association to target nonmainstream practitioners in order to eliminate the competition with certain pharmaceutical companies.

Discovery did not submit any specific evidence that FDA failed to perform a competent review of NDA 20–242, or that it conspired with the American Medical Association to eliminate competition in the drug industry by disapproving NDA 20–242. Similarly, Discovery did not submit any specific and reliable evidence of arrogance or bias in FDA's review of NDA 20–242. Because Discovery's response consists of mere allegations, it fails to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24 (b)(2) and 314.200(g)). I find that the record reflects that, in FDA's review of Discovery's NDA, it was appropriately concerned with one primary issue—whether NDA 20–242 contained the information required by the act. Therefore, I find no merit to Discovery's allegation.

5. FDA has committed 13 ''illegalities,'' as follows (Discovery response, pp. 27–29):

a. FDA violated Discovery's Fourth Amendment rights under the Constitution by illegally searching and seizing all items relating to Deprenyl in December 1990, which led to the illegal arrest and incarceration of Discovery's president in February 1991.

Discovery's allegation that FDA violated Discovery's constitutional rights are legal arguments, which do not raise a genuine and substantial factual issue of fact for which a hearing is required (§§ 12.24(b)(1) and 314.200(g)).

Moreover, in support of this allegation, Discovery submitted exhibit 2, attached to its response. Exhibit 2 consists of photocopies of an Order On Defendant's Motion To Suppress and an Order Dismissing Case and Releasing Cash Bond (Case No. 91–622CFAES). It is facially apparent that these documents pertain to a matter within the jurisdiction of the Criminal Division of the Circuit Court for Pasco County, FL, namely a vehicular stop for a traffic violation and subsequent seizure of unidentified pills and powder by the Pasco County Sheriff's Office from the possession of Mr. James Kimball, President of Discovery, on December 21, 1990.[6] Discovery's exhibit in support of its allegation does not indicate any FDA involvement in the traffic stop and seizure.[7] An alleged violation of Mr. Kimball's or Discovery's constitutional rights involving a traffic stop and seizure by a Pasco County, FL, sheriff's office does not raise a genuine issue of fact related to the approvability of NDA 20–242 requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). The allegation simply is not relevant to this proceeding.

b. FDA deliberately misconstrued applications Discovery submitted to have its products approved and returned them to the company.

Discovery submitted the applications to which it refers in an unsuccessful effort to have its product regulated as a food supplement rather than as a new drug. See letter dated April 10, 1991, from FDA to Discovery submitted in Discovery's NOOH response as exhibit 3. As the letter states, the applications were returned to Discovery because the product could not be regulated as a food supplement as requested by Discovery. Discovery's statement regarding the return of its applications, therefore, is true. Discovery did not submit any evidence, however, in support of its allegation that FDA ''deliberately misconstrued'' its applications.

To the extent that Discovery alleges that FDA returned its applications, there is no question but the allegation is true. To the extent that Discovery alleges that FDA ''deliberately misconstrued'' its applications, however, Discovery's response consists of a mere allegation. Mere allegations do not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(2) and 314.200(g)).

There is nothing in the record that indicates that FDA ''deliberately misconstrued'' Discovery's request that FDA regulate Deprenyl as a food supplement, or that FDA's return of the applications was improper. The letter from FDA to Discovery explains why FDA could not regulate Deprenyl as a food supplement. In its response, Discovery did not challenge the basis of FDA's decision in its response. Finally, Discovery was not hindered in any way from resubmitting the applications as NDA's. Therefore, Discovery's allegation has no probative value in, and is not relevant to, this proceeding.

c. FDA lost two applications that Discovery submitted in April 1991 for Liquid Deprenyl Citrate.

Irrespective of the validity of Discovery's allegation, FDA's action with respect to other NDA's is not determinative of the approvability of NDA 20–242. The matter before me pertains to FDA's proposal to refuse to approve NDA 20–242 due to insufficient information contained in the NDA, not to alleged FDA actions pertaining to other NDA's.

In addition, in light of other serious deficiencies associated with NDA 20–242, resolution of this issue is not determinative with respect to the approvability of NDA 20–242. At most, Discovery's response raises an issue for

[6] Even if this allegation were true, it is difficult to see its relevance given the fact that it occurred before Discovery submitted its NDA to FDA (November 1991).

[7] Discovery also contends on p. 2 of its response that FDA violated it's First Amendment right to free speech when FDA ''instigated'' the illegal stop, search, and seizure.

which a hearing is not required (§§ 12.24(b)(4) and 314.200(g)).

d. FDA violated § 314.103 (21 CFR 314.103) in January 1992 by not granting a hearing to Discovery regarding its two NDA's for Liquid Deprenyl Citrate.

Section 314.103 expresses FDA's policy in favor of the timely and amicable resolution of disputes between an applicant and FDA reviewing divisions regarding the technical requirements of NDA's. It also advises applicants to seek the assistance of the agency ombudsperson to resolve such difficulties. Section 314.103(c)(2) states that, ''FDA will make every attempt to grant requests for meetings that involve important issues and that can be scheduled at mutually convenient times.''

Discovery requested a meeting with FDA officials in a letter that FDA received on January 29, 1992. Thereafter, the record reflects numerous communications between the agency and Discovery[8] during which Discovery sought the assistance of FDA's ombudsperson in scheduling a meeting. Agency officials met with Discovery on November 16, 1992. Assuming that Discovery's allegation is that FDA officials violated § 314.103 because they failed to meet with Discovery in January 1992, but instead delayed until November 1992, the regulations placed no burden on FDA to meet with Discovery within any specific time period other than ''at [a] mutually convenient'' time. Therefore, I find that the information submitted by Discovery is insufficient to justify Discovery's allegation that FDA ''violated'' § 314.103 in January 1992. A hearing, therefore, is not required (§§ 12.24(b)(3) and 314.200(g)).

Furthermore, even if Discovery's allegation is viewed as accurate, in light of the numerous serious deficiencies in NDA 20–242, resolution of this issue would not be determinative of the basic issue in this matter, the approvability of the NDA, and a hearing, therefore, is not required (§§ 12.24(b)(4) and 314.200(g)).

e. FDA violated § 314.102(c) (21 CFR 314.102(c)) by not granting Discovery a ''90-day conference.''

Discovery's contention is that FDA failed to grant a conference within 90 days after receiving Discovery's NDA. This statement is true. The purpose of a ''90-day conference'' is ''to provide applicants with an opportunity to meet with agency reviewing officials [approximately 90 days after FDA receives an NDA] * * * to inform applicants of the general progress and status of their applications, and to advise applicants of deficiencies that have been identified by that time and that *have not already been communicated*'' (§ 314.102(c) (emphasis added)).

FDA received NDA 20–242 on November 29, 1991, and an amendment to the NDA on December 6, 1991. On January 17, 1992, FDA notified Discovery of the deficiencies in its application, and that it was refusing to file NDA 20–242. Although there is no question that FDA did not offer Discovery a conference on any deficiencies that it had *not* communicated, its failure to do so does not justify a hearing. A 90-day conference with Discovery would have served no purpose. When Discovery filed its application over protest, FDA had already informed Discovery that NDA 20–242 did not contain information required by section 505(b) of the act and § 314.101(d)(3). There was no question about the status of the application or any noncommunicated deficiencies. Therefore, there was no new information to convey to Discovery in a 90-day conference.

I find that Discovery was not prejudiced in any way by FDA's failure to grant it a 90-day conference. Moreover, in light of the other significant deficiencies in NDA 20–242, the issue of whether FDA should have done so is not determinative of whether the NDA is approvable. This allegation by Discovery, therefore, does not raise a factual issue on which a hearing is required (§§ 12.24(b)(4) and 314.200(g); also see *Pineapple Growers Assoc. of Hawaii* v. *Food and Drug Administration,* 673 F.2d 1083, 1086 (9th Cir. 1982)).

f. FDA violated Discovery's constitutional rights under the Fifth and Fourteenth Amendments by ''making up'' rules regarding amendments to Discovery's application during final review.

Discovery's allegation that FDA violated Discovery's constitutional rights are legal arguments and, as such, fail to raise a genuine and substantial factual issue for which a hearing is required (§§ 12.24(b)(1) and 314.200(g)).

Upon review of the record, I find no evidence that FDA ''made up'' rules regarding the submission of amendments to NDA's filed over protest. The record reflects that FDA informed Discovery in a letter dated November 24, 1992, that after an NDA is filed over protest, FDA would not consider additional amendments in the review of the NDA, in accord with § 314.101(c) (now § 314.101(a)(3)). This regulation states that, ''the agency will file the application * * * over protest * * * and review it *as filed*'' (emphasis added). Further, in the November 24, 1992, letter, FDA responded to Discovery's suggestion that it might want to summit an amendment to its NDA and advised Discovery that it could amend its application so long as it did so before it was filed over protest. Discovery was, thus, fully advised of the regulatory requirements regarding the submission of amendments to its NDA filed over protest.

g. FDA violated §§ 314.102(a) and (b) and 314.103(a), (b), and (c) by failing to articulate the deficiencies in Discovery's application during the review process.

Section 314.102 refers to reasonable efforts at notification of easily correctable efficiencies or the need for additional data. Section 314.103 establishes a process for dispute resolution.

The record reflects that Discovery's NDA was not under review until December 7, 1992, at which time Discovery was fully apprised of the application's deficiencies. See letter dated January 17, 1992, from Dr. Paul Leber, FDA, to Mr. James T. Kimball, president of Discovery, with attachment; transcript of the informal meeting between FDA and Discovery held on November 16, 1992; letter dated December 7, 1992, from Mr. James T. Kimball to Dr. Paul Leber, FDA; and letter dated December 31, 1992, from Dr. Paul Leber to Mr. James T. Kimball.

Discovery submitted NDA 20–242 on November 29, 1991, and amended its application on December 6, 1991. In a letter dated January 17, 1992, FDA informed Discovery that its submission was facially deficient, listed the deficiencies in an attachment, and notified Discovery that FDA refused to file the NDA. At this time, the NDA was not under review by FDA. Discovery was again informed of the deficiencies during an informal conference held with FDA on November 16, 1992. On December 7, 1992, Discovery requested that FDA file NDA 20–242 over protest.

Thus, NDA 20–242 was not under review by FDA until December 7, 1992, when the agency filed it over protest. At that time, Discovery had already been informed of the substantial deficiencies in its NDA as a result of the January 17, 1992, letter, and the November 16, 1992, conference. In a letter dated August 20, 1993, FDA informed Discovery that its NDA was not approvable and listed in detail numerous significant deficiencies. Based on this record, it is clear that FDA articulated the deficiencies in NDA 20–242 to Discovery before the review process even began and thus gave Discovery an opportunity to correct the

[8] *Supra* note 2.

deficiencies before it filed Discovery's NDA for review over protest.

Although FDA did not communicate with Discovery after it began its review of NDA 20–242 over protest, it had already done so on two occasions before its review process began, thus fulfilling the intent of the regulations. FDA had communicated the type of information contemplated by §§ 314.102(a) and (b) and 314.103(a), (b), and (c) to Discovery *before* the review began.

Consequently, I find that this allegation by Discovery does not raise a genuine and substantial issue of fact. Therefore, this allegation does not justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

h. FDA violated § 314.100 (21 CFR 314.100) by not notifying Discovery that its application was approved within 180 days of its receipt or disapproved.

Section 314.100 states that within 180 days of receipt of an NDA, FDA will review it and send the applicant either an approval letter or a not approvable letter.

Discovery submitted NDA 20–242 on November 29, 1991, and amended it on December 6, 1991. As stated above, however, Discovery's NDA was not filed until December 7, 1992. FDA issued its not approvable letter on August 20, 1993. Whether measured from November 29, 1991; December 6, 1991; or December 7, 1992, FDA did not meet the 180-day deadline. There is no issue of fact with regard to this point (*Pineapple Growers Assoc. of Hawaii,* 673 F.2d at 1086).

The consequence of FDA delay in approving or disapproving an NDA, however, is not the approval of the NDA. Federal courts have recognized that the proper remedy of a party seeking to enforce a statutory deadline is to seek an order compelling the agency to act, not to challenge the legitimacy of post-deadline agency action. The Federal courts have also recognized that if an agency's regulations do not specify the consequence for noncompliance with regulatory timing provisions, as is the case here, then the provision is merely directory rather than mandatory. In such cases, Federal courts will not ordinarily impose their own sanction nor will they seek to reorder agency priorities.[9]

Discovery has made no showing that FDA did not respond to Discovery's NDA as quickly as possible given the competing demands on its resources. In light of the failure of Discovery to demonstrate that its product is safe and effective, I find that there is no basis, consistent with the act, to grant it the relief it seeks.

i.-m. FDA committed five ''illegalities'' with respect to its approval of an NDA submitted by Somerset Pharmaceuticals, Inc. for its Eldepryl® product.

The five illegalities asserted by Discovery are based upon Discovery's allegation that, at the time of its approval by FDA, Eldepryl® was contaminated with methamphetamine and amphetamine, both of which are controlled substances under laws administered by the Drug Enforcement Agency. Discovery did not submit any evidence to support its allegation. On p. 32 of its response, Discovery merely stated that it ''is fully prepared to argue and prove that Eldepryl®, prior to 1993, was contaminated with a high degree of methamphetamine and amphetamine, and was not selegiline hydrochloride but a contaminated version of selegiline hydrochloride.''

Discovery further alleged that FDA violated various sections of FDA regulations and law by: Approving Eldepryl® knowing it to contain controlled substances; failing to require that Eldepryl® labels declare the presence of the controlled substances; allowing the importation and distribution of Eldepryl®; failing to require that Somerset notify DEA of the presence of controlled substances in its Eldepryl® product; and causing all pharmacists filling prescriptions of Eldepryl® to violate the law.

Discovery submitted no evidence in support of its allegation that Eldepryl® was contaminated with controlled substances when it was approved and that FDA was aware of this fact. Discovery's mere allegations, therefore, do not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(2) and 314.200(g)).

Moreover, Discovery's response to the NOOH failed to make clear the relevance of FDA's approval and regulation of Somerset's Eldepryl® to the issue of whether Discovery's NDA 20–242 for Deprenyl was approvable. In the absence of some reason to conclude otherwise, I find that FDA's approval and regulation of Eldepryl® are irrelevant to the issue before me, i.e., the approvability of NDA 20–242. FDA approval of another drug product does not exempt Discovery's NDA from compliance with the new drug provisions of the act. Resolution of Discovery's allegations, therefore, is not probative of the approvability of NDA 20–242.

B. Statutory and Regulatory Framework

The act provides that:

Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a) of this section. Such person shall submit to the Secretary as a part of the application (A) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (B) a full list of the articles used as components of such drug; (C) a full statement of the composition of such drug; (D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (E) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (F) specimens of the labeling proposed to be used for such drug.[10]

Section 505(b)(1) of the act

The act requires that:

If the Secretary, [and by delegation of authority, the Commissioner of Food and Drugs] finds, after due notice to the applicant in accordance with subsection (c) of this section and giving him an opportunity for a hearing, in accordance with said subsection, that:

* * * * *

(3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity;

(4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions; or

(5) evaluated on the basis of the information submitted to him as part of the application and any other information before him with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the condition of use prescribed, recommended, or suggested in the proposed labeling thereof; * * * he shall issue an order refusing to approve the application.

[9] See *In re. Barr Laboratories, Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1991); *Brotherhood of Railway Carmen* v. *Pena,* 64 F.3d 702, 704 (D.C. Cir. 1995); *United States* v. *James Daniel Good Real Property,* 510 U.S. 43, 62–65 (1993).

[10] Section 314.50 (21 CFR 314.50) sets out what is required to be in such ''full'' reports, statements, and descriptions. The regulation requires an NDA to contain, among other information, a full description of the composition, manufacture, and specifications of the drug substance and the drug product; an environmental assessment or a claim for exclusion; the results of nonclinical studies necessary to assess the pharmacological and toxicological profile of the drug or clinical data to obviate the need for such studies; the results of clinical studies necessary to assess the safety and efficacy of the drug product; the proposed labeling of the drug product; evidence demonstrating the in vivo bioavailability of the drug product or information which would permit FDA to waive such data; and compliance with FDA's current good manufacturing practice (CGMP) regulations for finished pharmaceuticals (parts 210 and 211 (21 CFR parts 210 and 211)).

Section 505(d) of the act[11]

C. Evidence of Safety

For approval of its NDA, Discovery was required to submit to FDA, among other information, ''full reports of investigations which have been made to show, whether or not such drug is safe for use * * *,'' as required by section 505(b)(1) of the act, as well as all information required by § 314.50.

In the NOOH, FDA stated that NDA 20–242 failed to contain any nonclinical studies[12] necessary to assess the safety of the drug or any clinical data to obviate the need for such studies; that the copies of published studies Discovery submitted in support of the safety of Deprenyl were not performed using its product; and that it was apparent from the NDA that Discovery had sought to use the safety studies contained in an NDA for another FDA approved product, Eldepryl®, manufactured by Somerset, as evidence of the safety of its Deprenyl product, which it could not do.[13]

In its response, Discovery made three arguments related to the safety of Deprenyl: that Deprenyl was as safe as Eldepryl®, therefore, FDA should have approved Deprenyl; that Discovery had submitted 29 studies in its NDA that established the safety of Deprenyl; and that FDA had collected a sample of Deprenyl and purposely withheld the results of its analysis from publication in the NOOH. I will consider each of these arguments to see, first, whether they justify granting a hearing, and second, whether they would justify a finding that Deprenyl is safe.

1. Deprenyl is as Safe as Eldepryl®

Eldepryl® is currently being marketed by Somerset for the treatment of Parkinson's disease. However, when Discovery's NDA was filed, Somerset still enjoyed its exclusivity period granted by the act (section 505(c)(3)(D)(ii) of the act and 21 CFR 314.108). Thus, Discovery was prohibited by the act from using any of the data contained in the Eldepryl® NDA to support its NDA for Deprenyl.[14]

Barred by the act from using any information contained in the Eldepryl® NDA, Discovery's mere reassertion in its response to the NOOH that its product is as safe as Eldepryl® does not raise a genuine and substantial issue of fact requiring a hearing. Discovery has not presented any data or other evidence to support its assertion (§§ 12.24(b)(2) and 314.200(g)).

Discovery did not challenge FDA's statement in the NOOH that Discovery claimed that its product is not the same as the FDA-approved product, Eldepryl®. Indeed, Discovery stated that:

> [It] is fully prepared to argue and prove that Eldepryl, prior to 1993, was contaminated with a high degree of methamphetamine and amphetamine, and was not selegiline hydrochloride but a contaminated version of selegiline hydrochloride. These contaminants in Eldepryl lessen the effectiveness of the selegiline. Thus, the product is not selegiline or selegiline hydrochloride as approved by the FDA, but selegiline hydrochloride plus methamphetamine and amphetamine * * *. Even with the improvements made in the methamphetamine/amphetamine content of Eldepryl in 1993, and as reformulated, the Eldepryl product still contains methamphetamine, unlike [Discovery's] selegiline in which the methamphetamine content is, in essence, unmeasurable. * * * [n]o one has made deprenyl that compares to the purity of [Discovery's] product * * *. Products made without contaminates, in their purest form, prove much safer and effective than the contaminated products allowed by the FDA.

Discovery response to NOOH, pp. 32–34

Finally, Discovery failed to challenge the absence in its NDA of a ''right of reference'' to the Eldepryl® NDA or FDA's finding that it (Discovery) had failed to otherwise comply with the requirements of section 505(b)(2) of the act.[15]

Notwithstanding the statutory prohibition against Discovery using safety data contained in the Eldepryl® NDA, Discovery's admission that its product is different than Eldepryl® alone is fatal to its argument that the safety of Deprenyl could be established by comparing it to the approved product, Eldepryl®. Therefore, I find no merit to the first of Discovery's three assertions on the safety of Deprenyl.

2. Discovery Submitted 29 Trials that Showed Deprenyl to be Safe

In its response to the NOOH, Discovery asserted that its product ''has been proven safe in over 30 years of clinical use,'' and that Deprenyl ''has unequivocally proven to be one of the safest, if not the safest product to take'' for the treatment of Alzheimer's disease (Discovery response, pp. 31, 40). Discovery did not present any safety studies in its response. Instead, it stated that:

> it saw absolutely no rationale for conducting clinical safety tests with deprenyl, when [Discovery] submitted at least 29 trials [in its NDA] that stated, in essence, that deprenyl is safer than most pharmaceuticals on the market [and] safer than raw seafood or uncooked fresh fruits and vegetables * * *.

Discovery response, p. 31

Discovery did not identify which of the 171 published studies it submitted in its NDA were the 29 that it believed established the safety of Deprenyl.

As stated in the NOOH, Discovery could have established the safety of Deprenyl in its NDA in two ways. Either it could have performed and submitted the necessary toxicological and pharmacological studies on its product, or it could have submitted clinical data to obviate the need for such data. In its response, Discovery does not contest the absence of pharmacological or toxicological studies in its NDA. Discovery does, however, assert that it submitted 29 studies in its NDA that established the safety of Deprenyl.

In the NOOH, FDA explained that it could not accept any of the 171 published studies submitted in NDA 20–242 as evidence of the safety of Discovery's product because none of the studies used Discovery's product. Any study purporting to compare the safety of Discovery's product to other pharmaceutical products on the market, or to raw seafood and uncooked fresh fruits and vegetables, would have to use Discovery's product as a test article or one shown to be bioequivalent to Discovery's product. Because none of the published studies submitted in NDA 20–242 used Discovery's product, and Discovery did not submit any information showing that any of the test articles used in the studies was bioequivalent to its product, none of the

[11] Section 314.125(b) (21 CFR 314.125(b)) sets forth additional reasons for which FDA may refuse to approve an NDA, including: The absence of bioavailability data required by part 320 (21 CFR part 320); the failure of drug products' proposed labeling to comply with the requirements for labels and labeling in part 201 (21 CFR part 201); and the failure to assure that the methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, or holding of the drug substance or the drug product comply with the CGMP regulations in parts 210 and 211. Further, § 314.125(a)(3) states that FDA may refuse to approve an NDA for any of the reasons listed in § 314.125(b).

[12] Nonclinical studies are studies involving animals as test subjects and are designed to determine if the new drug is safe for use in humans.

[13] FDA notified Discovery in its ''not approvable letter'' dated August 20, 1993, that Somerset was granted exclusive marketing for Eldepryl® in NDA 19–338 for 5 years from the date of its approval (June 5, 1989) and that section 505(c)(3)(D)(ii) of the act prohibited anyone from submitting an NDA seeking to use the safety and efficacy data contained in the approved application for any other form of the drug (including other salts, esters, etc.) until the exclusivity period expired (June 6, 1994).

[14] Somerset's exclusivity period expired on June 6, 1994. This fact is not relevant to this proceeding because I am reviewing an application that was filed before that date. I express no view as to the significance of the safety and effectiveness data in NDA 19–338 (Eldepryl®) for Discovery's application because that question is not before me.

[15] Absent a right of reference, Discovery would have had to comply with other requirements of section 505(b)(2) of the act, including that Discovery submit a certification that the patent for Eldepryl® did not apply, which it did not do.

studies could be used to make such comparisons nor to reach such conclusions.

In its response, Discovery did not challenge FDA's statements in the NOOH that NDA 20–242 failed to contain any safety studies of Deprenyl, preclinical or clinical, and that the 171 studies it submitted were not conducted using its product. Discovery thus fails to raise an issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Discovery's mere assertions that its product has been proven safe; that it is has been proven to be one of the safest products to take for the treatment of Alzheimer's disease; that it is safer than most pharmaceuticals on the market; and that it is safer than raw seafood or uncooked fresh fruits and vegetables are not sufficient to raise a genuine and substantial issue of fact requiring a hearing, §§ 12.24(b)(2) and 314.200(g), or to establish the safety of its product. Therefore, I find that Discovery's second allegation is also without merit.

3. FDA's Analytical Evidence Showed Deprenyl to be Safe

Finally, Discovery asserted that FDA had collected a sample of 50 bottles of its product during an FDA inspection of Discovery and had ''conveniently'' left the results out of the NOOH, implying that the results were favorable to Discovery. Discovery submitted no evidence that FDA had performed any safety studies using the sample it collected from Discovery (Discovery response, p. 33).

FDA has no obligation to, nor does it, use the results of tests performed on samples that it collects during an inspection as a substitute for safety studies conducted by a sponsor in support of approval of a new drug product. The act places the burden of establishing the safety of a new drug on the NDA sponsor, not FDA (section 505(b)(1) of the act).

Moreover, with respect to the sample of Discovery's product collected by FDA investigators, in its response to the NOOH Discovery admitted that it ''held back **DELIBERATELY**, due to **MISTRUST**, the **PUREST LIQUID DEPRENYL** product [from the FDA investigators] which would have been put into [its] production runs'' (Discovery response, p. 8 (emphasis in original)). Thus, notwithstanding the fact that the act places the burden for safety studies on the applicant, even if FDA did perform safety studies using the sample collected during the inspection, such studies could not demonstrate the safety of the form of the product that Discovery itself says that it uses. Thus, Discovery's third assertion neither suggests the existence of an issue of fact that would justify a hearing nor the existence of evidence to establish the safety of Discovery's product.

In sum, Discovery offered no evidence in its response to challenge FDA's conclusion in the NOOH that NDA 20–242 was not approvable because it failed to contain any safety studies of Deprenyl, preclinical or clinical, or that the studies it submitted as part of its NDA were not acceptable as evidence of Deprenyl's safety because the studies were not conducted with its product. Mere assertions that Discovery's product is safe are insufficient to raise a genuine and substantial issue of fact requiring a hearing. Discovery's failure to present any evidence establishing the safety of its product requires, in and of itself, summary judgment against Discovery and disapproval of NDA 20–242 (§§ 12.24(b)(1) and (b)(2), 314.200(g), and section 505(d)(4) of the act).

D. Evidence of Effectiveness

In addition to evidence of safety, to obtain approval of NDA 20–242, Discovery was required to submit, among other information, full reports of investigations that were made to show whether or not Deprenyl is effective in use (section 505(b)(1) of the act and § 314.50).

In its NDA, Discovery proposed to label Deprenyl as effective for the treatment of Alzheimer's disease and claimed that its product demonstrated a ''quantitative and qualitative improvement in cognitive functions of Alzheimer's patients as a result of the inhibition of MAO–B activity.'' To support the statutory requirement for adequate and well-controlled studies that demonstrate the effectiveness of Deprenyl, Discovery submitted in its NDA reprints from 171 articles published in the medical and scientific literature, specifically identifying in the table of contents 12 of these 171 articles as evidence of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease.

In the NOOH, FDA explained in general why it could not accept any of the 171 published studies submitted in NDA 20–242 as evidence of the effectiveness of Deprenyl. The agency pointed out that even though some of these articles pertained to deprenyl, not one of the studies used Discovery's product or a product with a known bioavailability relationship to Discovery's product.

Regarding the 12 published studies identified in the NDA's table of contents as evidence supporting the effectiveness of Deprenyl, the NOOH explained the reasons why each one was inherently incapable of being regarded as substantial evidence of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease, as follows:

Study No. 1: Mangoni, A. et al., ''Effects of a MAO–B Inhibitor in the Treatment of Alzheimer Disease,'' *European Neurology*, 31:100–107, 1991.

While finding that this study suggested a positive effect of L-deprenyl in patients with Alzheimer's disease, the agency found that the published report lacked many details required by FDA's regulations to enable the agency to assess the study, including data from a bioequivalence study that demonstrates that the rate and the extent of absorption of Deprenyl are essentially identical to the product used in the published study (§§ 320.21 and 314.126(d)); a protocol to determine whether the study design and analysis, including analysis of patients not completing the study, were performed as proposed (§§ 314.50 and 314.126(b)(1)); the measures used to minimize bias in the study such as the details of randomization, blinding, maintenance of patient assignment code, including an explanation for the unequal number of patients treated with the drug versus the number receiving a placebo (§ 314.126(b)(5); and copies of case report forms or data tabulations, and individual patient data on safety and effectiveness measures (§§ 314.50 and 314.126(a)).

Study No. 2: Knoll, J., J. Dallo, and T. T. Yen: ''Striatal Dopamine, Sexual Activity and Lifespan. Longevity of Rats Treated With (-) Deprenyl,'' *Life Sciences*, 45:525–531, 1989. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was a study in rats and not a clinical (human) study.

Study No. 3: Heinonen, E. H. et al., ''Pharmacokinetics and Metabolism of Selegiline,'' *Acta Neurologica Scandinavia*, 126:93–99, 1989. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because the clear objective of the study was to study the pharmacokinetics, not the effectiveness, of selegiline (deprenyl).

Study No. 4: Shoulson, I. et al. (The Parkinson Study Group), ''Effect of Deprenyl on the Progression of Disability in Early Parkinson's Disease,'' *The New England Journal of Medicine*, 321:1364–1370, 1992. This study was not an adequate and a well-controlled clinical study of the effectiveness of

deprenyl citrate in the treatment of Alzheimer's disease because it was a study of Parkinson's, and not Alzheimer's, disease.

Study No. 5: Tariot, P. N. et al., ''Cognitive Effects of L-Deprenyl in Alzheimer's Disease,'' *Psychopharmacology,* 91:489–495, 1987. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because there was no protocol available to provide details of the study; the study did not use a randomized concurrent control or other means of assuring comparability of treatment and control groups; the procedures used to minimize bias, such as blinding, were not described; and the test drug was not identified.

Study No. 6: Tariot, P. N. et al., ''L-Deprenyl in Alzheimer's Disease: Preliminary Evidence for Behavioral Change With Monoamine Oxidase B Inhibition,'' *Archives of General Psychiatry,* 44:427–433, 1987. This was a preliminary report of the data from the Tariot study described under Study No. 5 above. Therefore, it suffers from the same deficiencies cited above.

Study No. 7: Tariot, P. N. et al., ''Tranylcypromine Compared With L-Deprenyl in Alzheimer's Disease,'' *Journal of Clinical Psychopharmacology,* 8:23–27, 1988. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because its primary purpose was to investigate tranylcypromine, a drug of unknown effectiveness in the treatment of Alzheimer's disease.

Study No. 8: Sunderland, T. et al., ''Dose-Dependent Effects of Deprenyl on CSF Monoamine Metabolites in Patients With Alzheimer's Disease,'' *Psychopharmacology,* 91:293–296, 1987. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because the clear objective of the study was to study the pharmacokinetics, not the effectiveness, of deprenyl.

Study No. 9: Konradi, C., P. Riederer, and M. B. H. Youdim, ''Hydrogen Peroxide Enhances the Activity of Monoamine Oxidase Type-B But Not of Type-A: A Pilot Study,'' *Journal of Neural Transmission,* Suppl. 22:61–73, 1986. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because its primary purpose was the study of the effects in certain tissues of hydrogen peroxide, not deprenyl citrate, and it was not a clinical study, i.e., a study in human patients with the disease intended to be treated.

Study No. 10: Maurizi, C. P., ''The Therapeutic Potential for Tryptophan and Melatonin: Possible Roles in Depression, Sleep, Alzheimer's Disease and Abnormal Aging,'' *Medical Hypotheses,* 31:233–242, 1990. This review article was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was not the report of an investigation, and moreover, it did not even mention the drugs deprenyl or selegiline.

Study No. 11: Knoll, J., ''The (-)Deprenyl-Medication: A Strategy To Modulate the Age-Related Decline of the Striatal Dopaminergic System,'' *Journal of the American Geriatric Society,* 40:839–847, 1992. This review article was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was not the report of an investigation.

Study No. 12: Martini, E. et al., ''Brief Information an Early Phase-II Study With Deprenyl in Demented Patients,'' *Pharmacopsychiatry,* 20:256–257, 1987. This 11-patient uncontrolled study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was not the report of an investigation that permitted a valid comparison with a control.

In its response to the NOOH, Discovery did not challenge FDA's statement that none of the 171 articles contained in NDA 20–242 involved studies that used its product or a product with a known bioavailability relationship to its product. Nor did it challenge the reasons cited in the NOOH as to why the 12 published studies that it highlighted in its NDA were not adequate to support evidence of the effectiveness of Discovery's product.

Instead, Discovery submitted abstracts of studies Nos. 1 and 5; quoted from study articles Nos. 1 and 5; and merely asserted that: (1) ''the trial publications submitted by [Discovery], not only should indicate to any normal human being that deprenyl is effective in Alzheimer's Disease * * *.''; (2) ''[a]ll journal trials submitted referenced definite improvement in people afflicted with Alzheimer's Disease treated with deprenyl since 1985''; and (3) ''Not only has the product unequivocally proven to be effective in the treatment of Alzheimer's, but has unequivocally proven to be one of the safest, if not the safest product to take'' (Discovery response, pp. 36 and 39–40).

Discovery's responses fail to raise a genuine and substantial issue of fact requiring a hearing. First, the abstracts of studies Nos. 1 and 5 provided by Discovery in its response included no new information that had not already been submitted in the NDA. Second, Discovery did not explain how or why the quoted statements from the studies already submitted and reviewed by FDA should be found adequate to fulfill the statutory requirements for adequate and well-controlled studies of the effectiveness of its product. Third, Discovery's response consisted of mere allegations that its product was effective. A hearing, therefore, is not required (§§ 12.24(b)(1) and (b)(2) and 314.200(g)).

Discovery also alleged in its response that: (1) FDA did not review all 2,000 pages of the 171 published articles submitted in the NDA, and (2) that FDA reviewed NDA 20–242 based upon an incorrect table of contents instead of an amended table of contents submitted after its NDA was filed over protest.

Regarding the first allegation, FDA advised Discovery in its ''not approvable letter'' dated August 20, 1993, that it had reviewed the published literature provided in its application. (See letter dated August 20, 1993, from Robert Temple to James T. Kimball, p. 3.) Discovery did not submit any evidence to challenge this statement. Therefore, it did not justify a hearing (§§ 12.24(b)(2) and 314.200(g)).

Regarding the second allegation, notwithstanding the fact that FDA was only obligated to review NDA 20–242 as filed over protest, even if FDA were to have reviewed the amended table of contents, it would not have altered FDA's review of the material that was filed. As stated in its letter to Discovery, FDA had reviewed the studies that Discovery submitted in its NDA, and Discovery did not identify any specific evidence or specific studies that FDA failed to review that addressed the deficiencies in NDA 20–242 raised in the NOOH. Discovery's response, therefore, consisted of mere allegations, which do not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(2) and 314.200(g)).

Moreover, Discovery's failure to challenge substantively FDA's assertion that none of the 171 studies related to the effectiveness of *its* product or to a product with a known bioavailability relationship to its product deprives Discovery's allegation of significance as far as justifying a hearing is concerned. If FDA had failed to review any of the

171 studies submitted, such a failure would be significant if Discovery had alleged that FDA's failure had caused it to miss evidence that would justify granting the NDA. Discovery makes no such claim. Thus, Discovery has not presented an issue that warrants a hearing (§§ 12.24(b)(4) and 314.200(g)).

Finally, Discovery alleged that FDA approved a different, more dangerous, and less effective product than Discovery's product for the treatment of Alzheimer's disease when it approved Tacrine Hydrochloride (Cognex® , Parke-Davis) (Discovery response, p. 41). FDA's approval of another drug product is irrelevant to the question of whether NDA 20–242 meets the requirements in section 505(b) of the act and § 314.50. FDA approval of another drug product does not exempt Discovery's NDA from compliance with the new drug provisions of the act. Discovery's allegations, therefore, do not raise a genuine and substantial issue of fact regarding FDA's proposal to refuse to approve NDA 20–242 because it failed to contain information required by section 505(b) of the act and § 314.50. A hearing, therefore, is not required (§§ 12.24(b)(1) and 314.200(g)).

In sum, Discovery failed to raise a genuine and substantial issue of fact regarding FDA's findings in the NOOH that Discovery had failed to comply with the requirements of section 505(b)(1)(A) of the act and § 314.50. Thus, FDA's findings stand unchallenged. Discovery's failure to present any evidence establishing the effectiveness of its product requires, in and of itself, summary judgment against Discovery and disapproval of NDA 20–242 (section 505(d)(5) of the act).

E. Methods, Facilities, and Controls

To gain approval of its NDA, Discovery was required to submit information in NDA 20–242 that the methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, and holding of the drug substance and the drug product were adequate to preserve the identity, strength, quality, purity, stability, and bioavailability of the drug substance and the drug product (§ 314.50(d)(1)(i) and (d)(1)(ii)(*a*)).

In the NOOH, FDA stated that the deficiencies in Discovery's NDA related to the drug substance included a lack of information concerning the methods used in the synthesis, extraction, isolation, and purification of the new drug substance to determine its identity, strength, quality, and purity. With respect to the drug product, the NOOH stated that Discovery's NDA lacked information about the drug product components, composition, and formulation; how the drug product was to be manufactured; the laboratory methods to be used to test the drug product, including validation of the test methods; and the product container system and packaging to be used for the drug product.

Discovery's reply to this issue appears on pp. 42–43 and 50–53 of its response and consists of the following:

1. With respect to the absence of information in NDA 20–242 about the methods, facilities, and controls used for the manufacture of Deprenyl, Discovery stated in its response that, ''The absolute facts are that the FDA inspectors, who spent four days at [Discovery's] facility, found none of the above,'' and that ''[t]he FDA inspection of February, 1993 confirmed the methods and procedures used by [Discovery] in the formulation and bottling of the product exceeded FDA standards'' (Discovery response, pp. 42 and 51).

Discovery's response did not address the deficiency in NDA 20–242 that was cited in the NOOH. In the NOOH, FDA stated that NDA 20–242 failed to contain certain information concerning: The drug substance; the drug product; methods validation; stability data; establishment locations; and an environmental assessment. In its response, Discovery did not challenge that this information was not included in its NDA. Discovery, therefore, failed to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Without this information, it obviously was not possible for FDA to do the type of evaluation that was necessary to assess the safety and effectiveness of a new drug.

2. ''[T]he method used in the manufacture of deprenyl by [Discovery] is a trade secret. It was kept so due to the total mistrust of the FDA * * * '' (Discovery response, p. 50).

Discovery's response is an admission that it did not provide FDA with information about the manufacture of Deprenyl. Such information is required to be in an NDA by the act (section 505(b)(1)(D) of the act). Because Discovery's response does not challenge the absence of such information in NDA 20–242, Discovery's response does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Moreover, Discovery conceded that its application did not comply with the act.

3. ''The evidence submitted to the FDA unequivocally proved that [Discovery's] deprenyl is deprenyl'' (Discovery response, p. 51).

Discovery's response did not challenge FDA's statements in the NOOH that NDA 20–242 lacked the information about the drug substance and the drug product required by § 314.50(d)(1)(i) and (d)(1)(ii)(*a*). Discovery's response, therefore, does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)).

4. ''How a product is manufactured should be of no concern to the FDA, only the purity of the end product[,]'' and ''[t]he methods of manufacture, in essence, mean absolutely nothing, as long as the end product is a pure and chemically correct product'' (Discovery response, pp. 50–51).

FDA is required by statute to review the manufacturing process of a new drug in its review of an NDA (section 505(d)(3) of the act). In addition, Congress has recognized the connection between the purity of a drug and the manner in which it is manufactured by the fact that any drug not manufactured in conformity with current good manufacturing practices is deemed adulterated (section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B))). Discovery's response, therefore, does not raise an issue of fact, §§ 12.24(b)(1) and 314.200(g), but concedes that it has not complied with the act. If Discovery wishes to change the law as to whether how a product is manufactured is of significance, its venue is the Congress. I must enforce the act as written, and given that state of affairs, the record establishes that Discovery's application is deficient.

5. ''[Discovery] is fully prepared to prove that if a product, is a product chemically, then it unequivocally is that product'' (Discovery response, p. 43).

Discovery's response does not challenge FDA's statement in the NOOH that Discovery's NDA lacked the information required by the act. The fact that Discovery is fully prepared to prove its statement is insufficient to raise a genuine and substantial issue of fact. The opportunity to offer evidence in support of its assertion was in response to the NOOH. Discovery's response, therefore, does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)).

6. Regarding the absence of an environmental statement in its NDA Discovery stated that:

> [T]he EPA stated that the manufacturing methods of Liquid Deprenyl Citrate being used by [Discovery] did not warrant an inspection, and that the EPA would not inspect [Discovery] as [Discovery] was in total compliance. The FDA's duplication of the EPA's jurisdiction is ludicrous and totally redundant.

Discovery response, p. 52

FDA regulations require an NDA to contain an environmental assessment under 21 CFR 25.31, or a claim for exclusion under 21 CFR 25.24 (§ 314.50(d)(1)(iii) and 21 CFR 25.22(a)(14)).

In the NOOH, FDA stated that Discovery had not claimed exclusion, and that NDA 20–242 was facially unresponsive to FDA's regulatory requirement in that it was lacking identification of the chemical substances that were the subject of the assessment. Discovery's response, therefore, that FDA's requirements are duplicative of the Environmental Protection Agency's (EPA's) requirements, raises an issue of law rather than an issue of fact, which does not require a hearing (§§ 12.24(b)(1) and 314.200(g)).

Furthermore, Discovery's response amounts to a request that FDA ignore the requirements of its existing regulations. Discovery's response, therefore, is inconsistent with the provisions of FDA's regulatory requirements and, therefore, is wrong as a matter of law.

FDA's environmental assessment regulations were issued to implement the requirements of EPA, under which each agency must assess the effects of its actions (40 CFR 1506.5(b) and 21 CFR part 25). Nothing in what Discovery reports EPA as saying is in derogation of that fact. Therefore, there is no merit to Discovery's claim, and I find that Discovery's application is deficient in this regard. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(5) and 314.200(g)).

7. FDA failed to post the results of its analysis of a sample of 50 bottles of Discovery's product collected during its February 1993, inspection of Discovery (Discovery response, p. 42).

With respect to the sample of Discovery's product collected by FDA investigators, Discovery cannot seriously suggest that FDA would use this sample to establish, itself, the safety and effectiveness of Discovery's product. First, as stated above, in its response to the NOOH, Discovery admitted that it ''held back **DELIBERATELY**, due to **MISTRUST**, the **PUREST LIQUID DEPRENYL** product [from the FDA investigators] which would have been put into [its] production runs'' (Discovery response, p. 8 (emphasis in original)). Consequently, even if FDA were to test the sample provided by Discovery for safety or effectiveness, Discovery's admission that it did not provide FDA with the most potent formulation of its drug product would render worthless any such test results and render the issue not determinative of the approvability of NDA 20–242. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

Second, as a matter of law, the statute places these burdens on the applicant. Thus, I find this allegation to be utterly without merit or probative value (section 505(b) of the act).

In sum, Discovery's response either does not challenge FDA's conclusion that NDA 20–242 lacked the information required by section 505(b)(1) of the act and § 314.50(d)(1) or requests an action inconsistent with the requirements of the act. Discovery thus fails to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and (b)(5) and 314.200(g)).

Discovery's failure to include information regarding the methods, facilities, and controls to be used for the manufacture and control of Deprenyl in NDA 20–242 requires, in and of itself, summary judgment against Discovery and refusal to approve NDA 20–242 (section 505(d)(3) of the act).

F. Drug Product Labeling

In the NOOH, FDA stated that, among other deficiencies related to the proposed labeling of Deprenyl, NDA 20–242 did not contain copies of the labeling to be used for the packaged drug product, as required by § 314.50(e)(2)(ii), and did not contain copies of the labeling to be used for the shipment and storage of the bulk drug substance, as required by §§ 314.125(b)(8) and 201.122.

In its response, Discovery did not challenge the accuracy of FDA's statements in the NOOH. Instead, Discovery contended that FDA had not addressed any specific problem regarding the labeling of Deprenyl in the NOOH, except to state that Discovery had proposed labeling of Deprenyl for over-the-counter marketing, as opposed to distribution by prescription.

Discovery's contention that FDA did not address in the NOOH any specific labeling deficiencies associated with NDA 20–242 is belied by the NOOH itself. In the NOOH (59 FR 26239 at 26243), FDA listed three labeling deficiencies associated with NDA 20–242. I find, therefore, that Discovery's contention is an error of fact. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

Discovery's contention that FDA raised the marketing status of Deprenyl in the NOOH is also belied by the NOOH itself. The marketing status of Deprenyl was not raised in the NOOH. The record does, however, reflect that FDA raised the issue on p. 12 of its ''not approvable'' letter to Discovery, dated August 20, 1993, under the heading ''Proposed Marketing Status.'' I find, therefore, that Discovery's contention is an error of fact. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

Discovery also alleged in its response that FDA rewrote the labeling for Somerset when Somerset's labeling and packaging for Eldepryl® were found to be deficient—Discovery response, p. 53 and exhibit 10 (including a copy of a letter from FDA to Somerset to which FDA attached a revised package insert for Eldepryl®).

Because Discovery's response does not challenge FDA's finding in the NOOH, it fails to raise a genuine and substantial issue of fact requiring a hearing. Furthermore, evidence that FDA revised labeling submitted in an NDA by another applicant does not address the absence of such required labeling in NDA 20–242 and, therefore, is not determinative with respect to the approvability of NDA 20–242. As such, Discovery's allegation does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and (b)(4) and 314.200(g)).

Discovery's failure to include information required by § 201.122, in and of itself, is a sufficient basis upon which to refuse to approve NDA 20–242 (§ 314.125(b)(8)).

G. Bioavailability Data

In order for Discovery to obtain approval of NDA 20–242, the application had to contain either: (1) Evidence demonstrating the in vivo bioavailability of the drug product, or (2) information that would permit the agency to waive demonstration of in vivo bioavailability (§§ 314.50(d)(3) and 320.21(a)). In its NDA, Discovery contended that it was entitled to a waiver of the demonstration of in vivo bioavailability because the drug and its metabolites are not measurable in plasma ''at their designated levels.''

In the NOOH, FDA stated that Discovery's conclusion was incorrect, based upon two articles in the scientific literature that provided information on the metabolites of selegiline (deprenyl). (See, Salonen, J. S., ''Determination of the Amine Metabolites of Selegiline in Biological Fluids by Capillary Gas Chromatography,'' *Journal of Chromatography*, 527:163–168, 1990; Heinonen, E. H., and R. Lammintausta, ''A Review of the Pharmacology of

Selegiline,'' *Acta Neurologica Scandinavia,* Suppl., 136:44–59, 1990.)

In response to the NOOH, Discovery merely asserted that,

> In addition, the FDA reverts to bio-equivalency, and [Discovery] will again unequivocally state that Liquid Deprenyl Citrate is selegiline, period. Selegiline or selegiline hydrochloride was used in all references. [Discovery] is prepared to prove that if a product, is a product chemically, then it unequivocally is that product. Discovery response, p. 43

Discovery's response, which referred to ''bio-equivalency,'' did not challenge FDA's assertion that NDA 20–242 lacked bioavailability data, nor did it challenge the basis for FDA's conclusion that bioavailability data could not be waived because published scientific literature demonstrated that the metabolites of selegiline are measurable.

As it did in response to other issues raised by FDA in the NOOH, Discovery sought to fulfill its obligation to provide the information required by the act and FDA by a mere assertion that its product is what it purports to be. FDA regulations, however, require Discovery to submit evidence of the bioavailability of its product or to obtain a waiver of the requirement to submit such information. Mere assertions of bioavailability are not sufficient to raise an issue of fact or to fulfill the requirements for FDA approval of NDA 20–242.

Because Discovery failed to challenge FDA's conclusion in the NOOH that its NDA failed to contain required bioavailability data, it failed to raise an issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Discovery's mere assertion that its product is bioequivalent to a drug substance is also insufficient to raise an issue of fact requiring a hearing regarding the absence of bioavailability data in NDA 20–242 (§§ 12.24(b)(2) and 314.200(g)).

Discovery's failure to include bioavailability data in NDA 20–242 is a sufficient basis, in and of itself, to refuse to approve NDA 20–242 (§ 314.125(b)(9)).

H. CGMP Requirements

In addition to the requirement that an NDA contain a description of the manufacturing and packaging procedures and in-process controls designed to assure the identity, strength, quality, purity, and bioavailability of the drug substance and drug product (§ 314.50(d)(1)(i) and (d)(1)(ii)(*a*)), FDA requires that an applicant be in compliance with CGMP as set forth at parts 210 and 211 (§ 314.125(b)(13)).

Between February 25 and March 2, 1993, FDA investigators made an inspection of Discovery's establishment in Wesley Chapel, FL, and the investigators observed numerous violations of the CGMP regulations. The following were among numerous CGMP violations observed during the February through March, 1993, inspection.

1. Discovery lacked adequate standard operating procedures with regard to: (a) Responsibilities of the quality control unit (§ 211.22); (b) cleaning and maintenance of equipment used in manufacturing products (§ 211.67); (c) receipt and handling of components (§ 211.82); (d) production and process control, e.g., weighing components (§ 211.101); and (e) in-process controls or testing (§ 211.110).

2. Discovery lacked a written stability program. Additionally, Discovery could locate no records documenting stability testing of selegiline citrate (§ 211.166).

3. Discovery could not produce batch production records showing manufacture of the one batch produced, which was intended by the firm for use in clinical trials (§ 211.188).

In its response to the NOOH, Discovery asserted that: (1) The faults found in its NDA should have been addressed in the first 90 days during the review of Discovery's application; (2) the CGMP violations cited in the NOOH did not exist at the time of the FDA inspection; and (3) the FDA investigators did not inform Discovery of the CGMP violations at the time of their inspection (Discovery response, p. 52).

With respect to Discovery's first assertion, Discovery's response did not address the issue raised by FDA in the NOOH. FDA's statements regarding this issue in the NOOH did not pertain to the contents of Discovery's NDA. Rather, they concerned the findings of an FDA inspection conducted in February and March 1993, that showed that Discovery was in violation of CGMP regulations at the time of the inspection. Thus, the deficiencies could not have been discovered by FDA during its review of Discovery's NDA as asserted by Discovery. Discovery's response does not challenge the issue raised by FDA in the NOOH. Thus, I find that Discovery's response is not probative of the issue raised by FDA and, therefore, does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)).

In its response to this issue, Discovery failed to distinguish between § 314.50(d)(1)(i) and (d)(1)(ii)(*a*), which require an NDA to contain certain information about the manufacture and control of a new drug substance and drug product,[16] and § 314.125(b)(13), which permits FDA to refuse to approve an NDA if the applicant's methods, facilities, and controls do not conform to CGMP requirements set forth at parts 210 and 211.

Regarding Discovery's second and third assertions, that the CGMP violations cited in the NOOH did not exist at the time of the FDA inspection, and that the FDA investigators did not mention the deficiencies to Discovery at the time of the inspection, I find that the record clearly establishes that Discovery's assertions are incorrect.

Contrary to Discovery's assertion, it is facially evident from the record that FDA investigators issued a Form FDA 483 (list of observations) to Mr. James T. Kimball, President at the conclusion of the inspection on March 2, 1993, which listed all of the above CGMP violations. Indeed, on p. 9 of its response, Discovery admitted that it ''received the FDA's noted deficiencies.''

Moreover, Discovery admitted on p. 53 of its response that FDA investigators ''found that most everything [Discovery] was doing was in order, except for a couple of written GMP's [sic] that needed to be amended.'' On p. 9 of its response, Discovery further admitted that ''[i]n fact, some of [Discovery's] procedures were above FDA standards, but not all of these procedures were written into [Discovery's] GMP, which is a requirement.''

Finally, Discovery did not submit any evidence that it had the written procedures in place during the March 1993 FDA inspection. Discovery's mere assertions that the CGMP violations did not exist, and that none had been communicated to it during the FDA inspection, in the face of its admissions that CGMP deficiencies did exist, and that it had received notice of them, fail to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and (b)(2) and 314.200(g)).

Discovery's failure to comply with CGMP is, in and of itself, a sufficient basis upon which to refuse to approve NDA 20–242 (§ 314.125(b)(13)).

III. Findings and Conclusions

Based upon the above, I find that Discovery has failed to raise a genuine and substantial issue of fact related to the approvability of NDA 20–242 in its response to the NOOH. A hearing, therefore, is not required.

Further, I find that NDA 20–242: (1) Fails to contain information about Deprenyl to determine whether the product is safe for use under the

[16] FDA may refuse to approve an NDA that lacks such information under § 314.125(b)(1).

conditions suggested in its proposed labeling; (2) lacks evidence consisting of adequate and well-controlled investigations that Deprenyl will have the effect it is represented to have in the NDA; (3) fails to contain bioavailability data required by § 320.21; (4) fails to contain information that establishes that the methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, or holding of the drug substance and the drug product are adequate to preserve their identity, strength, quality, purity, stability, and bioavailability; and (5) does not contain the proposed labeling for the bulk drug substance and the packaged drug product. I also find that Discovery was not in compliance with FDA's CGMP regulations published at parts 210 and 211.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505(d)) and under the authority delegated to me in 21 CFR 5.10, Discovery's request for a hearing is denied and approval of NDA 20–242 is denied.

Dated: February 28, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–8517 Filed 4-2-97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–R–204]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Data Collection for the Second Generation Social Health Maintenance Organization Demonstration; *Form No.:* HCFA–R–204; *Use:* The data collected under this effort will be used to support the operational and evaluation needs of the Congressionally-Mandated Second Generation of the Social Health Maintenance Organization Demonstration. *Frequency:* On occasion, Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 157,056; *Total Annual Responses:* 157,056; *Total Annual Hours:* 133,652.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 26, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–8526 Filed 4–2–97; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–R–203]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Data Collection Forms for a Project to Develop a Case-Mix Adjustment System for a National Home Health Prospective Payment Program; *Form No.:* HCFA–R–203; *Use:* The data collection from this form will support analysis of home health utilization patterns and develop predictive models of home health resource use. That will serve as the basis for a system to adjust payments for Medicare home health services for differences/changes in patient service needs; *Frequency:* On Occasion; *Affected Public:* Not-for-profit, Business or other for-profit; *Number of Respondents:* 893,629; *Total Annual Responses:* 893,629; *Total Annual Hours:* 52,156.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 11, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–8525 Filed 4–2–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the

Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Performance Outcome Demonstration Study—New

Through Titles VII and VIII programs, the Bureau of Health Professions provides both policy leadership and support for health professions workforce enhancement and educational infrastructure development. An outcome-based performance measurement system is central to the ability of the Bureau to measure whether program support is meeting its national health workforce objectives, and to signal where program course correction is necessary.

In addition, the Government Performance and Results Act (GPRA) requires each agency to develop comprehensive strategic plans, to submit annual performance plans that set specific performance goals for each program activity, and to report annually on the actual performance achieved compared to the performance goals.

The Bureau of Health Professions has developed a comprehensive program which consists of cross-cutting indicators designed to capture the common activities across programs, cluster level indicators designed to capture common activities for programs with a similar focus, and program specific indicators designed to capture activities which are specific to selected individual programs. At the core of the Bureau's performance measurement system are four cross-cutting goals with respect to workforce quality, supply, diversity and distribution. External customer input was utilized to validate the Bureau's proposed outcomes and indicators, and to assist with a preliminary assessment of the suitability of data sources. A pilot study of nine program sites within the Washington metropolitan area was completed to determine the availability of the data along with the clarity of the definitions and instructions. The results of the pilot indicate that these data can be collected from grantees.

A wider demonstration will be done to assess the ability of current grantees, in the second year of the project period or later, to supply the data without the benefit of a site visit and to further refine the definitions and instructions. Since data are collected by discipline, the estimate of burden hours per response is different for projects that involve a single discipline and projects that involve multiple disciplines.

It is expected that the data collection tool for the demonstration may be distributed through the Internet, as has been done for the grant application materials for these programs, and returned to the Bureau in the mail. However, when this data collection system is fully implemented, it is expected that the distribution and submission will be fully automated and that the data collection tool will be an interactive program which prompts respondents to report only those data relevant to their programs. Burden estimates are as follows:

Type of respondent	No. of respondents	Responses per respondent	Burden hours per response	Total burden hours
Projects involving a single discipline	400	1	8	3,200
Projects involving multiple disciplines	16	1	40	640
Total	416	1	9.2	3,840

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 27, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–8449 Filed 4–2–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Record of Decision and Statement of Findings on the Environmental Impact Statement on Reintroduction of the Mexican Wolf to its Historic Range in the Southwestern United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of record of decision.

SUPPLEMENTARY INFORMATION: Pursuant to regulations implementing the National Environmental Policy Act (40 CFR 1505.2), the Department of the Interior, Fish and Wildlife Service announces the availability of the Record of Decision and Statement of Findings on the Environmental Impact Statement on Reintroduction of the Mexican Wolf to its Historic Range in the Southwestern United States.

The Record of Decision authorizes implementation of the Preferred Alternative (Alternative A) as set forth in the Final Environmental Impact Statement. As soon as practicable, the U.S. Fish and Wildlife Service will reintroduce Mexican gray wolves, classified as a nonessential experimental population, in eastern Arizona for the purpose of establishing a population of at least 100 wolves distributed throughout the Blue Range Wolf Recovery Area, which includes portions of western New Mexico. If feasible and necessary to achieve the population objective of 100 wolves, a subsequent reintroduction of Mexican gray wolves into the White Sands Wolf Recovery Area in southern New Mexico will be conducted.

ADDRESSES: The Record of Decision is available from—Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Parsons, Mexican Wolf Recovery Program, Albuquerque, New Mexico (see **ADDRESSES** section) (telephone 505/248–6920; facsimile 505/248–6922; or by electronic mail at ''david__parsons@mail.fws.gov.'').

Dated: March 28, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–8542 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Notice of Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that The Western Mohegan Tribe and Nation of New York, Route 22 PO Box 32, Granville, New York 12832 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 27, 1997, and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) (§ 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: March 24, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–8478 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[WY–930–97–1220–00]

Notice of Emergency Closure Along the Oregon/Mormon Pioneer/California/Pony Express National Historic Trails; Bureau of Land Management Administered Lands, Wyoming

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that, temporary road and trail closures may occur during inclement weather conditions or due to excessive erosion, on portions of public lands within Wyoming along the Oregon/Mormon Pioneer/California and Pony Express National Historic Trails during 1997. The Mormon Trail Sesquicentennial event will occur in 1997. Estimates of visitor use along the historic trails on public lands is estimated to be 100,000 to 1,000,000 people. In order to protect trail resources and to prevent unacceptable levels of resource degradation, emergency closures for vehicles, foot, and horse traffic may be needed.

EFFECTIVE DATE: The closure may become effective based on the resource conditions during the 1997 calendar year. Local authorized officers will notify the public through media sources and post closure notices along appropriate trail segments.

FOR FURTHER INFORMATION CONTACT: Jude Carino, Historic Trails Coordinator, Casper District Office, 1701 East E. Street, Casper, Wyoming 82601, (307) 261–7600.

SUPPLEMENTARY INFORMATION: The National Historic Trails are fragile, nonrenewable resources. Improper use due to wet conditions could cause irreparable harm to the resource. Due to the Mormon Church's planned celebration of the 150th anniversary of the opening of the Mormon-Pioneer National Historic Trail, protective management actions need to be in place. Projections are for record visitation. Due to the fragile nature of the trail, combined with projected visitation and historic weather patterns, the BLM may find it necessary to temporarily close portions of the trail and roads on public lands in the adjoining vicinity.

The emergency closure would apply to segments of BLM-administered public lands along the National Historic Trail within Wyoming. The closure prohibits the use of all mechanized motorized, non-motorized vehicles, foot and horse traffic along particular posted segments of the trail, with the exception of:

(1) Any Federal, State, or local officers engaged in fire, military, emergency, or law enforcement activities.

(2) BLM employees engaged in official duties.

(3) Private land owners accessing private land.

(4) Authorized public land users regulated through land use permits (i.e., grazing permittees). Authority for closure orders is provided under 43 CFR subpart 8364.1.

Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: March 25, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–8512 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–22–M

[CO–935–07–1430–01: (COC–60190)]

Notice of Proposed Issuance of Disclaimer of Interest, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed issuance of recordable disclaimers of interest, for areas in Garfield County, Colorado.

SUMMARY: Notice is hereby given pursuant to Section 315 of the Act of October 21, 1976 (43 U.S.C. 1745), that Edward Koch, Ed Juhan, James Lemon, and Barrett Resources Corporation, through the law firm of Delaney and Balcomb, Drawer 790, Glenwood Springs, Colorado 81601, have filed an application, Colorado 60190, for a recordable disclaimer of interest for ''islands'' within the Colorado River. Additional ''islands'' included in the following descriptions, may be the subject of future applications by other parties.

Sixth Principal Meridian, Colorado

T. 6 S., R. 95 W.,
Tracts 37 and 39;
T. 7 S., R. 95 W.,
Tract 37;
T. 8 S., R. 96 W.,
Tracts 38, 39, 40 and 41.

The Bureau of Land Management has reviewed the official records in

conjunction with the decision of the Court of Appeals for the Tenth Circuit in *Koch* v. *United States* 47 F.3d 1015 10th Cir. 1995, decided adversely to the United States, and has determined that the United States has no claim to or interest in the above-described areas and that issuing recordable disclaimers of interest will help to remove a cloud of title to the areas. Accordingly, the recordable disclaimers of interest will be issued no sooner than ninety days after the date of this publication. Information concerning the proposed disclaimers may be obtained from the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

Dated: March 26, 1997.

Herbert K. Olson,

Acting Realty Officer, Colorado State Office.

[FR Doc. 97–8514 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–JB–M

[ID–933–07–1330–01; IDI–28113]

Notice of Revocation of the Mountain Home Known Geothermal Resource Area: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Mountain Home Known Geothermal Resource Area (KGRA) was defined effective February 1, 1974. The KGRA was established mostly on the basis of filing of overlapping non-competitive lease applications. Lands offered for competitive lease in 1975 received no bids. A competitive lease issued in 1977 expired in 1983 without exploration or development of any geothermal resources. The last competitive lease sale held in 1983 received no bids. Only about one-half of the land within the existing KGRA is underlain by Federal geothermal rights and none of the hot water wells within the KGRA are on Federal lands. There are no hot springs within the KGRA. The estimated geothermal reservoir temperatures of 70 °C to 135 °C have not been demonstrated. Revised subsurface temperatures are estimated at 60 °C to 80 °C. For the above reason and the absence of any competitive interest, the area does not meet the current KGRA criteria and the lands are recommended to be declassified and made available for non-competitive leasing.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Oberlindacher, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709, 208–373–3884.

SUPPLEMENTARY INFORMATION: The Mountain Home KGRA contains the following lands:

Boise Meridian

T. 3 S., R. 8 E.
Secs. 34 and 35.
T. 4 S., R. 8 E.
Secs. 1, 2, and 3.
T. 4 S., R. 9 E.
Secs. 6 through 9, 17 through 21, and 33.

The area described aggregate 9,520.17 acres in Elmore County.

Detailed information regarding this action including a description of lands included in the Mountain Home KGRA, are on file at the Idaho State Office of the BLM. Pursuant to authority contained in the Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, and Secretarial Orders No. 3071 and No. 3087, the Mountain Home Known Geothermal Resource Area, serial number IDI–28113, is revoked effective March 4, 1997.

Dated: March 26, 1997.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 97–8518 Filed 4–2–97; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on January 27, 1997, in 62 FR 3915, at which time a 60 calendar day comment period was announced. This comment period ended March 28, 1997. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503, 202/395–5871.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Extension of a currently approved collection.
Title: Self Monitoring Questionnaire.
Form Number: OPIC–162.
Frequency of Use: Annually.
Type of Respondents: Business or other individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies assisted by OPIC.
Reporting Hours: 3 hours per form.
Number of Responses: 200 annually.
Federal Cost: $6,000 annually.
Authority for Information Collection: Section 231(k)2, of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: March 28, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–8472 Filed 4–2–97; 8:45 am]

BILLING CODE 3210–01–M

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on January 27, 1997, in 62 FR 3915, at which time a 60 calendar day comment period was announced. This comment period ended March 28, 1997. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–5871.

Summary of Form Under Review

Type of Request: New collection.

Title: Self Monitoring Questionnaire for Investment Fund Projects.

Form Number: OPIC 217.

Frequency of Use: Annually.

Type of Respondents: Business or other individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies assisted by OPIC.

Reporting Hours: 3 hours per form.

Number of Responses: 130 annually.

Federal Cost: $3,900 annually.

Authority for Information Collection: Section 231(k)2, of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: March 28, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–8473 Filed 4–2–97; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–383]

Certain Hardware Logic Emulation Systems and Components Thereof

Notice is hereby given that a prehearing conference on the permanent phase of this investigation will commence at 9:00 a.m. on Monday, April 7, 1997, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: March 31, 1997.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 97–8538 Filed 4–2–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To The Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Ace Galvanizing, Inc., et al.*, Civil Action No. 97–152C, was lodged on January 30, 1997, with the United States District Court for the Western District of Washington. The Consent Decree requires each defendant to compensate the trustees for natural resource damages at the Tulalip Landfill Superfund Site on Ebey Island in Puget Sound, resulting from the release of hazardous substances at the Site. The Trustees consist of the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior. Under the Consent Decree, 184 *de minimis* waste contributors, including 6 federal agencies and 2 state agencies, will pay a total of $725,048.00 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ace Galvanizing, Inc., et al.*, DOJ Ref. #90–11–3–1412a.

The proposed consent decree may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98104, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 97–8528 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree in United States v. Amerada Hess Corp., et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a Consent Decree in *United States* v. *Amerada Hess Corp., et al.*, Case No. 97–522 (W.D. La.), was lodged on March 14, 1997 with the United States District Court for the Western District of Louisiana. The proposed Consent Decree resolves certain claims of the United States on behalf of U.S. EPA against 28 settling parties under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* relating to the PAB Oil Site near Abbeville, in

Vermilion Parish, Louisiana. Under the Decree, potentially responsible parties will, *inter alia*, pay the United States $637,500 towards past response costs, pay oversight costs up to $910,000, and agree not to seek any reimbursement from the United States for implementing remedial action pursuant to an administrative order.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Amerada Hess Corp., et al.*, D.J. Ref. No. 90–11–3–1405. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Louisiana, 300 Fannin St., Suite 3201, Shreveport, Louisiana 71101–3068; the Region 6 Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $30.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–8529 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States, et al.* versus *Montrose Chemical Corporation of California, et al*, No. CV 90–3122–AAH (C.D. Cal), was lodged on March 25, 1997, with the United States District Court for the Central District of California. The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended, brought against defendant County Sanitation Districts of Los Angeles County and 150 third-party defendants for natural resource damages associated with contamination of sediments on the Palos Verdes shelf in the vicinity of Los Angeles, California, and for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Montrose Chemical National Priorities List Site in Torrance, CA, and at the aforementioned Palos Verdes shelf.

The proposed consent decree provides that the aforementioned entities will collectively pay $45.7 million to resolve their liability to the United States for natural resource damages and response costs as described above. The proposed consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.* versus *Montrose Chemical Corporation of California, et al.*, No. CV 90–3122–AAH (C.D. Cal), DOJ Ref. #90–11–3–159 and DOJ Ref. #90–11–3–511.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $67.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–8530 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Extension of Period for Public Comment on Consent Decree Lodged in United States v. Puerto Rico Electric Power Authority, No. 93–2527 (D.P.R.)

Notice is hereby given that the U.S. Department of Justice will continue to receive, until May 7, 1997, comments relating to the proposed consent decree in *United States* v. *Puerto Rico Electric Power Authority*, No. 93–2527. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Puerto Rico Electric Power Authority*, DOJ Ref. Number 90–5–2–1–1750 (PREPA). The notice of lodging of this proposed consent decree was published at 62 FR 5249 (Feb. 4, 1997).

The proposed consent decree may be examined at the Office of the United States Attorney, Degeteau Federal Building, 150 Chardon Avenue, Room 452, Hato Rey, Puerto Rico 00918; the U.S. Environmental Protection Agency, Region II Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de Leon Avenue, Suite 417, Santurce, Puerto Rico 00907; the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and the Consent Decree Library, 1120 G Street, Northwest, Fourth Floor, Washington, District of Columbia 20005, (202) 624–0892. Also, a summary of the consent decree may be examined at the locations previously listed. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the consent decree, please refer to the case identified above and enclose a check, payable to the Consent Decree Library, in the amount of $35.75 for the consent decree only (reproduction costs at twenty-five cents ($.25) per page) or $67.50 for both the consent decree and all attachments and appendices to the consent decree (reproduction costs at twenty-five cents ($.25) per page). A copy of the consent decree summary may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the consent decree summary, please refer to the case

identified above and enclose a check, payable to the Consent Decree Library, in the amount of $3.25 for the consent decree summary (reproduction costs at twenty-five cents ($.25) per page).

The consent decree, which was lodged on January 10, 1997, with the United States District Court for the District of Puerto Rico, resolves the United States' claims against the Puerto Rico Electric Authority (''PREPA'') that are identified in a complaint filed on October 27, 1993. In that complaint, the United States cited PREPA for violations of multiple federal and Commonwealth environmental statutes and regulations, including: (1) the air quality and emission limitations requirements of the Clean Air Act, 42 U.S.C. §§ 7401–7431; (2) the effluent limitations and National Pollutant Discharge Elimination System requirements of Sections 301 and 402 of the Federal Water Pollution Control Act (the ''Clean Water Act''), 33 U.S.C. §§ 1311, 1342; (3) the oil pollution prevention requirements promulgated at 40 C.F.R. Part 110 pursuant to Section 311 of the Clean Water Act; (4) the inventory reporting requirements for hazardous chemicals pursuant to Section 312 of the Emergency Planning and Community-Right-to-Know Act (''EPCRA''), 42 U.S.C. § 11022; (5) the hazardous substance release reporting requirements promulgated at 40 C.F.R. Part 302 pursuant to Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9603; (6) the hazardous substance release reporting requirements of Section 304 of EPCRA; and (7) the underground storage tank requirements promulgated at 40 C.F.R. Part 280 pursuant to Section 9003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991b. The United States sought civil penalties and injunctive relief for the violations alleged in the complaint.

In the proposed consent decree, PREPA agrees to pay a civil penalty of $1.5 million; to implement environmental projects costing $3.5 million; to spend $1 million to hire an Environmental Review Contractor to oversee and monitor PREPA's implementation and compliance with the proposed consent decree; and to undertake extensive injunctive relief designed to assure PREPA's compliance with environmental laws and regulations.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–8532 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant To The Clean Water Act

In accordance with Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* versus *Ronald J. Silveira, Inc. & Silveira Cranberry Corp.*, Civil No. 97–10626–RCL (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on March 20, 1997. The proposed decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1344, resulting from unlawful excavation activities and the discharge of fill materials into approximately 90,000 square feet of wetlands located in Berkley, Massachusetts. The wetlands are located adjacent to an unnamed brook, which is a tributary of the Taunton River, located between Jerome Street and Burt Street in Berkley.

The proposed consent decree would provide for restoration and mitigation of approximately 91,800 square feet of wetlands at and near the violation site in accordance with restoration/mitigation plans approved by the United States Army Corps of Engineers and payment of a $25,000 civil penalty.

The U.S. Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Julie S. Schrager, Assistant United States Attorney, District of Massachusetts, 1003 J.W. McCormack Post Office and Courthouse, Boston, MA 02109, and should refer to *United States* versus *Ronald J. Silveira, Inc. & Silveira Cranberry Corp.*, Civil No. 97–10626–RCL (D. Mass.).

The proposed consent decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 1003 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 97–8531 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States of America versus American Radio Systems Corporation and EZ Communications, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *American Radio Systems and EZ Communications, Inc.* Civ. Action No. 97 CV 405. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).

Plaintiff filed a civil antitrust Compliant on February 27, 1997, alleging that the proposed acquisition of EZ Communications (''EZ'') by American Radio Systems Corporation (''ARS'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that ARS and EZ own and operate numerous radio stations throughout the United States, and that after the transaction ARS would own eight radio stations in the Sacramento, California area, including six of the 12 stations authorized and operating as Class B broadcast facilities in that area. This acquisition would give ARS half of the most competitively significant radio signals, and a significant share of the radio advertising market, including a large percentage of advertising directed to certain target audiences in Sacramento. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in Sacramento, California and the surrounding area.

The prayer for relief seeks: (a) Adjudication that ARS's proposed acquisition of EZ would violate Section 7 of the Clayton Act,; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits ARS to complete its acquisition of EZ, yet preserves competition in the market for which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders defendants to divest KSSJ–FM. Unless the United States grants a time extension, defendants must divest this radio station either within six months after the filing of the Complaint, or within five (5) business days after notice of entry of the Final Judgment,

whichever is later. If defendants do not divest KSSJ–FM within the divestiture period, the Court shall, upon plaintiff's application, appoint a trustee to sell the assets. The proposed Final Judgment also requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, KSSJ–FM will be operated independently as a viable, ongoing business, and kept separate and apart from ARS's and EZ's other Sacramento radio stations. Additionally, the proposed Final Judgment provides that if KSSJ–FM's Class B license has not been issued by the FCC on or before December 31, 1997, the United States has the right to designate one additional ARS or EZ Class B radio station for divestiture. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Sacramento.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: (202) 307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 3rd Street and Constitution Avenue, NW., Washington, DC.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations Antitrust Division.

United States District Court for The District of Columbia

United States of America, Plaintiff, v. *American Radio Systems Corporation and EZ Communications, Inc.,* Defendants. Civil Action No. 1:97CV00405, Filed 2/27/97, Judge Oberdorfer.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) Defendants shall not consummate the transaction sought to be enjoined by the complaint herein before the Court has signed this Stipulation and Order.

(5) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestiture required by Section IV of the Final Judgment, notwithstanding the good faith efforts of defendants and any prospective Acquirer, as defined in the Final Judgment. In this circumstance, plaintiff will, in the exercise of its sole discretion, acting in good faith, give special consideration to forbearing from apply for the appointment of a trustee pursuant to section V of the Final Judgment, or from pursuing legal remedies available to it as a result of such delay, provided that: (a) defendants have entered into a definitive agreement to divest the KSSJ–FM Assets, or, if necessary, the Optional ARS Station Assets, and such agreement and the Acquirer have been approved by plaintiff; (b) all papers necessary to secure any governmental approvals and/or rulings to effectuate such divestiture (including but not limited to FCC, SEC and IRS approvals or rulings) have been field with the appropriate agency; (c) receipt of such approvals are the only closing conditions that have not been satisfied or waived; and (d) defendants have demonstrated that neither they nor the prospective Acquirer are responsible for any such delay.

(6) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(7) In the event (a) plaintiff withdraws its consent, as provide in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(8) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will alter raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: February 26, 1997.

For Plaintiff United States of America:

Dando B. Cellim,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20005, (202) 307–0829.

For Defendant American Radio Systems Corporation'

James R. Loftis, III,

Joseph J. Simons,

Collier Shannon Rill & Scott, PLLC,

3050 K Street, N.W., Suite 400, Washington, DC 20007, (202) 342–8480.

For Defendant EZ Communications, Inc.

Ray V. Hartwell, III,

Andrew J. Strenio, Jr.,

Hunton & Williams,

1900 K Street, NW, Washington, DC 20006–1109, (202) 955–1639.

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint herein on February 27, 1997, and defendants American Radio Systems Corporation (''ARS'') and EZ Communications, Inc. (''EZ''), by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein.

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants ARS and EZ, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *ARS* means defendant American Radio Systems Corporation, a Delaware corporation with its headquarters in Boston, Massachusetts, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of ARS.

B. *EZ* means defendant EZ Communications, Inc., a Virginia corporation with its headquarters in Fairfax, Virginia, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of EZ.

C. *KSSJ–FM Assets* means all of the assets, tangible or intangible, used in the operation of KSSJ 101.9 FM radio station in the Sacramento Area, including but not limited to: all real property (owned or leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials supplies and other tangible property used in the operation of that station; all licenses, permits, authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other government agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station, and all logs and other records maintained by defendants or that station in connection with its business.

D. *Sacramento Area* means the Sacramento, California Metro Survey Area as identified by The Arbitron Radio Market Report for Sacramento (Fall 1996), which is made up of the following counties: El Dorado, Placer, Sacramento and Yolo.

E. *Acquirer* means the entity to whom defendants divest the KSSJ–FM Assets or the Optional ARS Station Assets under this Final Judgment.

F. *ARS Radio Station* means any radio station owned by ARS or EZ and licensed to a community in the Sacramento Area, other than KSSJ–FM.

G. *Non-ARS Radio Station* means any radio station licensed to a community in the Sacramento Area that is not an ARS Radio Station.

H. *Optional ARS Station Assets* means the full class B FM radio station assets designated by plaintiff pursuant to Section IV (B) of this Final Judgment, and include all the assets, tangible or intangible, used in the operation of any one radio station with a full class B license broadcast facility owned by ARS or EZ, so chosen by the plaintiff, and licensed to a community in the Sacramento Area, other than KSSJ–FM, including but not limited to all real property (owned or leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of that station; all licenses, permits, authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station, and all logs and other records maintained by defendants or that station in connection with its business.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees, and all other persons in active concert or participation with them who shall have received actual notice of the Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in the Sacramento Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment, provided, however, defendants need not obtain such an agreement from an Acquirer in connection with the divestiture of the KSSJ–FM Assets or the Optional ARS Station Assets.

IV. Divestiture

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of the complaint in this action, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the KSSJ–FM Assets to an Acquirer acceptable to plaintiff, in its sole discretion.

B. In the event that KSSJ–FM's class B FM license has not been issued by the FCC on or before December 31, 1997, plaintiff shall thereafter have the right, exercisable at any time during the term of this Final Judgment, to designate the Optional ARS Station Assets. Plaintiff's designation shall be communicated to defendants in writing, which notification shall identify one class B FM station and accompanying assets that shall constitute the Optional ARS Station Assets In the event plaintiff designates the Optional ARS Station Assets pursuant to this Section IV(B), defendants shall, in accordance with the terms of this Final Judgment, within six (6) months of written notification to defendants of plaintiff's designation of the Optional ARS Station Assets, in addition to the KSSJ–FM Assets, divest the Optional ARS Station Assets to an Acquirer acceptable to plaintiff, in its sole discretion.

C. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment, or by the trustee appointed pursuant to Section V, shall include all the KSSJ–FM Assets and the Optional ARS Station Assets, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the KSSJ–FM Assets and Optional ARS Station Assets can and will be used by

an Acquirer as a viable, ongoing commercial radio business. The divestiture, whether pursuant to Section IV or V of this Final Judgment, shall be made (1) to an Acquirer that, in the sole judgment of plaintiff, has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a radio station operator in the Sacramento Area; and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the Acquirer to compete effectively.

D. Defendants agree to use their best efforts to divest the KSSJ–FM Assets and the Optional ARS Station Assets, and to obtain all regulatory approvals necessary for such divestiture, as expeditiously as possible. Plaintiff, in its sole discretion, may extend the time period for the divestiture set forth in Section IV (A) or Section IV (b), as the case may be, for two (2) additional thirty (30)-day periods of time, not to exceed sixty (60) calendar days in total in each case.

E. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the KSSJ–FM Assets and the Optional ARS Station Assets. Defendants shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the KSSJ–FM Assets and the Optional ARS Station Assets, that the assets described in Section II (C) and Section II (H) are being offered for sale. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the KSSJ–FM Assets and the Optional ARS Station Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

F. Defendants shall permit bona fide prospective purchasers of the KSSJ–FM Assets or the Optional ARS Station Assets to have access to personnel and to make such inspection of the assets and any and all financial, operational or other documents and information, as is customary in a due diligence process.

G. Defendants shall not interfere with any efforts by any Acquirer to employ the general manager or any other employee of KSSJ–FM or the Optional ARS Station Assets.

V. Appointment of Trustee

A. In the event that defendants have not divested the KSSJ–FM Assets or the Optional ARS Station Assets within the time periods specified in Section IV of this Final Judgment, the Court shall appoint, on application of plaintiff, a trustee selected by plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the KSSJ–FM Assets or the Optional ARS Station Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VII of this Final Judgment and consistent with FCC regulations, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff in its sole judgment, and shall have such other powers at this Court shall deem appropriate. Defendants shall not object to the sale of the KSSJ–FM Assets or the Optional ARS Station Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendants, and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the KSSJ–FM Assets or the Optional ARS Station Assets, and shall use their best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the KSSJ–FM Assets and the Optional ARS Station Assets, and defendants shall develop such financial or other information as may be necessary for the divestiture of the KSSJ–FM Assets and the Optional ARS Station Assets. Defendants shall permit prospective purchasers of the KSSJ–FM Assets and Optional ARS Station Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with defendants, plaintiff and the Court, setting forth the trustee's efforts to accomplish divestiture of the KSSJ–FM Assets and the Optional ARS Station Assets as contemplated under this Final Judgment, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the KSSJ–FM Assets or the Optional ARS Station Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these assets.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2)

the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to plaintiff and defendants, which shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. Preservation of Assets/Hold Separate

Until the divestiture of the KSSJ–FM Assets required by Section IV of the Final Judgment has been accomplished.

A. Defendants shall take all steps necessary to operate KSSJ–FM as a separate, independent, ongoing, economically viable and active competitor to defendants' other stations in the Sacramento Area, and shall take all steps necessary to ensure that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendants.

B. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by KSSJ–FM and the Optional ARS Station Assets, and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio station.

C. Defendants shall take all steps necessary to ensure that the assets used in the operation of KSSJ–FM and the Optional ARS Station Assets are fully maintained. KSSJ–FM's and the Optional ARS Station Assets' sales and marketing employees shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, provided that defendants give plaintiff and Acquirer ten (10) days' notice of such transfer.

D. Defendants shall not, except as part of a divestiture approved by plaintiff, sell any KSSJ–FM Assets or the Optional ARS Station Assets.

E. Defendants shall take no action that would jeopardize the sale of the KSSJ–FM Assets or the Optional ARS Station Assets.

F. Defendants shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for defendants' compliance with Section VI of this Final Judgment.

VII. Notification

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g., financing), to effect any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the KSSJ–FM Assets of the Optional ARS Station Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calender days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if the plaintiff provides written notice to defendant and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V (B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if plaintiff objects to it. Upon objection by plaintiff, or by defendants under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiff.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include *inter alia,* the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the KSSJ–FM Assets or the Optional ARS Station Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for the KSSJ–FM Assets or the Optional ARS Station Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve KSSJ–FM or the Optional ARS Station Assets pursuant to Section VI of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after such change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve and divest the KSSJ–FM Assets and the Optional ARS Station Assets.

X. Notice

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants, without providing advance notification to the plaintiff, shall not directly or indirectly acquire any assets of or any interest,

including any financial, security, loan, equity or management interest, in any Non-ARS Radio Station.

B. Defendants, without providing advance notification to the plaintiff, shall not directly or indirectly enter into any agreement or understanding that would allow defendants to market or sell advertising time or to establish advertising prices for any Non-ARS Radio Station.

C. Notification described in (A) and (B) above shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respect to ARS Radio Stations in the Sacramento Area. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (A) or (B) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the plaintiff make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

D. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. Compliance Inspection

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the plaintiff, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from defendants, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section IX or this Section XI shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Certificate of Service

I, Dando B. Cellini, hereby certify that, on February 27, 1997, I caused the foregoing documents to be served on defendants American Radio Systems Corporation and EZ Communications, Inc., by having a copy mailed, first-class, postage prepaid, to:

James R. Loftis, III,

Joseph J. Simons,

Collier Shannon Rill & Scott, PLLC,

3050 K Street, N.W., Suit 400, Washington, DC 20007, (202) 342–8480, Counsel for American Radio Systems Corporation.

Ray V. Hartwell, III,

Andrew J. Strenio, Jr.,

Hunton & Williams,

1900 K Street, NW, Washington, DC 20006–1109, (202) 955–1639, Counsel for EZ Communications, Inc.

Dando B. Cellini.

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on February 27, 1997, alleging that the proposed acquisition of EZ of Communications (''EZ'') by American Radio Systems Corporation (''ARS'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that ARS and EZ own and operate numerous radio stations throughout the United States, and that after the transaction ARS would own eight radio stations in the Sacramento, California area, including six of the 12 stations authorized and operating as Class B broadcast facilities in that area.[1]

[1] The Telecommunications Act of 1996 provides that a party may own up to a maximum of eight commercial radio stations in a radio market, not more than five of which are in the same service (AM or FM). However, a radio market for Federal Communications Commission (''FCC'') purposes is delineated by examining overlapping principal community contours. Because ARS defined two separate radio markets in the Sacramento area for FCC purposes, based upon principal community

Continued

This acquisition would give ARS half of the most competitively significant radio signals, and a significant share of the radio advertising market, including a large percentage of advertising directed to certain target audiences in Sacramento. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in Sacramento, California and the surrounding area.

The prayer for relief seeks: (a) adjudication that ARS's proposed acquisition of EZ would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (b) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits ARS to complete its acquisition of EZ, yet preserves competition in the market for which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders defendants to divest KSSJ–FM. Unless the United States grants as a time extension, defendants must divest this radio station either within six months after the filing of the Complaint, or with five (5) business days after notice of entry of the Final Judgment, whichever is later. If defendants do not divest KSSJ–FM within the divestiture period, the Court shall, upon plaintiff's application, appoint a trustee to sell the assets. The proposed Final Judgment also requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, KSSJ–FM will be operated independently as a viable, ongoing business, and kept separate and apart from ARS's and EZ's other Sacramento radio stations. Additionally, the proposed Final Judgment provides that if KSSJ–FM's Class B license has not been issued by the FCC on or before December 31, 1997, the United States has the right to designate one additional ARS or EZ Class B radio station for divestiture. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Sacramento.

The plaintiff and the defendants have stipulated that the proposed Final judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Defendant ARS is a Delaware corporation with its headquarters in Boston, Massachusetts. It currently owns and operates 75 radio stations in 14 metropolitan areas in the United States. Its 1996 revenues were approximately $270 million. ARS owns four radio stations authorized and operating as Class B broadcast facilities in the Sacramento area.

EZ is a Virginia corporation headquartered in Fairfax, Virginia. It owns and operates twenty-three radio stations in seven metropolitan areas in the United States. Its 1996 revenues were approximately $118 million. EZ owns two radio stations authorized and operating as Class B broadcast facilities in the Sacramento area.

B. Description of the Events Giving Rise to the Alleged Violations

On August 5, 1996, ARS agreed to purchase EZ for approximately $655 million. As is more fully discussed below, ARS would control a significant share of the radio advertising in Sacramento, as well as a significant percentage of advertising directed to certain target audiences in Sacramento. The proposed acquisition of EZ by ARS, and the threatened loss of such competition that would be caused thereby, precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Merger

1. Sale of Radio Advertising Time in Sacramento

The Complaint alleges that the provision of advertising time on radio stations serving the Sacramento, California Metro Survey Area (''MSA'') constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. The Sacramento MSA is the geographical unit for which Arbitron furnishes radio stations, advertisers, and advertising agencies in Sacramento with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. Local and national advertising that is placed on radio stations within the Sacramento MSA is aimed at reaching listening audiences in the Sacramento MSA, and radio stations outside of the Sacramento MSA do not provide effective access to this audience. Thus, if there were a small but significant nontransitory increase in radio advertising prices within the Sacramento MSA, advertisers would not buy enough advertising time from radio stations located outside of the Sacramento MSA to defeat the increase.

Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Sacramento because such advertising is preferable to advertising in other media for their specific needs. For such advertisers, radio time: may be less expensive and most cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); may reach certain target audiences that cannot be reached as effectively through other media; or may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons and others, many local and national advertisers in Sacramento who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Sacramento, the existence of such advertisers would not prevent radio stations from profitably raising their prices a small but significant amount to those advertisers who have strong preferences for using radio over other media for some or all of their advertising campaigns. At a minimum, stations could profitably raise prices to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate among different

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contours, it took the position in its FCC filings and with the Department of Justice that the 1996 Telecommunications in its FCC filings and with the Department of Justice that the 1996 Telecommunications Act did not require divestiture of any of the six class B FM signals that it would own after the merger.

customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. Harm of Competition

The Complaint alleges that ARS's proposed acquisition of EX would lessen competition substantially in the provision of radio advertising time in the Sacramento MSA. The proposed acquisition would create significant market concentration, and would permit ARS to control a substantial share of the advertising revenues in Sacramento. The transaction is likely to lead to further market concentration in view of the fact that KSSJ–FM has recently been ungraded to a Class B FM signal, which broadens that station's reach and is therefore likely to increase its (and hence ARS's) market share. Moreover, the proposed merger would concentrate many of Sacramento's strongest radio signals into the hands of ARS. After all transactions are complete, ARS would own six of the 12 stations in the Sacramento area authorized and operating as Class B broadcast facilities. Because weaker signals cannot penetrate as large as listening area, they do not have the potential to reach as many listeners as strong signals. All else being equal, concentrated ownership of strong signals is likely to create more listenship dominance the concentrated ownership of weaker signals.

ARS presently controls approximately 21% of radio advertising revenues in Sacramento, and its market share would rise to approximately 36% after the proposed merger. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Exhibit A hereto, the pre-merger HHI in this market is 1895, which would rise by 998 points to 2893 after the merger. This substantial increase in concentration, exacerbated by the upgrade of KSSJ–FM's signal to Class B and the resultant likely increase of ARS's future market share, will give ARS the unilateral power to raise advertising prices and reduce the level of service provided to advertisers in Sacramento.

Furthermore, the proposed transactions would eliminate head-to-head competition between ARS and EZ for advertisers seeking to reach specific audiences. Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience, the characteristics of its audience, and the geographic reach of a station's signal. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience has a high correlation with their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, several ARS and EZ stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Sacramento, they are close substitutes for each other based on their specific audience characteristics. The proposed merger would eliminate such competition, notably including competition for advertisers seeking to reach female listeners in Sacramento.

Advertisers seeking to reach female listeners in Sacramento currently help to ensure competitive rates by ''playing off'' ARS stations against EZ stations. Because the direct competition between the ARS and EZ stations would be eliminated by the proposed merger, and because advertisers seeking to reach female listeners would have inferior alternatives to the merged entity, the acquisition would give ARS the ability to raise its rates and reduce the quality of its services to a significant number of its advertisers on its Sacramento stations. This is particularly true because of the merged entity's ability to charge different prices to different advertisers.

Format changes are unlikely to deter the anticompetitive consequences of the proposed merger. If ARS raised prices or reduced services to those advertisers who buy time on ARS and EZ stations because of their strength in delivering access to certain specific audiences, non-ARS radio stations in Sacramento would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as ARS, because they would likely lose a substantial portion of their existing audiences. Even if less successful or less powerful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity.

Finally, new entry into the Sacramento radio advertising market is highly unlikely in response to a price increase by the merged parties. No unallocated radio broadcast frequencies exist in Sacramento. Also, stations located in adjacent communities cannot boost their power so as to enter the Sacramento market without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission (''FCC'') regulations.

For these reasons, plaintiff concludes that the merger as proposed would substantially lessen competition in the sale of radio advertising time in the Sacramento MSA, eliminate actual competition between ARS and EZ, and result in increased rates for radio advertising time in the Sacramento MSA, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Sacramento MSA. It requires the divestiture of KSSJ–FM, a station oriented toward female listeners, and one of only 12 radio signals in the Sacramento area authorized and operating as Class B FM broadcast facilities. Class B signals are the strongest, and therefore the most competitively significant, radio broadcasting signals in the Sacramento area. Absent the divestiture, ARS would have controlled six of 12 of Sacramento's Class B signals. Such concentrated ownership of the most competitively significant signals in the area, coupled with the likely increase in ARS's revenue share following KSSJ–FM's signal upgrade, would enable ARS to maintain a dominant share of listeners that would be difficult for competing radio stations to challenge effectively, thereby reducing the choices available to radio advertisers in Sacramento, and diminishing competition. The divestiture of KSSJ–FM leaves ARS with five of the 12 Class B FM signals and less than 35 percent of the advertising revenues in Sacramento, and puts the station in the hands of a competitor, who will have the competitive benefit of the station's signal upgrade. In particular, the divestiture of KSSJ–FM, upgraded to a Class B signal, will permit ARS and the remaining radio stations in Sacramento to compete vigorously for advertisers seeking to reach female listeners.

Although KSSJ–FM is currently authorized and operating as a Class B FM station, it is still awaiting the formal issuance of its Class B license by the FCC. In the event that this license has not been issued by the FCC on or before December 31, 1997, then the proposed Final Judgment gives plaintiff the option to designate an additional Sacramento Class B FM station for divestiture by defendants.

Unless plaintiff grants an extension of time, defendants must divest KSSJ–FM either within six months after the Final Judgment has been filed or within five (5) business days after notice of entry of the Final Judgment, whichever is later. Until the divestitures take place, KSSJ–FM will be operated and maintained as an independent competitor to defendants' other stations in the Sacramento MSA.

If defendants fail to divest KSSJ–FM within the prime periods specified in the Final Judgment, the Court, upon application of the plaintiff, shall appoint a trustee nominated by the plaintiff to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of KSSJ–FM, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with defendants, the plaintiff and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that defendants maintain KSSJ–FM separate and apart from their other stations, pending divestiture. The Judgment also contains provisions to ensure that KSSJ–FM will be preserved, so that it will remain a viable, aggressive competitor after divestiture.

The proposed Final Judgment also prohibits defendants from entering into certain agreements with other Sacramento radio stations without providing at least thirty (30) days' notice to the Department of Justice. Specifically, defendants must notify the Department before acquiring any significant interest in another Sacramento radio station. Such acquisitions could raise competitive concerns but might be too small to be otherwise reportable under the Hart-Scott-Rodino (''HSR'') premerger notification statute. Moreover, defendants may not agree to sell radio advertising time for any other Sacramento radio station without providing plaintiff with notice. This provision ensures that plaintiff will receive advance notice of any acquisition, or agreements, through which defendants would increase the amount of advertising time on radio stations that they can sell. In particular, this provision requires defendants to notify plaintiff before they enter into any joint sales agreements (''JSAs''), where one station takes over another station's advertising time, or enter into any local marketing agreements (''LMAs''), where one station takes over another station's broadcasting and advertising time, in the Sacramento MSA. Agreements whereby defendants sell advertising for or manage other area radio stations would effectively increase defendants' market share in the Sacramento area MSA. Despite their clear competitive significance, JSAs probably would not be reportable to the Department of Justice under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Sacramento market.

The relief in the proposed Final Judgment is intended to remedy the anticompetitive effects of the proposed acquisition of EZ by ARS. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Sacramento MSA.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. The plaintiff is satisfied, however, that the divestiture of the KSSJ–FM Assets and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Sacramento MSA. Thus, the proposed Final Judgment would achieve the relief the Government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases

brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. § 16(e).

As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather,

[a]bsent a showing of corrupt failure of the governments to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. No. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that—

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

This is strong and effective relief that should fully address the competitive harm posed by the proposed merger.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Dando B. Cellini,

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–0829.

Dated: March 20, 1997.

[2] 119 Cong. Rec. 24598 (1073). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[3] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[4] *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.*. 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Exhibit A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

Certificate of Service

I, Dando B. Cellini, hereby certify that, on March 20, 1997, I caused the foregoing document to be served on defendants American Radio Systems Corporation and EZ Communications, Inc. by having a copy mailed, first-class, postage prepared, to:

James R. Loftis, III,

Joseph J. Simons,

Collier Shannon Rill & Scott, PLLC,

3050 K Street, NW., Suite 400, Washington, DC 20007, (202) 342–8480, Counsel for American Radio Systems Corporation.

Ray V. Hartwell, III,

Andrew J. Strenio, Jr.,

Hunton & Williams,

1900 K Street, NW., Washington, DC 20006–1109, (202) 955–1639, Counsel for EZ Communications, Inc.

Dando B. Cellini.

[FR Doc. 97–8459 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

Proposed Final Judgment and Competitive Impact Statement; United States of America versus EZ Communications, Inc. and Evergreen Media Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and

Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *EZ Communications, Inc. and Evergreen Media Corporation* Civ. Action No. 97 CV 406. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).

Plaintiff filed a civil antitrust Complaint on February 27, 1997, alleging that a proposed swap and acquisition of radio stations in Charlotte, North Carolina between EZ Communications, Inc. (''EZ'') and Evergreen Media Corporation (''Evergreen'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that EZ and Evergreen both own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Charlotte, North Carolina metropolitan area. The combined transactions would give EZ a significant share of the radio advertising market in the Charlotte metropolitan area. As a result, the combination of these stations would lessen competition substantially in the sale of radio advertising time in the Charlotte metropolitan area.

The prayer for relief seeks: (a) An adjudication that the proposed transactions described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of such transactions; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits EZ to complete its transactions with Evergreen, yet preserves competition in the market in which the transactions would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders EZ to divest WRFX-FM, currently owned by Evergreen. Unless the plaintiff grants a time extension, EZ must divest this radio station either within six months after the filing of the Complaint or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If EZ does not divest WRFX-FM within the divestiture period, the Court shall, upon plaintiff's application, appoint a trustee to sell the assets. The proposed Final Judgment also requires EZ to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, WRFX-FM will be operated independently as a viable, ongoing business, and kept separate and apart from defendant EZ's other Charlotte radio stations. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Charlotte.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001). Copies of the Complaint, Stipulation, proposed final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington. D.C. 20530 (telephone: (202) 514–2481) and the office of the Clerk of the United States District Court for the District of Columbia, 3rd Street and Constitution Avenue, N.W., Washington, D.C.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operation Antitrust Division.

United States District Court For the District of Columbia

United States of America, Plaintiff, v. *EZ Communications, Inc. and Evergreen Media Corporation,* Defendants. Civil Action No. 1:97CV00406, Filed 2/27/97, Judge Oberdorfer.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) Defendants shall not consummate the transaction sought to be enjoined by the complaint herein before the Court has signed this Stipulation and Order.

(5) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court. In the event that, as contemplated by defendants, the WRFX–FM Assets are transferred by defendant Evergreen Media Corporation (''Evergreen'') to defendant EZ Communications, Inc. (''EZ'') or to a trust approved by plaintiff and the FCC prior to the entry of the attached Final Judgment, then an amended Complaint and proposed Final Judgment which do not name Evergreen as a defendant shall promptly be filed herein and submitted to the Court.

(6) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to either the transfer of the WRFX–FM Assets to EZ or to an approved trust, described in paragraph (5) above, or the divestiture required by Section IV of the Final Judgment, notwithstanding the good faith efforts of defendants and any prospective Acquirer, as defined in the Final Judgment. In this circumstance, plaintiff will, in the exercise of its sole discretion, acting in good faith, give special consideration to forbearing from applying for the appointment of a trustee pursuant to Section V of the Final Judgment, or from pursuing legal remedies available to it as a result of such delay, provided that: (a) defendants have entered into a definitive agreement to divest the WRFX–FM Assets, and such agreement and the Acquirer have been approved by plaintiff; (b) all papers necessary to

secure any governmental approvals and/or rulings to effectuate such divestiture (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency; (c) receipt of such approvals are the only closing conditions that have not been satisfied or waived; and (d) defendants have demonstrated that neither they nor the prospective Acquirer are responsible for any such delay.

(7) In the event (a) plaintiff withdraws its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(8) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: February 26, 1997.

For Plaintiff United States of America

Dando B. Cellini,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW., Suite 4000, Washington, DC 20005, (202) 307–0829.

So Ordered.

United States District Judge

For Defendant EZ Communications, Inc.

Ray V. Hartwell, III,

Andrew J. Strenio, Jr.,

Hunton & Williams,

1900 K Street, NW, Washington, DC 20006–1109, (202) 955–1639.

For Defendant Evergreen Media Corporation.

Bruce J. Prager,

Latham & Watkins,

885 Third Avenue, New York, NY 10022–4802, (212) 906–1272.

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint herein on February 27, 1997, and defendants EZ Communications, Inc. (''EZ'') and Evergreen Media Corporation (''Evergreen''), by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants EZ and Evergreen, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *EZ* means defendant EZ Communications, Inc., a Virginia corporation with its headquarters in Fairfax, Virginia, and includes its successors and assigns (specifically including without limitation American Radio Systems Corporation (''ARS''), a Delaware corporation headquartered in Boston, Massachusetts, which has agreed to acquire EZ through merger), its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of EZ.

B. *Evergreen* means defendant Evergreen Media Corporation, a Delaware corporation with its headquarters in Irving, Texas, and includes Evergreen's successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Evergreen.

C. *WRFX–FM Assets* means all of the assets, tangible or intangible, used in the operation of the WRFX 99.7 FM radio station in the Charlotte Area, including but not limited to all real property (owned and leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of that station; all licenses, permits, authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies related to that station, all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station, and all logos and other records maintained by defendants or that station in connection with its business.

D. *Charlotte Area* means the Charlotte, North Carolina Metro Survey Area as identified by The Arbitron Radio Market Report for Charlotte (Fall 1996), which is made up of the following counties: Union, York, Cabarrus, Rowan, Mecklenburg, Lincoln and Gaston.

E. *Acquirer* means the entity to whom defendants divest the WRFX–FM Assets under this Final Judgment.

F. *EZ Radio Station* means any radio station owned by EZ and licensed to a community in the Charlotte Area, other than WRFX–FM.

G. *Non-EZ Radio Station* means any radio station licensed to a community in the Charlotte area that is not an EZ Radio Station.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns (specifically including without limitation ARS), their subsidiaries, affiliates, directors, officers, managers, agents and employees, and all other persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service or otherwise, specifically including any trustee or trustees appointed by defendants pursuant to an FCC License Trust Agreement or an FCC Assets Trust Agreement applicable to the WRFX–FM Assets.

B. The defendants shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in their business of owning and operating their portfolio of radio stations in the Charlotte Area, that the acquiring party or parties agree to be bound by the provisions of this Final

Judgment; provided, however, defendants need not obtain such an agreement from an Acquirer in connection with the divestiture of the WRFX–FM Assets.

IV. Divestiture of WRFX–FM Assets

A. Defendant EZ is hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of the compliant in this action, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the WRFX–FM Assets to an Acquirer acceptable to plaintiff, in its sole discretion. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment, or by the trustee appointed pursuant to Section V, shall include all the WRFX–FM Assets and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WRFX–FM Assets can and will be used by an Acquirer as a viable, ongoing commercial radio business. The divestiture, whether pursuant to Section IV or V of this Final Judgment, shall be made (1) to an Acquirer that, in the sole judgment of plaintiff, has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a radio station operator in the Charlotte Area; and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the Acquirer to compete effectively.

B. Defendant EZ agrees to use its best efforts to divest the WRFX–FM Assets, and to obtain all regulatory approvals necessary for such divestiture, as expeditiously as possible. Plaintiff, in its sole discretion, may extend the time period for the divestiture for two (2) additional thirty (30)-day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestiture ordered by this Final Judgment, defendant EZ promptly shall make known, by usual and customary means, the availability of the WRFX–FM Assets. Defendant EZ shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. Defendant EZ shall make known to any person making an inquiry regarding a possible purchase of the WRFX–FM Assets that the assets described in Section II (C) are being offered for sale. Defendants also shall offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WRFX–FM Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit bona fide prospective purchasers of the WRFX–FM Assets to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information, as is customary in a due diligence process.

E. Defendants shall not interfere with any efforts by any Acquirer to employ the general manager or any other employee of WRFX–FM.

V. Appointment of Trustee

A. In the event that EZ has not divested the WRFX–FM Assets within the time period specified in Section IV above, the Court shall appoint, on application of plaintiff, a trustee selected by plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the WRFX–FM Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price than obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VII of this Final Judgment and consistent with FCC regulations, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendant EZ any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to purchaser acceptable to plaintiff in its sole judgment, and shall have such other powers as this Court shall deem appropriate. EZ shall not object to the sale of the WRFX–FM Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by EZ must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of EZ, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to EZ, and the trustee's services shall then be terminated The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the WRFX–FM Assets, and shall use their best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the WRFX–FM Assets, and defendants shall develop such financial or other information as may be necessary for the divestiture of the WRFX–FM Assets. Defendants shall permit prospective purchasers of the WRFX–FM Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with defendant EZ, plaintiff and the Court, setting forth the trustee's efforts to accomplish divestiture of the WRFX–FM Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WRFX–FM Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these assets.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to plaintiff and defendant EZ, which shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. Preservation of Assets/Hold Separate

Until the divestiture of the WRFX–FM Assets required by Section IV of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to operate WRFX–FM as a separate, independent, ongoing, economically viable and active competitor to defendant EZ's other stations in the Charlotte Area, and shall take all steps necessary to ensure that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendant EZ.

B. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WRFX–FM, and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio station.

C. Defendants shall take all steps necessary to ensure that the assets used in the operation of WRFX–FM are fully maintained. WRFX–FM's sales and marketing employees shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, provided that defendants give plaintiff and Acquirer ten (10) day's notice of such transfer.

D. Defendants shall not, except as part of a divestiture approved by plaintiff, sell any WRFX–FM Assets.

E. Defendants shall take no action that would jeopardize the sale of the WRFX–FM Assets.

F. Defendants shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for defendants' compliance with Section VI of this Final Judgment.

VII. Notification

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g., financing), to effect any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendant EZ or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant EZ. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in WRFX–FM Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if plaintiff objects to it. Upon objection by plaintiff, or by defendant EZ under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiff.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the WRFX–FM Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for the WRFX–FM Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve WRFX–FM pursuant to Section VII of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve WRFX–FM and to divest the WRFX–FM Assets.

X. Notice

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), EZ, without providing advance notification to the plaintiff, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or

management interest, in any Non-EZ Radio Station.

B. EZ, without providing advance notification to the plaintiff, shall not directly or indirectly enter into any agreement or understanding that would allow EZ to market or sell advertising time or to establish advertising prices for any Non-EZ Radio Station.

C. Notification described in (A) and (B) above shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respect to EZ Radio Stations in the Charlotte Area. Notification shall be provided at least thirty (30) days prior to acquiring any such interest or entering any such agreement covered in (A) or (B) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the plaintiff make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

D. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. Compliance Inspection

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the plaintiff, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from defendants, to interview directors, officers, employees and agents of defendants, who may have cousel present, regarding any such matters.

B. Upon the written request of the Untied States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section IX or this Section XI shall be divulged by any representative of the Untied States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Certificate of Service

I, Dando B. Cellini, hereby certify that, on February 27, 1997, I caused the foregoing documents to be served on defendants EZ Communications, Inc. and Evergreen Media Corporation by having a copy mailed, first-class postage prepaid, to:

Ray V. Hartwell, III,

Andrew J. Strenio, Jr.,

Hunton & Williams,

1900 K Street, NW, Washington, DC 20006–1109, (202) 955–1639, Counsel for EZ Communications, Inc.

Bruce J. Prager,

Latham & Watkins,

885 Third Avenue, New York, NY 10022–4802, (212) 906–1272, Counsel for Evergreen Media Corporation.

Dando B. Cellini.

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on February 27, 1997, alleging that a proposed swap and acquisition of radio stations in Charlotte, North Carolina between EZ Communications, Inc. (''EZ'') and Evergreen Media Corporation (''Evergreen'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that EZ and Evergreen both own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Charlotte, North Carolina metropolitan area. The combined transactions would give EZ a significant share of the radio advertising market in the Charlotte metropolitan area. As a result, the combination of these stations would lessen competition substantially in the sale of the radio advertising time in the Charlotte metropolitan area.[1]

[1] Prior to, and independent of, the transactions giving rise to this action, EZ and other radio station owners had announced plans to swap radio stations. The swaps would have eliminated existing competition and resulted in EZ dominating the country format—and its listeners—and SFX Broadcasting Inc. dominating the rock format—and

The prayer for relief seeks: (a) an adjudication that the proposed transactions described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of such transactions; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits EZ to complete its transactions with Evergreen, yet preserves competition in the market in which the transactions would raise significant competitive concerns. A stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.[2]

The proposed Final Judgment orders EZ to divest WRFX–FM, currently owned by Evergreen. Unless the plaintiff grants a time extension, EZ must divest this radio station either within six months after the filing of the Complaint or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If EZ does not divest WRFX–FM within the divestiture period, the Court shall, upon plaintiff's application, appoint a trustee to sell the assets. The proposed Final Judgment also requires EZ to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, WRFX–FM will be operated independently as a viable, ongoing business, and kept separate and apart from defendant EZ's other Charlotte radio stations. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Charlotte.

The plaintiff and the defendants have stipulated that the proposed final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

its listeners. These transactions were abandoned following the Department of Justice's investigation into whether the swaps were a device to allocate Charlotte's advertisers in such a way as to lessen competition between the two station groups. Therefore, it was not necessary to seek relief regarding these swaps in this Complaint.

[2] In a related transaction, American Radio Systems Corporation (''ARS'') has agreed to acquire EZ through merger. Should the proposed merger be consummated, ARS will succeed to EZ's obligations under the proposed Final Judgment.

II. The Alleged Violations

A. The Defendants

Defendant EZ is a Virginia corporation with its headquarters in Fairfax, Virginia. It currently operates 23 radio stations throughout the United States, including two radio stations in Charlotte. In 1996 EZ reported revenues of approximately $14 million from its Charlotte stations.

Evergreen is a Delaware corporation headquartered in Irving, Texas. It owns and operates 41 radio stations nationwide, including five stations in the Charlotte area. In 1996 Evergreen derived approximately $22 million in revenues from its Charlotte stations.

B. Description of the Events Giving Rise to the Alleged Violations

On August 27, 1996, EZ entered into an agreement to swap two of its radio stations in Philadelphia for five of Evergreen's stations in Charlotte, North Carolina. In addition, EZ agreed to purchase another Charlotte radio station Evergreen for $10 million. The result of these two transactions, as is more fully discussed below, would be to give EZ a significant share of the radio advertising market in Charlotte, as well as a significant percentage of advertising directed to certain target audiences in Charlotte.

EZ and Evergreen previously have competed for the business of local and national companies seeking to advertise in the Charlotte area. Because the proposed transactions between EZ and Evergreen would have eliminated this competition, they precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Transaction

1. *Sale of Radio Advertising Time in Charlotte.* The Complaint alleges that the provision of advertising time on radio stations serving the Charlotte, North Carolina Metro Service Area (''MSA'') constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. The Charlotte MSA is the geographical unit for which Arbitron furnishes radio stations, advertisers and advertising agencies in Charlotte with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. The Charlotte MSA includes seven countries: Union, York, Cabarrus, Rowan, Mecklenburg, Lincoln and Gaston.

Local and national advertising that is placed on radio stations within the Charlotte MSA is aimed at reaching listening audiences within the Charlotte MSA, and radio stations outside of the Charlotte MSA do not provide effective access to this audience. Thus, if there were a small but significant nontransitory increase in radio advertising prices within the Charlotte MSA, advertisers would not buy enough advertising time from radio stations located outside of the Charlotte MSA to defeat the increase.

Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Charlotte because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) may be less expensive and more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); (b) may reach certain target audiences that cannot be reached as effectively through other media; or (c) may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers in Charlotte who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Charlotte, the existence of such advertisers would not prevent radio stations from raising their prices a small but significant amount. At a minimum, stations could raise prices profitably to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate between different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

2. *Harm to Competition.* The Complaint alleges that EZ's proposed station swaps and acquisition with Evergreen would lessen competition substantially in the provision of radio

advertising time in the Charlotte MSA. First, the proposed transactions would create further market concentration in an already highly concentrated market, and EZ would control a substantial share of the advertising revenues in this market. EZ's market share of radio advertising revenues would increase to 55 percent after the proposed transactions. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Appendix A, EZ possesses a pretransaction HHI of 2198, which would rise by 1440 points to 3638 after the transactions. This substantial increase in concentration is likely to give EZ the unilateral power to raise advertising prices and reduce the level of service provided to advertisers in the Charlotte radio market.

Furthermore, the proposed transactions would eliminate head-to-head competition between EZ and Evergreen for advertisers seeking to reach specific audiences. Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience, the characteristics of its audience, and the geographic reach of a station's signal. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience best correlates to their target audience. Today, EZ's two stations and several of Evergreen's stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Charlotte, the stations are close substitutes for each other based on their specific audience characteristics. The proposed transactions would eliminate such competition, notably including competition for advertisers seeking to reach male listeners in Charlotte.

Advertisers seeking to reach male listeners in Charlotte currently help ensure competitive rates by ''playing off'' Evergreen stations against EZ stations. Because the direct competition between the Evergreen and EZ stations would be eliminated by the proposed transactions, and because advertisers seeking to reach male listeners would have inferior alternatives as a result of the transactions, the transactions would give EZ the ability to raise its rates and reduce the quality of its services to some of its advertisers on its Charlotte stations. This is particularly true because of EZ's ability to charge different prices to different advertisers.

Format changes are unlikely to deter the anticompetitive consequences of these transactions. If EZ raised prices or lowered services to those advertisers who buy EZ and Evergreen stations because of their strength in delivering access to certain specific audiences, non-EZ radio stations in Charlotte would not be induced to change their formats to attract a greater share of the same listeners and to serve better those advertisers seeking to reach such listeners. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as EZ, because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they still would be unlikely to attract enough listeners to provide a suitable alternative to EZ.

Finally, new entry into the Charlotte radio advertising market is highly unlikely in response to a price increase by EZ. No unallocated radio broadcast frequencies exist in Charlotte. Also, stations located in adjacent communities cannot boost their power so as to enter the Charlotte market without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission (''FCC'') regulations.

For all of these reasons, plaintiff concludes that the proposed transactions would lessen competition substantially in the sale of radio advertising time in the Charlotte MSA, eliminate actual competition between EZ and Evergreen, and result in increased prices and reduced quality of service for radio advertising time in the Charlotte MSA, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Charlotte MSA. It requires the divestiture of WRFX–FM, Charlotte's most popular station among male listeners. This relief will reduce the market share in advertising revenues EZ would have achieved through the proposed transactions from over 55 percent to about 40 percent of the Charlotte radio market. The divestiture will preserve choices for advertisers and help ensure that radio advertising rates in Charlotte do not increase and that services do not decline as a result of the combined transactions.

Unless plaintiff grants an extension of time, EZ must divest WRFX–FM either within six months after the Complaint has been filed or within five (5) business days after notice of entry of the Final Judgment, whichever is later. Until the divestiture takes place, WRFX–FM will be maintained as a viable and independent competitor to EZ's other stations in the Charlottee MSA.

If EZ fails to divest WRFX–FM within the time periods specified in the Final Judgment, the Court, upon plaintiff's application, shall appoint a trustee nominated by plaintiff to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that EZ will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of WRFX–FM, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment the trustee will file monthly reports with the plaintiff, defendant EZ and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendant EZ, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that defendants maintain WRFX–FM separate and apart from defendant EZ's other Charlotte stations, pending divestiture. The Judgment also contains provisions to ensure the WRFX–FM will be preserved, so that this station remains a viable, aggressive competitor after divestiture.

The proposed Final Judgment also prohibits EZ from entering into certain agreements with other Charlotte radio stations without providing at least thirty (30) days' notice to the Department of Justice. Specifically, EZ must notify the Department before acquiring any interest in another Charlotte radio station. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino (''HSR'') premerger notification statute. Moreover, EZ may not agree to sell radio advertising time for any other Charlotte radio station without providing plaintiff with notice. In particular, the provision requires EZ to notify the Department before it enters

into any Joint Sales Agreements (''JSAs''), where one station takes over another station's advertising time, or any Local Marketing Agreements (''LMAs''), where one station takes over another station's broadcasting and advertising time, or other comparable arrangements in the Charlotte area. Agreements whereby EZ sells advertising for or manages other Charlotte area radio stations would effectively increase its market share in this MSA. Despite their clear competitive significance, JASs probably would not be reportable to the Department under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Charlotte market.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of EZ's proposed transactions with Evergreen in Charlotte. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Charlotte MSA.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture of WRFX–FM and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Charlotte MSA. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.A. § 16(e).

As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest findings, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *Cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that—

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to

[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [5]

This is strong and effective relief that should fully address the competitive harm posed by the proposed transactions.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Respectfully submitted,

Dando B. Cellini,

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20530, (202) 307–0829.

Dated: March 20, 1997.

Exhibit A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market increases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Dando B. Cellini, hereby certify that, on March 20, 1997, I caused the foregoing document to be served on defendants EZ Communications, Inc. and Evergreen Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Ray V. Hartwell, III,

Andrew J. Strenio, Jr.,

Hunton & Williams,

1900 K Street, NW, Washington, DC 20006–1109, (202) 955–1639, Counsel for EZ Communications, Inc.

Bruce J. Prager,

Latham & Watkins,

885 Third Avenue, New York, NY 10022–4802, (212) 906–1272, Counsel for Evergreen Media Corporation.

Dando B. Celini.

[FR Doc. 97–8460 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

[4] *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[5] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette Co.,* 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

United States v. Western Pine Association, et al.

Notice is hereby given that defendant Western Wood Products Association (''WWPA'') has filed with the United States District Court for the Central District of California a motion to terminate the Consent Decree in *United States* v. *Western Pine Ass'n, et al.,* Civil Action No. 41–1389 RJ, and that the Department of Justice (''Department''), in a stipulation and order also filed with the Court, has tentatively consented to termination of the Consent Decree but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed February 6, 1941) alleged that the Western Pine Association (''WPA'') and its lumber company members had curtailed output, fixed prices, and enforced arbitrary and unreasonable rules and policies for standardization and distribution of western pine lumber.

On February 6, 1941, a Consent Decree was entered against the WPA and its members which (1) required WPA to make its grading services available to both members and nonmembers alike without discrimination and at the actual cost of the services rendered and (2) contained various injunctive provisions relating to the conduct of the WPA and its members. Specifically, the Consent Decree enjoined the defendants from (1) assigning to manufacturers a maximum production figures; (2) allocating business; (3) fixing prices, discounts or commissions; (4) disseminating information concerning production, sales, or prices; (5) refusing to quote f.o.b.; and (6) restricting the sale of lumber to any particular class of customers.

The Department has lodged with the court a memorandum setting forth the reasons why the Government believes that termination of the Consent Decree would serve the public interest. Copies of WWPA's motion papers, the stipulation containing the Government's consent, the Government's memorandum and all further papers filed or lodged with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 215 North, Liberty Place, Washington, D.C. 20530, and at the Office of the Clerk of the United States District Court for the Central District of California 90012. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be received by the Division with sixty (60) days and will be filled with the court by the Government. Comments should be addressed to Christopher S. Crook, Acting Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 91402 (Telephone: (415) 436–6660).

Rebecca P. Dick,

Deputy Director of Operations.

[FR Doc. 97–8533 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The Asymetrical Digital Subscriber Line Forum

Notice is hereby given that, on November 5, 1996, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), The Asymetrical Digital Subscriber Line Forum (''ADSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have joined ADSL: 3Com, San Diego, CA; AG Communication Systems, Phoenix, AZ; Amati Communications, San Jose, CA; Ariel Corporation, Cranberry, NJ; AT&T Laboratories, Holmedel, NJ; BellSouth, Atlanta, GA; Cascade Communications, Westford, MA; Cisco Systems, San Jose, CA; DTI, London, UNITED KINGDOM; ECI Telecom, Inc., Altamonte Springs, FL; France Telecom, Lannion, FRANCE; Global Village Communications, Sunnyvale, CA; GlobeSpan Technologies, Largo, FL; and Vertel, El Segundo, CA.

ADC Fibermux has changed its name to ADC Telecommunications; AT&T Paradyne has changed its name to Paradyne; and Ericsson Schrack has changed its name to Ericsson Austria.

GTE Labs and Racal-Datacom have cancelled their membership in ADSL.

No other changes have been made in the membership, nature or objectives of ADSL. Membership remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 38058).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–8458 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Hart Communication Foundation

Notice is hereby given that, on December 18, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Hart Communication Foundation (''HCF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are: Analog Devices, Limerick, IRELAND; Bopp & Reuther Messtechnik GmbH, Mannheim, GERMANY; Brooks Instrument, Hatfield, PA; Harold Beck & Sons, Inc., Newtown, PA; Hersey Measurement Company, Spartanburg, SC; Institute of Automatic Control and Robotics, Warszawa, POLAND; Kamstrup A/S, Aabyhoj, DENMARK; Knick Electronische MeBgerate GmbH &, Berlin, GERMANY; MMG Automatika Muvek Rt, Budapest, HUNGARY; Ohmart Corporation, Cincinnati, OH; Pondus Instruments AB, Vallingby, SWEDEN; PR electronics A/S, Ronde, DENMARK: Rittmeyer Ltd. Measuring Control, Zug, SWITZERLAND; Ronan I/O, Woodland Hills, CA; SMC Corporation, Tsukuba-gun, Ibaraki-ken, JAPAN; Toshiba Corporation, Mintto-Ku, Tokyo, JAPAN; and Valtek International, Springville, UT.

No other changes have been made in the membership, nature and objectives of the consortium. Membership in HCF remains open, and HCF intends to file additional written notifications disclosing all changes in membership.

On March 17, 1994, HCF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234). The last notification was filed with the Department on September 28, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 13, 1996 (61 FR 5569).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–8455 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

Notice is hereby given that, on March 6, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (''IPACT–II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the name of one of its members. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, as the result of a merger, Ciba-Geigy Limited, Basel, Switzerland, an original party to IPACT–II, is now known as Novartis Pharma, Inc., Basel, Switzerland.

No other changes have been made in either the membership or planned activity of IPACT–II. Membership in this group research project remains open, and IPACT–II intends to file additional written notification disclosing all changes in membership.

On February 21, 1991, IPACT–II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on April 15, 1996. The Department of Justice published a notice in the **Federal Register** on May 14, 1996 (61 FR 24331).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–8453 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on March 6, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (''IPACT–I'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the name of one of its members. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, as a result of a merger, Ciba-Geigy Limited, Basel, Switzerland, is now known as Novartis Pharma, Inc., Basel, Switzerland.

No other changes have been made in either the membership or planned activity of IPACT–I. Membership in this group research project remains open, and IPACT–I intends to file additional

written notification disclosing all changes in membership.

On August 7, 1990, IPACT–I filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** puruant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on April 15, 1996. The Department of Justice published a notice in the **Federal Register** on April 29, 1996 (61 FR 18755).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–8454 Filed 4–2–97; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–038]

Notice of Prospect Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Foerster Instruments, Inc., of Pittsburgh, PA 15275, has applied for a partially exclusive patent license to practice the invention described and claimed in NASA Case No. LAR–15231–1, entitled ''Flux-Focusing Eddy Current Probe and Rotating Probe Method for Flaw Detection,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Langley Research Center.

DATE: Responses to this notice must be received by June 2, 1997.

FOR FURTHER INFORMATION CONTACT:

Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–9190.

Dated: March 27, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–8541 Filed 4–2–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–13027, 030–21073, 030–22274; License Nos. 12–00722–06, 12–00722–13, 12–00722–14 and EA 97–059]

Department of the Army, U.S. Army Armament and Chemical Acquisition and Logistics Activity Rock Island, IL; Confirmatory Order Modifying License (Effective Immediately)

I

Department of the Army (also known as TACOM–ACALA, Army, and Licensee) is the holder of NRC License Nos. 12–00722–06, 12–00722–13, and 12–00722–14 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The licenses authorize possession of up to 1.5 million curies (55.5 PBq) of tritium, 25 curies (0.93 TBq) of americium-241, and 1000 curies (37 TBq) of nickel-63 for use in self-luminous fire control devices, in chemical agent detectors, and in chemical agent monitors. The licenses authorize use and storage of these devices at Army, Marine, and Navy installations throughout the United States. The licenses were initially issued on June 23, 1977, May 23, 1984, and May 3, 1985, respectively, and each is currently due for renewal or in the renewal process.

II

The licenses identified in this Order were inspected by the NRC on several occasions between June 1992 and March 1997. Most of the inspections were conducted as a result of reported events and, therefore, the inspections were limited in scope and direction. As a result of the NRC inspections conducted between June 1992 and August 1995, 22 violations were identified and two civil penalties totaling $32,500 were proposed and paid.

This Order is being issued because of significant deficiencies in the Licensee's ability to manage its licensed activities, to ensure compliance with NRC requirements, and to promptly correct problems identified through its own internal audits. Based upon results of the December 9, 1996, through March 6, 1997, NRC inspection, NRC has concluded that continued programmatic defects exist, such as extensive loss of control of licensed material and poor communication between the Rock Island radiation protection officer (RPO) and other Department of Defense installations. By its own self-assessment, which was conducted in December 1995, the Licensee identified a major program weakness in that many of the RPOs responsible for licensed activities are unfamiliar with the license conditions. As of February 1997, this weakness had not been corrected. Furthermore, based upon the NRC inspection findings, the Rock Island radiation safety officer did not provide adequate oversight of licensed activities, including ensuring that corrective actions for identified deficiencies either at Rock Island or at the other installations were fully implemented. Therefore, information is needed to determine how TACOM–ACALA, based on its placement in the overall Army organizational structure, intends to control licensed activities being performed at other Licensee installations and at other Department of Defense installations.

The purpose of this Order is to confirm commitments made by the Licensee as described in Section IV.

III

By letter dated February 14, 1997, the NRC described to the Licensee the NRC's understanding of the commitments the Licensee plans to implement. The Licensee subsequently consented to the issuance of this Order in accordance with the conditions described in Section IV below, by a waiver signed on February 28, 1997. The Licensee agreed that this Order is to be effective upon issuance and to waive its right to a hearing in the matter of this Order only. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements. The content of this Order is applicable only to License Nos. 12–00722–06, 12–00722–13, and 12–00722–14.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *it is hereby ordered, effective immediately, that license nos. 12–00722–06, 12–*

00722–13, and 12–00722–14 are modified as follows:

A. The Army shall retain the services of an independent individual or organization (consultant) to perform a full assessment (audit) of the Army's radiation safety program conducted under License Nos. 12–00722–06, 12–00722–13, and 12–00722–14. The consultant shall be independent of the Army's organization and shall be experienced, or qualified, in evaluating the effectiveness of the management and implementation of a radiation safety program, specifically including the program for material control and accountability. The audit shall determine the Army's compliance with all NRC requirements, and the status of completion of all commitments to which the Army committed in response to NRC enforcement actions issued since January 1, 1992.

B. Within 30 days of the date of the Order, the Army shall:

1. Submit to NRC Region III the audit plan for NRC review and approval prior to implementation; and

2. Provide in writing answers to the following specific questions concerning implementation of the Army's NRC-licensed activities:

a. How will the Army ensure that each local and installation Radiation Protection Officer for licensed activities maintains an awareness of, and compliance with, all NRC requirements that are applicable to that locale or organization?

b. How will the Army ensure that effective training of all users of licensed material is provided prior to the individuals' use of licensed material?

c. How will the Army ensure that notifications and reports are made to ACALA and subsequently to the NRC as required by NRC requirements or license conditions?

d. How will inspectors from ACALA gain access to bases or facilities possessing licensed material to conduct unannounced inspections of base or facility implementation of regulatory requirements?

C. Within 60 days of the date of NRC's approval of the audit plan, the Army shall:

1. Complete the audit of NRC requirements and the review of Army commitments; and

2. Ensure that the consultant submits to NRC Region III the results of the audit and the review, including the deficiencies identified, at the same time the consultant provides the results to the Army.

D. Within 90 days of the date of NRC's approval of the audit plan, the Army shall:

1. Contact other service branches or organizational units that use byproduct material licensed to the Army, including the Marine Corps, National Guard, Reserve units, and Navy to ensure that all events reportable to the NRC are identified;

2. Perform a complete root cause analysis for those known events that were reportable to the NRC that occurred since January 1, 1995, to determine the root cause of the events and to identify corrective action to prevent recurrence of such events at any locale or installation for which the licenses are valid; and

3. Provide to NRC Region III a report of the results of Provisions D.1 and D.2 above.

E. Within 150 days of the date of NRC's approval of the audit plan, the Army shall:

1. Develop, and submit to the NRC for approval, a schedule to implement corrective action for each deficiency identified as a result of completing Provisions C and D above;

2. In cases where the audit concludes that the Army is currently unable to meet certain commitments or requirements, provide the reason for such current inability, a description of the corrective action planned to ensure that the commitments or requirements will be met, a schedule for completion of the corrective action, and a basis as to why the NRC should not take further enforcement action for the continued failure to comply with NRC requirements; and

3. In cases where deficiencies are not scheduled for correction, explain why you disagree with each deficiency or otherwise are not taking corrective action.

F. Within 30 days of the date of completion of all corrective actions, provide to the NRC a report describing all deficiencies and corrective actions taken to prevent recurrence.

G. For the purpose of the Order, the Army shall send the audit scope, results of the audit, its program for implementing corrective actions, and the response to the questions in Provision B.2, to Mr. A. B. Beach, Regional Administrator, at NRC Region III, 801 Warrenville Road, Lisle, Illinois, 60532–4351.

H. If, for any reason, a date specified in the above conditions cannot be met, the Army will contact, in writing, Mr. Roy Caniano at the address in Provision G above.

The Regional Administrator, Region III may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 26th day of March 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–8543 Filed 4–2–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–286]

Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Westchester County, New York.

II

The Code of Federal Regulations at subsection (a) of 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, a criticality monitoring system ''using gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs.'' Subsection (a)(1) of 10 CFR 70.24 specifies the detection, sensitivity, and coverage capabilities of the monitors required by 10 CFR 70.24(a). The specific requirements of subsection (a)(1) are that ''the monitoring system shall be capable of detecting a criticality that produces an absorbed dose in soft tissue of 20 rads of combined neutron and gamma radiation at an unshielded distance of 2 meters from the reacting material within one minute.'' Subsection (a)(3) of 10 CFR 70.24 requires that the licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

The purpose of 10 CFR 70.24 (a), (a)(1), and (a)(3) is to ensure that any inadvertent criticality is detected and that action is taken to protect personnel and correct the problem. By letter dated December 20, 1996, as supplemented March 5, 1997, and March 19, 1997, the licensee requested an exemption from the requirements of 10 CFR 70.24. The licensee proposes to handle and store unirradiated fuel without having the criticality monitoring system specified in 10 CFR 70.24. The licensee also proposes to handle and store unirradiated fuel without the speicfic emergency procedures detailed in 10 CFR 70.24. The licensee believes that fuel handling procedures and design features make an inadvertent criticality unlikely. The licensee believes that a portable radiation monitoring system and existing plant procedures will provide adequate protection in the unlikely event of an accidental criticality. The licensee also believes that current emergency procedures and training are adequate to meet the intent of 10 CFR 70.24(a)(3).

III

Special nuclear material, as nuclear fuel, is stored in the spent fuel pool or the new (unirradiated) fuel storage racks. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor, and new fuel prior to loading into the reactor. The new fuel racks are used to store new fuel in a dry condition upon arrival on site.

Special nuclear material is also present in the form of fissile material incorporated into fission chambers for nuclear instrumentation, primary source assemblies, and Health Physics calibration sources. The small quantity of special nuclear material present in these items precludes an inadvertent criticality.

Consistent with Technical Specification Section 5.4, the spent fuel pool is designed to store the fuel in a geometric array using a solid neutron absorber that precludes criticality. The spent fuel racks are designed such that the effective neutron multiplication factor, K_{eff}, will remain less than or equal to 0.95 under normal and accident conditions for fuel of maximum enrichment of 5.0 wt% U–235. The staff has found this design adequate.

The new fuel storage racks may be used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor or spent fuel pool. The spacing between new fuel assemblies in the storage racks is sufficient to maintain the array in a subcritical condition even under accident conditions assuming the presence of moderator. The maximum enrichment of 5.0 wt% U–235 for the new fuel assemblies results in a maximum K_{eff} of less than 0.95 under conditions of accidental flooding. The staff has found the design of the licensee's new fuel storage racks to be adequate to store fuel enriched to no greater than 5.0 wt% U–235.

Nuclear fuel is moved between the new fuel storage racks, the reactor vessel, and the spent fuel pool to accommodate refueling operations. In addition, fuel is moved into the facility and within the reactor vessel, or within the spent fuel pool. Fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. Fuel handling procedures and the design features of the fuel handling system are discussed in the licensee's Final Safety Analysis Report.

Technical Specification Section 3.8 precludes certain movements of heavy loads over the spent fuel pool to prevent a fuel handling accident. Previous accident analyses have demonstrated that a fuel handling accident (i.e., a dropped fuel assembly) will not create conditions which could result in inadvertent criticality.

Procedures and controls prevent an inadvertent criticality during fuel handling; nevertheless the licensee will provide monitoring in the IP3 Fuel Storage Building during dry fuel handling operations. During dry fuel handling operations, the licensee will have in operation at least one portable detector that will meet the detection and sensitivity criteria of Sections 5.6 and 5.7 of ANSI/ANS 8.3 (1986), ''American National Standard Criticality Accident Alarm System.'' Upon detection, this instrument shall automatically cause an immediate alarm audible in all areas from which evacuation is necessary to minimize exposure. The staff has determined that the detection and sensitivity criteria in the ANSI standard are as rigorous as those specified in 10 CFR 70.24(a)(1). The staff has also determined that, because fuel handling equipment design and procedures make a criticality unlikely, one detector will be adequate and that in the case of fuel handling at IP3 two detectors as required by 10 CFR 70.24(a)(1) are not necessary.

The licensee has procedures and conducts training on dealing with radiological emergencies consistent with 10 CFR 50.47 and Part 50, Appendix E. In addition to this training, the licensee gives training on responding to a criticality monitor alarm

to radiation workers accessing the fuel handling building. This training will be provided as necessary until dry fuel handling in 1997 is complete and the subject material has been incorporated into general employee training. The staff has determined that the licensee's procedures and training meet the intent of 10 CFR 70.24(a)(3); therefore, adherence to the specific requirements of this section is not necessary to serve the underlying purpose of the rule.

Because inadvertent criticality is precluded by both design and procedure, because adequate radiation monitoring is present, and because the licensee maintains emergency procedures for the areas in which fuel is handled, the staff has concluded that there is reasonable assurance that irradiated and unirradiated fuel will remain subcritical; furthermore, there is reasonable assurance that, should an inadvertent criticality occur, the licensee will detect such a criticality and workers will respond properly. The combination of plant design features, fuel handling procedures, the use of a portable criticality monitor, radiological emergency procedures and radiation worker training constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The Power Authority of the State of New York is exempt from the requirements of 10 CFR 70.24(a), 10 CFR 70.24(a)(1), and 10 CFR 70.24(a)(3) for Indian Point Nuclear Generating Unit No. 3. This exemption is contingent on the facility's maintaining the hardware, procedure, and training described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 14705).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 27th day of March 1997.

For the Nuclear Regulatory Commission,

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–8545 Filed 4–2–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items 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.

Date of amendment request: February 14, 1997, revised March 10, 1997.

Brief description of amendment: The amendment revises the Technical Safety Requirement for the design features for the cranes in the feed facilities and reflects the associated changes to the Safety Analysis Report.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed change to TSR 2.2.5.2 involves a change to the design features of the hoist brakes for the feed facility cranes. These changes have no impact on plant effluents and will not result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed design change for the brakes will not affect individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed change involves a change to the description of the safety features on the feed facility cranes. The changes are being made to reflect the field configuration of the cranes. The brake design in question complies with the requirements of ANSI B30.2–1990 and will continue to perform its safety function. As such, the potential of occurrence of an evaluated event is unaffected. The consequences of previously evaluated accidents are not increased.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed changes revise the design feature for the brakes of the feed facility cranes to match the field configuration. The brakes meet ANSI B30.2–1990 and will continue to meet their safety feature. The change does not create the possibility for a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The brake designs for the cranes comply with the requirements of ANSI B30.2–1990. The TSR change is necessary to reflect the field configuration of the brakes. The accident analysis is not affected by this change. The proposed changes cause no reductions in the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed TSR change is being made to reflect the field configuration of the brakes for the feed facility cranes. The effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: Upon issuance of amendment.

Certificate of Compliance No. GDP–1: Amendment will revise a Technical Safety Requirement on crane design and incorporate Safety Analysis Report changes.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, MD, this 27th day of March 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello, Director,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–8546 Filed 4–2–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application and Claim for Unemployment Benefits and Employment Service.

(2) *Form(s) submitted:* UI–1, UI–3.

(3) *OMB Number:* 3220–0022.

(4) *Expiration date of current OMB clearance:* 4/30/98.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 294,000.

(8) *Total annual responses:* 294,000.

(9) *Total annual reporting hours:* 31,333.

(10) *Collection description:* Under Section 2 of the Railroad Unemployment Insurance Act, unemployment benefits are provided for qualified railroad employees. The collection obtains the information needed for determining the eligibility to and amount of such benefits from railroad employees.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–8524 Filed 4–2–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–8, SEC File No. 270–225, OMB Control No. 3235–0235

Form N–8F, SEC File No. 270–136, OMB Control No. 3235–0157

Form N–23C–1, SEC File No. 270–230, OMB Control No. 3235–0230

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information:

Rule 17a–8 exempts certain mergers and similar business combinations (''mergers'') of affiliated registered investment companies (''funds'') from section 17(a)'s prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The average annual burden of meeting the requirements of Rule 17a–8 is estimated to be 1.5 hours for each fund. The Commission estimates that about seventeen funds rely each year on the rule. The total average annual burden for all respondents is therefore twenty-six hours.

Form N–8F is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that they have ceased to be investment companies. The form takes approximately 6 hours to complete. It is estimated that approximately 160 investment companies file Form N–8F annually, for a total annual burden of 960 hours.

Form N–23C–1 assists the Commission and the public in monitoring repurchases by closed-end investment companies (''closed-end funds'') of their own securities under Rule 23c–1, which permits such repurchases in limited circumstances subject to certain safeguards. The form, which must be filed within the first 10 days of the calendar month following any month in which securities are repurchased, requires the closed-end fund to report certain information including the date, amount, and price of repurchases and other information. It is

estimated that four closed-end funds are affected by the rule each year, and that they file approximately 23 reports in total each year (based on the average of 0 to 12 reports filed annually by each fund) requiring one hour per report, for a total of 23 annual burden hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 26, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–8471 Filed 4–2–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 7, 1997.

An open meeting will be held on Tuesday, April 8, 1997, at 10:00 a.m. A closed meeting will be held on Wednesday, April 9, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 8, 1997, at 10:00 a.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss a number of issues of mutual interest, including the Plain English pilot program and proposing release, EDGAR and electronic dissemination of information to shareholders, the shareholder proposal rules, Rule 144, direct shareholder communications, direct registration and direct purchase plans, and lost securities holders. For further information, please contact Marija Willen at (202) 942–2840.

The subject matter of the closed meeting scheduled for Wednesday, April 9, 1997, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 1, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–8652 Filed 4–1–97; 2:41 am]

BILLING CODE 8010–01–M

[Release No. 34–38451; File No. SR–NASD–97–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Valuation of Illiquid Direct Participation Program and Real Estate Investment Trust Securities on Customer Account Statements

March 27, 1997.

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 February 21, 1997, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation proposes to amend Rule 2340, ''Customer Account Statements,'' of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to require general securities members to provide estimated values for direct participation program (''DPP'') [1] securities and real estate investment trust (''REIT'') securities on customer account statements under certain circumstances. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

Rule 2340 Customer Account Statements

(a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account *(''statement'')* containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

(b) DPP/REIT Securities

(1) If a member participated in the public offering of any direct participation program (DPP) or real estate investment trust (REIT) securities (as these terms are defined below) and an estimated value of DPP or REIT securities is available pursuant to subparagraphs (3)(A) (ii) or (iii), the member shall list the DPP and/or REIT securities on the statement with an estimated value; except that the member shall not include on the account statement an estimated value that the member believes is inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust; or

(2) If the member or an affiliate of the member, acting as a fiduciary, provides estimated values of DPP and/or REIT securities to accounts that are subject to Employee Retirement Income Securities Act (''ERISA'') and Internal Revenue Service (''IRS'') regulations, the member shall disclose the same valuations on the statements of all other customers owning such securities.

(3) If DPP and/or REIT securities are listed on the statement with an estimated value:

(A) such estimated value shall be:

[1] Paragraph (a)(4) of NASD Rule 2810, ''Direct Participation Programs,'' defines a DPP as ''a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature. . . .'' According to NASD Regulation, this definition would cover most limited partnerships and specifically excludes real estate investment trusts.

(i) developed from data which is as of a date no more than 18 months prior to the date the statement is issued; and

(ii) provided by an independent source engaged by the member; and/or

(iii) provided in an annual report of the DPP or REIT distributed to investors pursuant to Sections 14(a) or 14(c) of the Act, as applicable, or a periodic report filed by the DPP or REIT with the Commission under Sections 13 or 15(d) of the Act; or

(iv) developed by the member, if valuations pursuant to subparagraphs (ii) and (iii) are not available; and

(B) the member shall segregate DPP and/or REIT securities by listing them on the statement separately from non-DPP and non-REIT securities and shall include on the statement:

(i) a brief and easily-understood description of the type of estimated value provided (e.g., that the value represents an estimate of the investor's interest in the assets owned by the DPP or REIT or represents an estimate of the value of the investor's DPP and/or REIT securities) and its source, and how a customer may obtain a complete and detailed explanation of the valuation methodology employed; and

(ii) disclosure in close proximity to the listing of DPP and/or REIT securities that DPP and/or REIT securities are generally illiquid securities and the estimated value disclosed may not be realizable if the customer seeks to liquidate the security.

(4) In disclosing on the statement an estimated value of DPP and/or REIT securities, the member shall not;

(A) aggregate the estimated value of DPP and/or REIT securities with the value of any other securities in any sub-total on the statement;

(B) aggregate the estimated value of DPP and/or REIT securities with the value of any other securities in the total account value unless the statement includes the total estimated value of DPP and/or REIT securities and the disclosure required by subparagraph (3)(B)(ii) in close proximity to the total account value; and

(C) include the original issue price of a DPP or REIT security as the estimated value (unless valuation of the securities by another method indicates the same dollar amount as the original issue price).

(5) Notwithstanding subparagraphs (b)(1)–(4), if a retirement account statement prepared in compliance with ERISA and IRS regulations includes DPP and/or REIT securities and individual values are not provided for any of the assets in the account, the member shall disclose on the statement that DPP and/or REIT securities are generally illiquid securities.

(6) If the DPP and/or REIT securities are listed on the statement without a price and without an estimated value, the member shall segregate the DPP and/or REIT securities by listing them on the statement separately from non-DPP and non-REIT securities and shall include on the statement disclosures that: DPP and/or REIT securities are generally illiquid securities; the value of the security may be different than its purchase price; and, if applicable, accurate valuation information is not available.

[(b)] *(c) Definitions* For purposes of this Rule[,];

(1) the term ''account activity'' shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) [(c) For purposes of this Rule,] the term ''general securities member'' shall refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraph (a)(2) and (a)(3).

Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(3) the term ''direct participation program securities'' shall include equity securities issued by a ''direct participation program'' as defined in Rule 2810 that would be included on a customer's statement of account even if not held by the member, but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodity Futures Trading Commission.

(4) the term ''real estate investment trust securities'' shall include equity securities issued by a real estate investment trust as defined in Section 856 of the Internal Revenue Code that would be included on a customer's statement of account even if not held by the member, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

(a) Rule 2340 of the NASD Conduct Rules (formerly, Article III, Section 45 of the NASD Rules of Fair Practice) requires general securities members to provide account statements to customers on at least a quarterly basis.[2] The account statement must contain a description of any securities position, money balances or account activity in the accounts since the prior account statements were sent. Under NASD Rule 2340, ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

Background

By letter dated March 9, 1994, the Subcommittee on Telecommunications and Finance of the U.S. House of Representatives (''House Subcommittee''), expressed to the NASD (as well as the SEC, the National Association of State Securities Administrators, and the Investment Program Association) its concern regarding the information provided to customers on account statements regarding the current value of non-publicly traded partnership securities.[3]

[2] ''General securities member'' refers to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraphs (a)(2) and (a)(3). However, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of NASD Rule 2340.

[3] *See* Letter from the Honorable Edward J. Markey, Chairman, and the Honorable Jack Fields, Ranking Republican Member, House Subcommittee, Committee on Energy and Commerce, U.S. House of Representatives, to Joseph R. Hardiman, President and Chief Executive Officer, NASD, dated March 9, 1994.

The correspondence noted that the partnerships that are the subject of their concern do not trade on a regular basis and, thus, regular market quotes are not available. The House Subcommittee urged that investors in non-publicly traded partnerships should be provided information on the performance of their investments and expressed concern that there may be serious shortcomings in current valuation reporting with respect to such securities.

In addition, on June 14, 1994, the NASD received correspondence from the Division of Market Regulation (''Division'') of the Commission requesting the NASD's views on whether it would be appropriate for self-regulatory organizations to require that members make certain disclosures on customer account statements.[4] Specifically, the June 14 Letter asks for the NASD's views regarding whether it would be appropriate for self-regulatory organizations to require broker-dealers to make the following disclosures on customer account statements: (i) there is no liquid market for most limited partnership interests; (ii) the values reported on account statements, if any, may not reflect the values at which customers can liquidate their positions; and (iii) if a value is reported, the source of the value, a short description of the methodology used to determine the value, and the date the value was last determined.

By letters dated May 10, 1994, and August 19, 1994, the NASD expressed concern to Congress and the SEC that there were inconsistencies in the manner in which members included valuations for DPP securities on customer account statements and indicated that the Association was moving forward to examine the need for regulation in this area.[5] NASD Regulation has determined to amend NASD Rule 2340 to provide regulatory guidance to members regarding the disclosure of values for DPP securities on customer account statements in order to regulate the manner in which information is provided to investors regarding the performance of their DPP investment assets.

In particular, NASD Regulation has been concerned that a significant number of NASD members continue to carry DPP securities on customer account statements at the original purchase price. NASD Regulation believes that this practice needs to be eliminated. In addition, NASD Regulation proposes to apply the proposed amendment to NASD Rule 2340 to the securities of certain REITs, which are excluded from the Association's definition of DPP security in paragraph (a)(4) of NASD Rule 2810, in order to ensure similarity of treatment under NASD Rules of the two products.

Description of Proposed Amendments to NASD Rule 2340

Scope and Definitions

NASD Regulation proposes to apply the new requirements in NASD Rule 2340 to DPP securities and REIT securities. The definitions of DPP and REIT securities proposed in subparagraphs (c)(3) and (4) of NASD Rule 2340 only encompass unlisted DPPs and REITs, since an investment in listed securities provides investors with some measure of liquidity and market values. Thus, the definitions exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. The definition of DPP securities proposed in subparagraph (c)(3) also excludes any program registered as a commodity pool, since those programs generally offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Requirements to Place Estimated Values on Customer Account Statements and Guidance on Appropriate Sources of Valuations—Subparagraphs (b)(1)–(2)

The proposed rule change contains two specific circumstances under which general securities members are obligated to provide customers with estimated values for DPP and/or REIT securities in their customers' accounts.

In the first circumstance, under subparagraph (b)(1) of the proposed rule change, if a general securities member participated in the public offering of DPP or REIT securities, then the member must list the DPP/REIT securities on its customer account statements with estimated values if such values are available pursuant to subparagraphs (b)(3)(A) (ii) or (iii) of the proposed rule change. Where a general securities member participated in the public offering of DPP or REIT securities, NASD Regulation believes that the member should inform its customers of the estimated value of the DPP or REIT securities. Subparagraph (b)(3)(A)(iii) permits a member to include an estimated value that is contained in an annual report distributed to investors pursuant to Sections 14(a) or 14(c) of the Act or in a periodic report filed with the Commission under Sections 13 or 15(d) of the Act.[6] This provision is intended to address the concern of members regarding their liability for disclosing an estimated value by permitting the member to rely on the liabilities under the federal securities laws that attach to the general partner's or trustee's disclosure.

Subparagraph (b)(3)(A)(ii) permits a member to include an estimated value provided by an independent source engaged by the member. Thus, when a member is obligated to include an estimated value for DPP/REIT securities on customer account statements under subparagraph (b)(1), the member may include valuations from both an independent source and an annual/periodic report, if the member determines to do so.

In considering this mandatory obligation, NASD Regulation determined that there are circumstances where the member should be required to refrain from using an estimated value that the member believes is inappropriate. Therefore, proposed subparagraph (b)(1) provides that a member shall not include an estimated value of the securities on the account statement if the member believes that the estimated value was inaccurate as of the date of the valuation or is no longer accurate due to a material change in the operations or assets of the program. With respect to the latter phrase, the assets of a real estate limited partnership would be considered to be impaired, for example, where the lessee fails to perform under the lease. Similarly, the sale of a property would be considered a material change because the sale reduces the value of the program.

In the second circumstance, under subparagraph (b)(2) of the proposed rule change, if a general securities member or its affiliate acts as a fiduciary in connection with partnership or trust securities which are held in retirement accounts and is disclosing individual

[4] *See* Letter from Brandon Becker, Director, Division, Commission, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated June 14, 1994 (''June 14 Letter'').

[5] *See* Letter from Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, to the Honorable Edward J. Markey, Chairman, House Subcommittee, Committee on Energy and Commerce, U.S. House of Representatives, and the Honorable Jack Fields, Ranking Republican, House Subcommittee, Committee on Energy and Commerce, U.S. House of Representatives, dated May 10, 1994; and Letter from Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Brandon Becker, Director, Division, Commission, dated August 19, 1994.

[6] According to the NASD, the reporting requirements of the Act do not impose a mandatory obligation on general partners or trustees to provide an estimated value to investors in a periodic report or in the annual report.

DPP/REIT estimated values to retirement account holders,[7] then the member must disclose the same valuations on the statements of all other customers owning such securities. NASD Regulation believes that when a member or its affiliate acts as a fiduciary for retirement accounts and provides *individual* DPP/REIT security values to its retirement account customers, other customers of the broker/dealer should receive the same values being provided to retirement account customers. NASD Regulation states that the requirement to disclose the ERISA or IRS valuation to other customers would not conflict with the fiduciary and custodial obligations imposed by the Department of Labor and the IRS.

However, according to NASD Regulation, neither the Department of Labor (which administers ERISA regulations) or the IRS (which administers IRA and other retirement products) specifically requires fiduciaries to provide *individual* values for any assets held in the retirement account. Therefore, if the general securities member acting as a fiduciary does not provide individual values for the DPP and REIT securities in the retirement account, proposed new subparagraph (b)(5), discussed more fully below, provides an exception from the requirement to disclose individual values for assets held in a retirement account.[8]

Appropriate Source for Estimated Values—Subparagraph (b)(3)(A)

Proposed subparagraph (b)(3)(A) of NASD Rule 2340 requires that, where DPP and/or REIT securities are listed on a customer account statement with an estimated value, such values shall be: (1) Provided by an independent source engaged by the member; or (2) from a valuation provided in an annual report distributed to investors or in a periodic report that must be filed with the SEC (discussed more fully above). A member may use an estimated value from either or both of these sources. Under proposed subparagraph (b)(3)(A)(iv), a member may develop an estimated value for the DPP/REIT securities only when a valuation by an independent source or from an SEC annual or periodic report is not available.

Subparagraph (b)(3)(A)(i) requires that any value provided must be developed from data which is as of a date no more than 18 months prior to the date the customer account statement is issued. NASD Regulation believes that this requirement is appropriate because an estimated value, accurate upon its first use on a customer account statement, may become stale due to length of time or occurrence of subsequent events (such as the sale of a major asset of the partnership). NASD Regulation believes that the 18-month standard provides sufficient time for the member and for an independent valuation source to develop an estimated value for DPP/REIT securities based on the audited financials contained in the Form 10–K of the DPP or REIT that is filed by March 30 and is based on financial statements dated December 31 of the prior year.

Accordingly, the 18-month standard will allow a member to continue to use a valuation based, for example, on the December 31, 1995, financials during April, May, and June 1997, while a new estimated value based on the December 31, 1996, financials is being developed. In developing an objective standard, NASD Regulation considered whether investors would be disadvantaged if an event occurred that would render an estimated value disclosed on customer account statements obsolete during the 18-month period. As set forth above, it is the responsibility of the member to not include an estimated value on the account statement that the member believes was inaccurate at the time it was developed or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

Segregation of DPP/REIT Securities—Subparagraphs (b)(3)(B) and (b)(6)

Subparagraph (b)(3)(B) requires that an estimated value provided for DPP/REIT securities on a customer's account statement be segregated from other securities into a separate location on the customer account statement. NASD Regulation believes that investment in non-publicly traded DPP and REIT securities and the estimated values that may be disclosed for those securities regarding their performance differ sufficiently from the prices of other securities that customers will benefit from having the DPP/REIT securities grouped together. In addition, NASD Regulation believes that the segregation of these securities into a separate location on the customer account statement should also lessen the possibility of misleading customers regarding the estimated values for DPP/REIT securities since the valuations will be distinguished from listed securities and accompanied by cautionary disclosures.

Subparagraph (b)(6) of the proposed rule change provides that DPP/REIT securities listed on customer account statements without an estimated value shall also be segregated. Thus, the requirement to segregate DPP/REIT securities will apply regardless of whether the security is listed with or without an estimated value.

Disclosure of the Source of the Estimated Value—Subparagraph (b)(3)(B)(i)

Proposed subparagraph (b)(3)(B)(i) requires members to provide a brief and easily-understood statement relating to the source of the estimated value, provided that the member informs the customer of how to obtain a more complete and detailed explanation of the methodology. The provision includes two examples of such a brief statement: (1) ''the value represents an estimate of the investor's interest in the assets owned by the DPP or REIT;'' or (2) ''the value . . . represents an estimate of the value of the investor's DPP and/or REIT securities.'' Another example of acceptable disclosure is that the estimated value is ''an estimate of value provided to (member's name) by an independent valuation service on an annual basis based on information available to the service on (date).''

An example of the disclosure a member may use to inform the customer of how to obtain a more complete explanation of the valuation methodology is: ''A general description of the methodology used by the independent valuation service to determine its estimate of value is available by telephoning (telephone number).''

Disclosure of Nature of DPP/REIT Securities—Subparagraph (b)(3)(B)(ii)

Proposed subparagraph (b)(3)(B)(ii) requires disclosure in close proximity to the location of the DPP/REIT securities on the account statement that DPP securities generally are illiquid securities and the estimated value disclosed may not be realizable if the customer seeks to liquidate the security. NASD Regulation considers the requisite disclosure to be sufficiently proximate if it is located on the same

[7] According to NASD Regulation, the Employee Retirement Income Securities Act (''ERISA'') and Internal Revenue Service (''IRS'') regulations require, at least annually, that a retirement account fiduciary provide to the account holder a statement of the total value of all the assets in the account.

[8] The adoption of such an exception does not represent a view that the proposed requirement to provide individual ERISA/IRA valuations to other customers of the broker-dealer will discourage members from providing such individual valuations. To the contrary, fiduciaries increasingly are providing individual values for each asset in a retirement account in order to permit the account holder to make withdrawals where the account holder has reached the age when ERISA/IRS regulations require annual mandatory withdrawals that do not exceed a percentage-of-assets limitation.

page where the DPP and/or REIT securities are listed.

Aggregation of Estimated Values for DPP/REIT Securities with the Value of Other Securities in Sub-Totals and in the Total Account Value—Subparagraphs (b)(4) (A) and (B)

Proposed subparagraph (b)(4)(A) prohibits a general securities member who discloses an estimated value for a DPP and/or REIT security on a customer account statement from aggregating the estimated value of the DPP/REIT securities with the value of any other securities in any sub-total on the statement. Proposed subparagraph (b)(4)(B) allows a member to include the estimated value of the DPP/REIT securities in the total account value on the statement if the member provides disclosure in close proximity to the total account value of the sub-total for DPP/REIT securities and of the illiquid nature of the securities, as required by subparagraph (b)(3)(B)(ii), as discussed above. NASD Regulation considers ''close proximity'' to require that the sub-total for DPP/REIT securities and the cautionary disclosure appear on the same page as the total account value.

Use of Purchase Price—Subparagraph (b)(4)(C)

Proposed subparagraph (b)(4)(C) prohibits members from using the original purchase price of a DPP or REIT security on a customer account statement as the estimated value unless the valuation of the DPP or REIT by another method indicates the same dollar amount as the original issue price. Thus, regardless of the mandatory obligations in proposed subparagraphs (b)(1) and (b)(2) to disclose an estimated value for DPP/REIT securities under certain circumstances, the member may not use the original purchase price as the required estimated value (unless the valuation of the DPP or REIT by another method indicates the same dollar amount as the original issue price).

Retirement Account Statements With No Individual Values—Subparagraph (b)(5)

Proposed subparagraph (b)(5) states that if a retirement account statement prepared in accordance with ERISA and IRS regulations includes an aggregate value of the assets held in the account, but does not provide individual values for any of the assets, then the member must disclose on the account statement only that DPP and/or REIT securities included in the account are generally illiquid securities. As a result of the exception provided in subparagraph (b)(5) from subparagraphs (b) (1)–(4), the member may include the value of DPP/REIT securities in the total account value. NASD Regulation believes that since individual values are not provided for any of the assets in the retirement account, the other provisions that would, in particular, require disclosures along with the display of the total account value, are unnecessary.

Required Disclosure for Unpriced Securities—Subparagraph (b)(6)

When a member discloses no valuation for DPP/REIT securities on a customer account statement, proposed subparagraph (b)(6) requires the member to segregate the DPP/REIT securities on the account statement and include disclosures that DPP/REIT securities are generally illiquid securities, that the value of the security may be different from its purchase price, and, if applicable, that accurate valuation information is not available.

Implementation of Proposed Rule Change

In order to provide members (or their service organizations) with sufficient time to modify their computer systems to comply with the proposed rule change, NASD Regulation is requesting that the proposed rule change become effective six months after Commission approval. During that time, NASD Regulation will issue a Notice to Members announcing the Commission's approval of the proposed rule change and the anticipated effective date. In addition, the staff of the Corporate Financing Department will respond to inquiries by members and their service organizations regarding compliance with the proposed rule change. To the extent that interpretive issues arise during this period that are generally applicable to those members that are subject to the proposed rule change, the Association will issue a Notice to Members to clarify for all members the application of the rule change.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which require that the Association adopt and amend its rules to promote just and equitable principles of trade and generally provide for the protection of customers and the public interest, in that the proposed rule change significantly improves disclosure to public customers on their account statements of information concerning the value and performance of securities issued by non-publicly traded DPPs and REITs in which such customers have invested, while providing safeguards for both member firms and public customers against the publication of inaccurate, and therefore misleading, values for such securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was published for comment in Notice to Members 94–96 (December 1994). Thirty-nine comments were received in response thereto from 36 commenters. A copy of the Notice to Members is attached as Exhibit 2 to the rule filing. A copy of the comment letters received in response thereto are attached as Exhibit 3 to the rule filing. Thirty of the 36 commentators generally favored NASD Regulation's effort to provide regulatory guidance regarding the disclosure of partnership valuations on customer account statements, although every letter contained suggested revisions. Six commenters were opposed to the adoption of the proposed rule change.

Notice to Members 94–96 published an original version of the proposed rule change which required that customer account statements:

1. Segregate DPP securities from other securities on the account statement;
2. If illiquid DPP securities are listed without a price, include disclosure that accurate pricing information is not available because the value of the security is not determinable until the liquidation of the partnership and no secondary market exists;
3. If DPP securities are listed with a price:
a. Not aggregate the value of the DPP securities with the value of any other securities on the statement or include the value of the DPP securities in the customer account net worth calculation; and
b. Include disclosure of the methodology used for obtaining the valuation; and
c. Include disclosure that DPP securities generally are illiquid securities and that the price listed may not be realizable if the customer seeks to liquidate the security.

Scope and Definitions

NASD Regulation agreed with the views of commenters that the regulatory concerns surrounding the value of DPP securities should extend only to unlisted DPPs and REITs, since an investment in Nasdaq or exchange-listed securities provides investors with some measure of liquidity and market

[9] 15 U.S.C. § 78*o*–3.

values.[10] Accordingly, NASD Regulation revised its proposal to adopt a definition of DPP and REIT securities in new subparagraphs (c) (3) and (4) of NASD Rule 2340 that excludes securities listed on a national securities exchange or the Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. NASD Regulation also determined to except from the definition of DPP securities any program registered as a commodity pool, since those programs offer investors a security that is redeemable by the issuer, at the customer's option at regular intervals and at ascertainable values.

Prices versus *Estimated Values*

NASD Regulation amended the proposal published for comment to eliminate the word ''price'' and insert the phrase ''estimated value'' throughout the revised rule. Commenters stated that a ''price'' carried on a customer account statement gives the appearance to the investor that the security can be liquidated for an amount that is roughly equivalent to the price set forth on the customer's account statement. However, except in the case of those DPPs/REITs which are publicly listed and traded, estimated values of DPP/REIT securities are not likely to be realizable if a customer seeks to liquidate his or her investment.

Requirements to Place Estimated Values on Customer Account Statements and Guidance on Appropriate Sources of Valuations—Subparagraphs (b) (1) and (2)

The provisions of the proposal published for comment that provide guidance for the disclosure of DPP securities with an estimated value on customer account statements received the most comments. The commenters generally believed that investors should be provided with a value for their DPP securities. However, they differed as to the value to be disclosed, with the greatest amount of comment focused on valuation methodologies (whether net asset value or securitized value) and their source (*i.e.*, whether generated by the member or obtained from the general partners or third-party independent evaluators).

NASD Regulation agrees with the sentiment expressed in a majority of the comment letters and with the views of correspondence received from the House Subcommittee, *i.e.*, that investors in non-publicly traded partnerships and trusts should know how their investments are performing. However, NASD Regulation believes that there are practical problems to requiring that all members provide disclosure of the estimated values of all DPP and REIT securities held by their customers. A member that was not part of the underwriting syndicate for the initial public offering would not have conducted due diligence. Therefore, the member would not have the usual ongoing relationship with the general partner or trust advisor that would permit the member to assess the reliability and validity of an estimated value provided by the general partner/trust advisor or any other source. In particular, when a customer's DPP/REIT securities are transferred to a broker-dealer after acquiring them through another member, NASD Regulation determined that it would be an inappropriate burden for the member to be required to provide estimated values for the many different partnerships and trusts held by its customers if the member did not participate in the initial public offering of the DPP or REIT.

NASD Regulation determined that members should be required to provide customers who have DPP or REIT securities in their general securities accounts with estimated values under two specific circumstances: (1) when the member participated in the underwriting of the initial or, although rare, follow-on public offering of the partnership or trust securities and had the opportunity to conduct due diligence and develop a relationship with the sponsor or general partner; and (2) when the member or its affiliate acts as a fiduciary in connection with partnership or trust securities which are held in retirement accounts and are disclosing individual DPP/REIT security values to retirement account holder.[11] NASD Regulation has revised the proposal published for comment in the Notice to Members to reflect these requirements by adopting new subparagraphs (b)(1) and (b)(2) of NASD Rule 2340.

However, to address concerns that the proposed rule change would require members to provide estimated values for DPP/REIT securities held in a retirement account, although neither the Department of Labor (which administers ERISA Regulations) or the IRS (which administers IRA, and other retirement type products) specifically require fiduciaries to provide *individual* values for DPP/REIT securities and any other assets held in the retirement account, NASD Regulation proposed new subparagraph (b)(5) to provide an exception from the requirement to disclose individual values if the member only provides an aggregate value for the entire retirement account. *See* discussion below of subparagraph (b)(5).

Appropriate Source for Estimated Values—Subparagraph (b)(3)(A)

Commenters expressed concern that the proposal published for comment did not provide guidance on the different sources of an estimated value considered appropriate by the Association. Accordingly, NASD Regulation has amended its original proposal to include a provision in subparagraph (b)(3)(A) of NASD Rule 2340 that will require the member's estimated value for DPP or REIT securities to be provided by an independent source engaged by the member, or be from a valuation in the DPP's or REIT's annual report distributed to investors, or from a periodic report filed with the SEC by the DPP or REIT. The member may develop a value for the DPP or REIT only if a valuation by an independent source or from an annual or SEC periodic report is not available.

Prohibition on Using Stale Data—Subparagraph (b)(3)(A)(i)

Many commenters stated that an estimated value, accurate upon its first use on a customer account statement, may become stale or inaccurate due to lengthy time or subsequent events (such as the sale of a major asset of the partnership). NASD Regulation agrees that an estimated value based on stale information eventually becomes sufficiently misleading to investors to constitute a fraud. Therefore, NASD Regulation has amended its original proposal to include a provision in subparagraph (b)(3)(A)(i) of NASD Rule 2340 that will preclude members from disclosing an estimated value if the financial statements and other underlying data used to determine that value are of a date more than 18 months prior to the date the account statement is issued. In addition, proposed subparagraph (b)(2) provides an exception to the mandatory requirement that a member that participated in the

[10] NASD Regulation expanded the proposal published for comment in Notice to Members 94–96 to include non-publicly traded REIT securities (which are not included in the Association's definition of DPP security) in order to ensure similarity of treatment under NASD Rules for these products.

[11] ERISA and IRS regulations require, at least annually, that a retirement account fiduciary provide to the account holder a value for the aggregate of all the assets in the account. However, as noted in footnote eight, other ERISA/IRS regulations requiring mandatory annual withdrawals by the account holder place pressure on a member acting as a fiduciary to provide individual values for each asset in a retirement account.

distribution of a DPP or REIT security provide an estimated value for such securities on its customers' account statements where the member believes that the estimated value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

Segregation of DPP/REIT Securities—Subparagraphs (b)(3)(B) and (b)(6)

NASD Regulation considered and ultimately rejected the views of several commenters who objected to the requirement that DPP and REIT securities be segregated from other securities into a separate location on the customer account statement. NASD Regulation believes that investments in non-publicly traded DPP and REIT securities and the estimated values which may be disclosed regarding their performance differ sufficiently from the prices of other securities that customers will benefit from having the securities grouped together for ease of presentation and review.

In addition, NASD Regulation believes that the segregation of DPPs and REITs into a separate location on the customer account statement should lessen the possibility of misleading customers regarding values since they will be distinguished from listed securities. NASD Regulation also determined that the requirement to segregate DPP/REIT securities should apply regardless of whether the security is listed with or without an estimated value. Therefore, proposed subparagraphs (b)(3)(B) and (b)(6) set forth the requirement to segregate DPP and REIT securities.

Use of Purchase Price—Subparagraph (b)(4)(C)

In response to the correspondence of the SEC, NASD Regulation amended the proposal published for comment to add a new provision in subparagraph (b)(4)(C) prohibiting members from using the original purchase price of a DPP or REIT security on a customer account statement as the estimated value. NASD Regulation provided additional language to clarify that the same dollar value of the purchase price may be used when a valuation methodology results in the estimated value and purchase price being equivalent.

Required Disclosure for Unpriced Securities—Subparagraph (b)(6)

In response to comments, NASD Regulation amended the proposal published for comment to require the following disclosure on the account statement where a member provides no valuation for a DPP or REIT: that DPP and/or REIT securities generally are illiquid securities; the value of the security may be different than its purchase price; and, if applicable, that accurate valuation information is not available. This disclosure replaces the provision in the proposal published for comment that would have required a statement that the value of the DPP security is not available until the liquidation of the partnership and that no active secondary market exists.

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 reason 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.

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, 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, N.W., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–12 and should be submitted by April 24, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[12] 17 CFR 200.30.–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–8470 Filed 4–2–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company; Computation of Alternative Maximum Annual Cost of Money to Small Businesses

13 CFR 107.855 limits the maximum annual Cost of Money (as defined in 13 CFR 107.50) that may be imposed upon a Small Business in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term ''Debenture Rate'', which is defined in 13 CFR 107.50 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate, plus the 1 percent annual fee which is added to this Rate to determine a base rate for computation of maximum cost of money, is 8.38 percent per annum.

13 CFR 107.855 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, regarding that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: March 28, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–8431 Filed 4–2–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2526]

Bureau of Oceans and International Environmental and Scientific Affairs; International Harmonization of Chemical Safety and Health Information

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES); Department of State.

ACTION: Notice regarding Government activities on international harmonization of chemical safety and

health information, and request for comments and information.

SUMMARY: Under the auspices of the State Department, an interagency committee has been working with international organizations and other countries to pursue harmonization of existing regulatory requirements or recommendations for chemical safety and health information. The authority for the State department, OES Bureau to convene this interagency committee is set forth at 22 U.S.C. 2655a. This includes, for example, provisions for classifying chemicals regarding their hazards, and the preparation and dissemination of information about the hazardous chemicals and appropriate safe handling procedures for them through labels, placards, material safety data sheets, or other written materials. Such requirements currently exist in the United States in laws or regulations that address worker protection, consumer protection, transportation of hazardous materials, and environmental protection.

Harmonization of such requirements internationally has been a long-term goal for the United States Government (USG). It was initiated through a 1984 interagency policy on chemical labeling trade issues. This goal became global through an international mandate in 1992 as a result of agreements made by participating countries, including the United States, in conjunction with the United Nations Conference on Environment and Development (UNCED) in 1992. Specifically, the UNCED objective states: ''A globally harmonized hazard classification and compatible labeling system, including material safety data sheets and easily understandable symbols, should be available, if feasible, by the year 2000.'' Recently, countries reaffirmed this commitment at a meeting of the Intergovernmental Forum on Chemical Safety, and recommended that the system be implemented in a voluntary instrument. The purpose of this notice is to update the public on progress made to date, and to allow an opportunity for interested parties to provide comments that may assist USG representatives as well as representatives of stakeholder groups such as industry, labor, and environment, who participate in the international discussions on these issues.

DATE: Comments and information should be submitted by June 2, 1997.

ADDRESS: Comments and information are to be submitted in quadruplicate or 1 original hard copy and 1 disk (3½ inch) in Word Perfect 5.1, 6.1, or ASCII text to: Office of Environmental Policy, Attn: David Rabadan, U.S. Department of State, OES/ENV Room 4325, 2201 C Street, NW, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT:

1. For general information related to this notice: David Rabadan, Office of Environmental Policy, U.S. Department of State, OES/ENV Room 4325, 2201 C Street, NW, Washington, DC, 20520; Telephone: (202) 647–8772; FAX: (202) 647–5947; E-mail: drabadan@state.gov. After May 30, OES/ENV contact will be Trigg Talley. Telephone: (202) 647–9266; FAX: (202) 647–5947.

2. For information about activities of the Interorganization Programme for the Sound Management of Chemicals' (IOMC) Coordinating Group for the Harmonization of Chemical Classification Systems: Jennifer Silk, Directorate of Health Standards Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N3718, Washington, DC, 20210; Telephone: (202) 219–7056; FAX: (202) 219–7068; E-mail: jsilk@osha-slc.gov.

3. For information about activities of the Organization for Economic Cooperation and Development's (OECD) Advisory Group on Harmonization: Amy Rispin, Office of Pesticide Programs, Environmental Protection Agency, Washington, DC, 20460; Telephone: (703) 305–5989; FAX: (703) 305–6244; E-mail: rispin.amy@epamail.epa.gov.

4. For information about activities of the United Nations' Committee of Experts on the Transport of Dangerous Goods' (UNCETDG) activities related to harmonization: Frits Wybenga, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW, Washington, DC, 20590, Telephone: (202) 366–0656; FAX: (202) 366–5713; E-mail: frits.wybenga@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

It has been estimated that there are as many as 650,000 hazardous chemical products in distribution in the United States (59 FR 6126). The potential hazards of these chemical products cover a wide range of health, physical and environmental effects. The health hazards that may result from exposure to these chemicals can be relatively minor, such as simple irritation of the skin, eyes, or respiratory tract, or may be serious and lethal, such as carcinogenicity or death from acute toxicity. Physical hazards include such characteristics as flammability and reactivity. Environmental hazards may cause aquatic, terrestrial or atmospheric effects. A number of federal laws, standards and regulations have been adopted to ensure adequate protection of the environment, workers handling the chemicals at various stages in the distribution chain, and members of the public (including consumers and emergency response personnel) who are potentially exposed to the chemicals during transportation and use. In certain areas, state and local laws supplement federal regulations.

Given the number of chemicals involved, and the limited resources available to address them on an individual basis, many of the U.S. laws are generic, focusing on generating and providing information regarding the hazards and precautions for safe use of chemicals rather than developing substance-specific regulations, such as exposure limits, for each one. The first step in each of these information-based regulatory schemes is the classification of chemicals according to their hazards. This requires development of definitions of hazards, and a means to evaluate information available on a chemical to classify it with regard to its hazard potential (e.g., what type of data are needed to classify the chemical, what test methods must be followed). The rules then require the generation and distribution of information on the hazardous chemical. The required information is generally given to handlers and users of the materials (such as workers, consumers, transport workers, and emergency response personnel) by means of labels, placards, materials safety data sheets, or other written materials regarding the hazardous chemicals. Training may also be required to ensure that those receiving this information can use it appropriately to protect themselves. Provision of complete information allows users and handlers to employ proper protective measures to avoid the occurrence of adverse effects.

It should be noted that this effort to develop a globally harmonized system (GHS) is limited to hazard classification and associated information transmittal requirements. The GHS should be viewed as a collection of building blocks from which the appropriate blocks for a particular part of a regulatory system can be chosen. For example, the system must include criteria for both chronic and acute health effects. However, that does not mean that all of the available criteria will be applied in all parts of the U.S. regulatory system. It may be expected, for example, that chronic health hazard criteria would not need to be applied to the transport sector because exposures

are brief and concerns are primarily directed to emergency situations. Application of the harmonized criteria will be consistent with the current U.S. approaches to regulation in various sectors. There are also situations where regulatory agencies already examine risk and determine that products are safe for use despite the small presence of small quantities of a hazardous chemical. These may include, for example, food which has trace amounts of a food additive or pesticide residue. While these types of chemicals may be hazardous in larger quantities when handled by workers, and are at that point subject to hazard classification requirements, a determination has been made by the government that they are safe for human consumption in their final finished form. They are not subject to hazard classification and labeling at that point in the product's life cycle, and thus the harmonized system will not be applied to them when completed.

Classification criteria refer to test data in establishing the parameters of coverage, but the GHS will not be establishing a testing protocol for chemicals or a testing system for countries to adopt. It is expected that varying test methods can be used as long as good laboratory practices are applied, and the approach is scientifically defensible with statistically significant results. The GHS will also not address downstream risk management decisions, such as packaging requirements or restricting the use of a chemical. Generally speaking, a hazard classification system is not appropriately used for such purposes without some further consideration of risks.

Other countries and international organizations have also adopted requirements to provide information to workers and members of the public potentially exposed to hazardous chemicals. In 1992, the International Labor Organization (ILO) published the *Report on the Size of the Task of Harmonizing Existing Systems of Classification and Labeling for Hazardous Chemicals.* In this report, the ILO indicated that there are two systems in addition to that in the U.S. which have a broad impact globally, and are of major significance to workers and consumers, or users of the chemicals. The European Union (EU) has directives which address classification and labeling of substances and preparations, and material safety data sheets. Canada has also adopted rules, most notably one which requires labels and material safety data sheets for chemicals in the workplace (Workplace Hazardous Materials Information System (WHMIS)). Other countries such as Australia, Japan, and Switzerland, have also adopted systems to protect workers and consumers.

In the area of transport, many countries' authorities, including the U.S. Department of Transportation (USDOT), follow the recommendations of the United Nations' Committee of Experts on the Transport of Dangerous Goods (UNCETDG). This UN Committee has developed harmonized criteria for hazard definitions and labeling that are applied in the transport sector throughout the world. These definitions focus on physical hazards, and acute health hazards.

Thus, according to the ILO Report, there are four major existing systems that have to be addressed in any effort to develop a harmonized scheme—those of the United States, Canada, the EU, and the UN transport system. While all of these systems are similar in intent (i.e. they are designed to protect people from experiencing adverse effects), there are significant differences in the specific provisions with regard to the criteria used to classify the chemicals, and the warning phrases, symbols, or other hazard communication components used to convey the information. Therefore, a chemical in the United States may be classified as being flammable for purposes of transport, but not for workplace use. Or it may be considered carcinogenic in the United States, but not in the EU.

The result is a patchwork of conflicting and diverse national and international requirements. Because of the variations in classification criteria, the same chemical may be classified as having different degrees of hazard, and thus require different warning statements, depending on the classification system being applied in a given situation. The differences multiply when the warning statements themselves are considered. Symbols and terminology vary from system to system.

The proper protection of the public from the hazards of imported chemicals is a primary concern. Consistency in approach, and provision of complete information will eliminate the confusion that users may experience as a result of receiving conflicting or incomplete data. This confusion can ultimately jeopardize safety; harmonized requirements will, therefore, help ensure that chemicals imported into the U.S. can be used as safely as those which are produced domestically within our borders.

To market or ship a product internationally, companies must grapple with different regulatory systems and attempt to develop labels and material safety data sheets to satisfy the varying requirements. Currently, that generally means having at least three sets of labels and data sheets for the same product when it is marketed in the U.S., Canada and the EU. There are also other countries that may have different requirements (e.g., Japan). This multiplicity of requirements creates a difficult compliance burden, and one which small companies in particular are not well equipped to handle due to the complexities involved and the extensive costs. These differing requirements may, therefore, constitute a technical barrier to trade, and are problematic for companies wishing to export chemicals from the United States. Small companies may be effectively barred from international trade by their inability to deal with the various classification requirements. These barriers to participation in international trade would be effectively eliminated by a globally harmonized system, and the costs of compliance with varying international requirements would be significantly reduced.

Other benefits that could result from harmonization include a reduction in the need for animal testing. The criteria used to classify hazards generally refer to the type of test methodology to follow in creating the data for purposes of classification. If all systems use the same criteria and acceptable test methodologies, there will be no need to test the same chemical several times for compliance with the differing requirements of the various systems. Centralized maintenance of the globally harmonized system (e.g., updating criteria based on new scientific information) by an international group would also reduce the efforts currently undertaken by the various countries and organizations maintaining different systems, thus freeing limited resources to address other problems.

Additional benefits will accrue in the U.S. since adoption of a globally harmonized system will also result in domestic harmonization. Currently in the U.S., various agencies promulgate requirements for hazard classification and information dissemination for the same chemicals, but may do so in different ways. This is due in part to the varying statutory requirements under which they operate. The result is that there is confusion among chemical users, thus reducing the utility of the information and the potential for protection. It also creates compliance burdens for manufacturers and importers who must classify their products under more than one agency's regulatory requirements. While international harmonization is the

primary focus, the resulting domestic harmonization potentially affects many more producers and users of chemicals in the U.S. Harmonization of U.S. agency requirements would streamline the Federal approach to hazard classification and labeling, resulting in increased protections for users and reduced compliance burdens.

Interagency Activities

As mentioned at the outset, the State Department coordinates an interagency work group to develop the United States' position concerning international harmonization of chemical safety and health information. Members of the committee include all of the agencies that regulate in this area: Consumer Product Safety Commission (CPSC), Department of Transportation (DOT), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Occupational Safety and Health Administration (OSHA), and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA). Other agencies that are interested or involved in trade and policy aspects of the issue participate as well, including other regulatory agencies and the Department of Commerce and the Office of the U.S. Trade Representative.

This interagency work group has been meeting for a number of years to discuss issues related to harmonization, to share information on work being conducted in various international fora, and to develop a coordinated U.S. policy regarding the international harmonization activities. In order to facilitate the work and ensure a coordinated position, a U.S. Government policy paper on harmonization of chemical safety and health information was developed by the interagency group in 1992. As part of that process, principles of harmonization were adopted to guide the participation of the various agencies in the U.S. Government in the international harmonization process. (See Table 1).

TABLE 1.—U.S. GOVERNMENT AGENCIES' GUIDING PRINCIPLES FOR HARMONIZATION OF CHEMICAL SAFETY AND HEALTH INFORMATION

1. The overall goal for the United States should be global harmonization of hazard classification criteria, labels, and material safety data sheets. No products or use categories should be exempted from consideration.
2. While all products/use categories should be considered, it may not be necessary for all authorities to adopt all classes agreed upon, or all hazard warnings, within some parts of their systems. For example, a consumer product labeling system may have broader definitions of toxicity than a workplace labeling system in order to address concerns involving exposure of children.
3. Uniform criteria for classifications should be accomplished first. Use of the classifications for purposes other than labeling and information transmittal should be taken into account. Hazard warnings, symbols, and other information are based on the classifications, and should be considered after agreement is reached on the classification scheme. Hazard warnings should be tested to determine comprehensibility before incorporation into a harmonized system.
4. Testing protocols and classification/labeling systems are closely intertwined, and harmonization may have to include test methods and interpretation of test results.
5. Discussions on criteria should be divided into 4 general groupings: acute health hazards; physical/chemical properties; environmental hazards; and chronic health hazards (e.g., carcinogenicity).
6. The guiding principle should be to adopt the most risk averse approach from the existing systems, taking into account principle (2) described above. A competent authority in any given jurisdiction cannot be expected to adopt a less protective system than it currently has in place. For example, with regard to acute oral toxicity, one of the existing schemes uses a threshold of 25 mg/kg to define the highly toxic category, and two others use 50 mg/kg. A threshold of 50 mg/kg covers more chemicals under the highly toxic category than a threshold of 25 mg/kg. Therefore, the most risk averse approach would be to use 50 mg/kg in a harmonized scheme.
7. Prior to negotiations on particular elements, participants will need the following:
   (a) An accurate description of existing systems used by various countries.
   (b) An understanding of the relative discretionary ability for a competent authority or agency to modify its position; i.e., are the requirements policy, regulation, or statutory legislation?
8. Procedures should be developed to ''grandfather'' test data generated to comply with current classification schemes. Otherwise, there will be extensive new testing to be done to reclassify substances and products that may have been evaluated in the past for specific hazards, and classified accordingly.
9. Plans need to be developed to ensure that all relevant groups are kept apprised of progress or involved in relevant activities when appropriate, i.e., chemical trade associations, public interest groups, labor representatives, Congressional trade and health committees, etc.
10. Activities to work towards harmonization that are trade related must seek to ensure that both general principles and specific recommendations are GATT consistent.

It should be noted that while all chemicals are potentially covered under the scope of this activity, there may be stages of a chemical's life cycle that are not currently subject to hazard classification and labeling requirements of the type being addressed in this harmonization activity. Development of a globally harmonized system would not require that such products be subject to these requirements in the future—that decision will have to be made by individual countries. However, if hazard classification and labeling of these products are added to a country's regulatory provisions, the requirements will need to be consistent with the globally harmonized system once it is developed and adopted. As the international harmonization process proceeds, work will have to be done domestically and internationally to clearly define and delineate existing requirements to determine where there is interface or overlap, and to identify exemptions as appropriate to accommodate specific concerns regarding certain product types.

For example, the end use of products intended for human intake (by any route, e.g., oral, dermal, or injection), would not be encompassed in this harmonization effort because such products are not currently subject to hazard classification and labeling requirements at that point in the life cycle of the product. If one of these products is defined as hazardous, however, there may be workplace, transport, and environmental hazards associated with it in stages of the product's life cycle before or after the intended use by consumers. Where there are hazard classification, labeling or material safety data sheet requirements to address these situations, these requirements would be covered in the harmonization process. For example, nurses may be required to mix antineoplastic (cancer treatment) drugs for administration to a patient, and thus be potentially exposed to the hazards of the material. In this case, OSHA requirements for material safety data sheets and training to protect the nurse from workplace exposure apply and are subject to the international harmonization process.

International Activities

Background

An international mandate to pursue a globally harmonized system was adopted at the United Nations Conference on Environment and Development (UNCED) in 1992. Specifically, Chapter 19 of Agenda 21 states that: ''A globally harmonized hazard classification and compatible

labeling system, including material safety data sheets and easily understandable symbols, should be available, if feasible, by the year 2000.'' Chapter 19 further recognized that while there is a globally harmonized system available for the transport of chemicals, a globally harmonized system which promotes the safe use of chemicals at the workplace or in the home is not currently available. It recommended that ''[t]he new system should draw on current systems to the greatest extent possible; it should be developed in steps and should address the subject of compatibility with labels of various applications.''

Work on a globally harmonized system is proceeding in a number of international organizations. Following the adoption of the international mandate as part of Chapter 19, governments established the Intergovernmental Forum on Chemical Safety (IFCS), a forum of government officials, which also has broad participation from representatives of relevant non-governmental groups. Among the primary charges of the IFCS is monitoring and providing broad guidance regarding the implementation of the various activities called for in Chapter 19, including harmonization. In this role, the IFCS at its second session in February 1997 recommended that the harmonized system envisioned in Chapter 19 Agenda 21 be implemented through a non-binding legal instrument.

Another new group—the Inter-Organization Programme for the Sound Management of Chemicals (IOMC)—was also established with representatives from each of the six international organizations involved in the process of accomplishing the work needed to meet the commitments made in the UNCED agreements.

IFCS-IOMC Coordinating Group on the Harmonization of Chemical Classification Systems

Under the auspices of IOMC, the Coordinating Group for the Harmonization of Chemical Classification Systems (CG/HCCS) has been managing the process of harmonization, and the International Labor Organization (ILO) is the Secretariat.

The CG/HCCS comprises representatives of the countries or organizations identified in the ILO report on the tasks involved in harmonization as having the major existing systems (US, EU, Canada, and UNCETDG), other interested countries and international organizations, and stakeholder representatives (primarily industry, labor, and environment). It meets twice a year to ensure that work is progressing, to assign work, and generally to oversee the process. OSHA is the lead U.S. agency involved in the work of the CG/HCCS, and the U.S. currently chairs the group. The CG/HCCS is charged with elaborating the voluntary instrument recommended by the IFCS.

The CG/HCCS has identified the following core elements as necessary for a globally harmonized classification and hazard communication system:

(i) Classification criteria for each hazard category and corresponding labeling classes;

(ii) Internationally recognized testing procedures for each criterion;

(iii) A procedure for establishing precedence of hazard for the purpose of label selection;

(iv) A procedure for classifying preparations and mixtures;

(v) A procedure for the selection of precautionary phrases for inclusion on labels;

(vi) Labeling symbols;

(vii) Appropriate risk and precautionary phrases;

(viii) Chemical safety data sheets;

(ix) A mechanism for protecting legitimate confidential business information, without compromising health, safety, or the environment; and,

(x) Appropriate information dissemination systems, provisions for relevant training, and a mechanism to coordinate maintenance of the harmonized system.

The CG/HCCS has also adopted a series of principles for the harmonization process to guide the work of the various organizations involved. These principles are included in the terms of reference for the CG/HCCS. (*See* Table 2.)

TABLE 2.—INTERNATIONAL PRINCIPLES FOR HARMONIZATION OF CHEMICAL SAFETY AND HEALTH INFORMATION

1. The level of protection offered to workers, consumers, the general public and the environment should not be reduced as a result of harmonizing the classification and labelling system.
2. The hazard classification process refers only to the hazards arising from the intrinsic properties of the chemical elements and compounds, and mixtures thereof, whether natural or synthetic.
3. Harmonization means establishing a common and coherent basis for chemical hazard classification and communication, from which the appropriate elements relevant to means of transport, consumer, worker and environment protection can be selected.
4. The scope of harmonization includes both hazard classification criteria and hazard communication tools, e.g. labelling and chemical safety data sheets, taking into account especially the four existing systems identified in the ILO report.
5. Changes in all these systems will be required to achieve a single globally harmonized system, transitional measures should be included in the process of moving to the new system.
6. The involvement of concerned international organizations of employers, workers, consumers, and other relevant organizations in the process of harmonization should be ensured.
7. The comprehension of chemical hazard information by the target audience, e.g., workers, consumers and the general public, should be addressed.
8. Validated data already generated for the classification of chemicals under the existing systems should be accepted when reclassifying these chemicals under the harmonized system.
9. A new harmonized classification system may require adaptation of existing methods for testing of chemicals.
10. In relation to chemical hazard communication, the safety and health of workers, consumers and the public in general, as well as the protection of the environment, should be ensured while protecting confidential business information, as prescribed by national authorities.

The CG/HCCS is currently planning to make information available on the internet in 1997 about the group's activities, papers developed, and other information regarding the harmonization process.

The technical work of harmonization is being done by different international organizations with specific expertise in the areas involved. There are three areas of technical work currently underway: criteria for health and environmental hazards; criteria for physical hazards; and hazard communication components.

Organization for Economic Cooperation and Development

Harmonization of the criteria for health and environmental hazards is being done under the leadership of the Organization for Economic Cooperation and Development (OECD). The criteria include acute health hazards (such as irritation, sensitization, corrosivity, and acute toxicity), chronic health hazards (such as target organ effects, carcinogenicity, and reproductive toxicity), and environmental hazards (such as aquatic toxicity). The CG/HCCS recently designated the OECD as the focal point for the criteria for mixtures as well.

The OECD Chemicals Group has primary responsibility for this activity, and has established an Advisory Group on Harmonization of Classification and Labeling which is completing the work. The various criteria or endpoints of concern have been assigned to working groups composed of member countries. Background papers describing existing requirements and position papers with recommendations for harmonization are being developed for each criterion. The goal is to complete this work in early 1998. Industry and labor are represented in all OECD discussions through the Business and Industry Advisory Council (BIAC) and the Trade Union Advisory Council (TUAC). EPA is the lead US agency for the work on health and environmental hazard criteria in the OECD and is coordinating national positions on harmonized criteria through consultation with other affected agencies and the public.

United Nations Committee of Experts on the Transport of Dangerous Goods

Harmonization of the criteria for physical hazards is being done under the leadership of the United Nations Committee of Experts on the Transport of Dangerous Goods (UNCETDG) in conjunction with the International Labor Organization (ILO). The UNCETDG has organized two working groups to address the physical hazards which have been grouped as either reactivity (such as explosive materials, oxidizing substances, and self-reactive substances) or flammability hazards (including solids, liquids, gases, and aerosols). By consensus, the existing transport definitions for physical hazards are the basis for the work, but adjustments are being made to accommodate concerns of other user groups (e.g., workplace and consumers). The work on the physical hazards is expected to be completed in 1997. DOT is the lead US agency involved in the harmonization of physical hazard criteria and is coordinating US positions through consultation with other U.S. agencies and the public.

International Labor Organization

The third major component to be harmonized is the approach to communicating the hazards determined through the harmonized classification process. This would be the information that goes on a label (e.g., warning statements, symbols) or material safety data sheet (e.g., standardized headings). This work is being done through the International Labor Organization (ILO), and is not expected to be completed until the year 2000. Initial work to ascertain the current approaches used by all countries with existing systems and the state of the scientific literature regarding comprehensibility and effectiveness of hazard communication approaches, is being done now to prepare for receipt of the harmonized criteria and the development of an appropriate approach to conveying information. A major concern is to ensure that the requirements of the globally harmonized system address issues related to the comprehensibility of the information conveyed. OSHA is the lead U.S. agency in the international harmonization of the hazard communication aspects. It is expected that a larger, more formalized ILO work group will be established later this year. Since the ILO is a tripartite organization, the work group will include representatives of government, labor and industry.

Prospects for the Future

Much progress has been made in the past few years with regard to the technical criteria for hazard classification. Work has also begun on development of a nonbinding instrument in which the harmonized system could be made available for adoption or ratification by countries, and consideration of the appropriate maintenance mechanism for the system when it is completed. Work has also begun on consideration of the appropriate approach for classifying mixtures.

It is clear from the time frame for the work described thus far that it will be several years before the system is completed and available for countries to adopt. Determinations will also have to be made about a mechanism for maintaining and updating the system to ensure technical viability in future years.

Within the U.S., decisions will have to be made about how the system will be applied in this country. In addition, legal alternatives for adoption of the system will have to be developed and considered. Given the differing legal frameworks in the U.S. for existing requirements (i.e., statutory requirements versus regulatory requirements), legislation may be needed to ensure that all agencies can adopt the harmonized system. It is likely that a significant time period will be required to phase in the new system and to train affected users to understand its components.

Thus, while progress has been made, much work remains to be done before the goal of a harmonized system is accomplished. The USG believes that the benefits in terms of increased protection and facilitation of trade are worth the effort required to participate in the development of the system. It is clear that if the process is successful, many countries will adopt the system, and, thus, participation in international trade in chemicals will be largely predicated upon implementation of the requirements. In order to shape the design of the resulting globally harmonized system and ensure that it meets the needs of the U.S., it is advantageous to actively engage in discussions in these areas and participate in the organizations charged with its development.

All of the major existing systems, as well as those that are not as widely used, have strengths and weaknesses. The best approach to harmonization appears to be development of a system that uses the strengths and corrects the weaknesses identified through implementation experiences within the existing systems. A system developed on this basis will result in benefits to the U.S. through increased protections for affected users while facilitating international trade.

As mentioned previously, an ancillary effect in the U.S. will be harmonization of varying domestic requirements—thus benefiting employers who are not involved in international trade but must comply with varying U.S. requirements.

The agencies involved in the harmonization process can provide more information about the specific international organizations they are working with, and the status of the specific work involved. In addition, as mentioned previously, there are organizations which are representing industry, labor, and other stakeholders in the discussions in the various international organizations, and they can be contacted to provide specific input in areas of concern.

Request for Comments and Information

The U.S. government needs to better identify specific aspects of the current

hazardous chemicals labeling regimes which may be posing technical barriers to trade so as to better inform agency decisions with respect to the global harmonization process. The U.S. government has identified seven broad areas of concern:

(1) Chemical hazard information may or may not be received routinely with imported chemicals and products (including mixtures) and may or may not be understandable when received. Hazard information which is received may not be consistent with what is required under U.S. law, (e.g., sufficient to comply with OSHA's Hazard Communication Standard). Without sufficient information, importers must independently take steps to ensure that the chemical or product complies with U.S. law.

(2) When shipping chemicals or products (including mixtures) overseas, problems may have been encountered in determining what is necessary to comply with the laws of other countries. Information about these laws may be difficult to obtain and compliance with them may have led to changes in U.S.-compliant labels or MSDSs. Such changes may involve more than simply translating the U.S. label information into the language of the country to which the material is being shipped.

(3) If national laws or international requirements in this area are harmonized, each country or organization with existing systems will be required to compromise and change its requirements to some extent. In experiences dealing with the rules of different organizations, there may be particular definitions, procedures, or components of existing systems that would be desirable with regard to their inclusion in a harmonized approach. Components of some already existing systems may have been proven to be problematic in terms of either understanding or implementation.

(4) The extent or amount of animal testing that must be conducted in order to classify products may be affected by harmonization. Criteria to assess existing test methodologies to ensure they are equally acceptable in the harmonized approach may need to be developed.

(5) In order to implement a globally harmonized system, changes might have to be made in existing U.S. laws or regulations. How much time would be needed to phase-in any new requirements is not clear.

(6) Issues regarding protection of legitimate confidential business information while maintaining the protection of those exposed to the chemicals would have to be resolved.

(7) Information about experience in these different areas will assist the U.S. government as work progresses on international harmonization and could include samples of different labels and MSDSs for the same substance or mixture when shipped to different countries. This would be helpful to illustrate the kinds of problems encountered. Information about the costs of complying with multiple requirements, and potential cost savings from harmonization, would also help. Information about applying the mixture rules of the existing systems to products would assist in discussions addressing this part of the issue.

In addition to the input received from stakeholder representatives actively involved in the process, the USG agencies are interested in learning more about the experiences of other affected or interested U.S. industry, labor, environment, or consumer groups dealing with hazardous chemicals. Please submit any comments, experiences, information or opinions with respect to the above seven areas of concern or any other issues that may be of relevance.

Signed at Washington, DC, this 28th day of March 1997.

Rafe Pomerance,

Deputy Assistant Secretary of State for Environment and Development.

[FR Doc. 97–8505 Filed 4–2–97; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice No. 2525]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Radiocommunications and Search and Rescue; Notice of Meeting

The Working Group on Radiocommunications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 1:30 PM on Thursday, May 1, 1997. This meeting will be held at the Radio Technical Commission for Maritime Services Annual Assembly, in the Tradewinds Hotel, 5500 Gulf Boulevard, St. Petersburg Beach, FL 33706. The purpose of this meeting is to prepare for the Third Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is tentatively scheduled for the week of February 23, 1998, at the IMO headquarters in London, England. Among other things, the items of particular interest are:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

—Maritime Search and Rescue matters.

Further information, including meeting agendas, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center Internet World Wide Web by entering: ''http://www.navcen.uscg.mil/marcomms/imo/imo.htm''

Members of the public may attend these meetings up to the seating capacity of the conference room. Interested persons may seek information by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, S.W., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to rgrandmaison@comdt.uscg.mil.

Dated: March 17, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–8515 Filed 4–2–97; 8:45 am]

BILLING CODE 4710–7–M

TENNESSEE VALLEY AUTHORITY

Kingston Fossil Plant (KIF) Alternative Coal Receiving Systems, Roane County, Tennessee

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to adopt the preferred alternative (Alternative C) identified in its Final Environmental Impact Statement (EIS) on Kingston Fossil Plant (KIF) Alternative Coal Receiving Systems. The Final EIS was made available to the public on January 15, 1997. A Notice of Availability of the Final EIS was published in the **Federal Register** on January 31, 1997. Under Alternative C, TVA would construct a new rail spur from the existing CSX Rail Yard or a direct tie in to the Norfolk Southern (NS) line at Walnut Hill in Harriman to the existing TVA coal delivery yard at KIF. The route would involve crossings of the Emory River and an embayment of Watts Bar Reservoir.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee

37902–1499; telephone (423) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION: The KIF receives by rail about 4 million tons of medium sulfur coal per year. This coal is transported by Norfolk Southern (NS) and CSX Railroads to Harriman, Tennessee. At Harriman (CSX origin), the coal is transported over a short NS spur for transport to NS's Emory Gap rail yard and then to TVA's Caney Creek yard. TVA then moves the coal by rail from Caney Creek yard to KIF, a distance of about 4 miles. While NS has directed access to Caney Creek, CSX trains are charged a switching fee, now approximating $2 million annually for use of the NS spur. This switching fee contributes to higher fuel costs at KIF when compared to the fuel costs at other TVA fossil plants. In order to enhance the competitiveness of the KIF plant and to provide more economical access to lower sulfur coals, which will be required to meet new air quality regulations, TVA investigated alternative methods of coal delivery to the plant.

TVA provided public notice of its intent to prepare an Environmental Impact Statement on alternatives for coal delivery to KIF on May 22, 1995. A public meeting on the proposal was held on June 29, 1995. TVA released a draft EIS on May 15, 1996, and held a public meeting to receive comments on the document on June 11, 1996. After considering all comments, TVA revised the EIS appropriately. The Final EIS was distributed to commenting agencies and the public on January 15, 1997.

Alternatives Considered

In order to reduce the fuel costs for KIF, direct rail delivery was evaluated because it would eliminate rail line switching fees, reduce operation and maintenance costs, and increase competition between the rail carriers. Alternatives initially considered included construction of an overland conveyor, a new barge unloading facility, and a coal slurry pipeline. Also, increased truck deliveries were considered. However, all of these were rejected because they were not feasible from an economic or engineering standpoint. A longer 13-mile rail line from Oliver Springs was also rejected on economic and other grounds. Three alternatives were formulated that represented economically feasible options. These were no action and two alternatives that involved construction of a new rail spur.

Under *Alternative A*, No Action, conditions and impacts resulting from the existing coal delivery system would not change. However, this route, which passes through downtown Harriman, blocks several street crossings and impacts the ability of the city and county governments to provide emergency services during portions of the day. There are also ongoing noise impacts resulting from 30-car rail trips to the plant about six times per day.

Under *Alternative B*, Rail Spur Route No. 1, new rail spurs would originate at the CSX Harriman Yard or near the NS line at Walnut Hill. From north to south, the route would cross Bullard Branch and Quarry Branch (CSX spur only), pass south of the Fiske Road community, pass through the Harriman Industrial Park, cross the Emory River, and extend overland about three miles to the plant. Proceeding south from the Emory River, the route would cross Swan Pond Circle Road, cross an unnamed stream, pass under existing transmission lines, cross Swan Pond embayment on a causeway, cross Swan Pond Circle Road, cross Swan Pond Road, cross Swan Pond Creek, and link up with the existing rail line.

Implementation of Alternative B would result in a rail spur approximately 4.5 miles in length. From an infrastructure standpoint, trains would bypass downtown Harriman; however, in order to avoid two road crossings in a short distance, Swan Pond Road and Swan Pond Circle would need to be relocated near their junction, creating one crossing. Bridges would need to be constructed across the Emory River and two small creeks; and there would be a new causeway across Swan Pond embayment. Other traffic impacts would be that one existing and two new crossings would be blocked to allow trains to pass; however, because the roads are less-used then the ones crossed by the current route, fewer vehicles would be impacted. Under this alternative, there would be 24,730 fewer vehicle crossings of the rail route per day than under the No Action alternative.

Trains following the new rail line would increase noise levels in the Fiske Road community of Harriman. However, the largest potential noise increase in this community over existing levels is 0.4 decibels (dBA). The quieter Swan Pond Circle Road community south of the Emory River would also be impacted by operation of a new rail line. Noises in this community would result from crossing bridges, road crossing bells, train whistles, and wheel squeal due to track curvature. In this area, the largest potential noise increase would be 2.0 dBA over existing levels. In order to reduce this impact, welded rail would be used rather than jointed rail in the Swan Pond Circle area.

Construction of the rail spur in Alternative B would result in the loss of 7 acres of prime farmland and a 5-acre beaver-created wetland. However, to the extent practicable, TVA would locate the rail spur above the 750-foot contour in the Swan Pond embayment area to avoid wetland involvement. With strict adherence to Best Management Practices during construction of the proposed rail spur, no significant impacts to water quality, floodplains, wildlife, recreation, or endangered species are expected. However, because the rail construction would take place in a karst geology area, there is some risk of sinkhole subsidence. This would be minimized by proper geotechnical investigations. Approximately 43 views from residences would be affected. There would be a 31 percent reduction in locomotive emissions as compared to the No Action alternative. An archaeological survey of the proposed route identified four sites that were eligible or potentially eligible for listing in the National Register of Historic Places that could be impacted by the proposed route. TVA would continue consultation with the State Historic Preservation officer prior to construction to define measures to avoid or reduce adverse effects to these sites. Although most of the area is sparsely populated, it appears that compared to the No Action alternative, fewer minority population groups would be affected; however, slightly more low income individuals would be affected.

Under *Alternative C*, Rail Spur Route No. 2, the route would not cross Swan Pond embayment after crossing under transmission lines, but would proceed south along the east side of Swan Pond, cross Swan Pond Circle Road, cross the narrow embayment fronting the KIF ash stack on a causeway, and run parallel with Swan Pond Road and the existing rail line to the plant rail yard. Implementation of Alternative C would result in construction of a rail spur 4.75 miles in length. Under this alternative, there would be 28,600 fewer vehicle crossing of the rail route per day than under the No Action alternative. Construction along the Alternative C route would not result in loss of prime farmland and would only involve minor wetland crossings. Approximately 37 residential views would be affected. There would be slightly higher impacts on low-income individuals than Alternative B. Other impacts would be similar to those of Alternative B.

TVA Decision

The Final EIS identified Alternative C, Rail Spur Route No. 2, as the preferred alternative. The northern end

of this rail spur route includes options to link to both the CSX yard and the NS rail line. Of the two action alternatives, Alternative C avoids the most wetland and prime farmland impacts. It also involves fewer intersections, fewer vehicles affected at railroad crossings, fewer terrestrial ecology impacts, and fewer aesthetic impacts on neighboring residents. In comparison to the No Action alternative, a new rail delivery option would reduce the fuel costs of KIF through increased competition between rail carriers for coal deliveries, reduced operation and maintenance costs for TVA, and the elimination of switching fees currently associated with CSX deliveries. All of these benefits would help to provide TVA's customers with electricity at the lowest possible rate.

In choosing its preferred alternative, TVA carefully considered and addressed all comments submitted on the Draft EIS. In addition, TVA has considered comments received from the Environmental Protection Agency on the Final EIS comment responses. These additional considerations are discussed below, along with the comment response number from the FEIS:

- *Comment No. 3.* EPA believes that environmental considerations associated with alternatives that were not considered in detail due to economic reasons, including the coal slurry pipeline alternative and the overland flexible pipe conveyor alternative, should be discussed in the EIS along with economic and feasibility considerations. Because the coal slurry pipeline alternative and overland flexible pipe conveyor alternative would follow the same routes as the other alternatives, TVA believes that many of the environmental impacts would be the same; however, had they been economical, there may have been some noise and air quality benefits of these alternatives. In addition, EPA believes TVA should have been more definitive in its statement of whether the Walnut Hill spur would have been constructed as part of Alternative C. The analysis of environmental impacts for each alternative considered both the route that would originate at the CSX yard as well as the Walnut Hill variation. As it turned out, the impacts for the route that would originate at the CSX yard are higher than impacts for the Walnut Hill variation for all areas except Environmental Justice. Accordingly, the Environmental Justice analysis identifies the impact of the Walnut Hill spur.
- *Comment No. 15.* EPA expresses concerns about the potential for derailment at a critical Swan Pond Circle Road intersection that might isolate residents east of Alternative C from emergency vehicles. The length of a unit coal train, including locomotives, is approximately 6700 feet. One of the earlier preliminary railroad alignment studies measured near that distance between the north and south intersections of Swan Pond Road. TVA will design the final centerline alignment such that the distance between crossings is greater than 7000 feet. With this commitment the scenario no longer exists where both crossings could be simultaneously blocked.
- *Comment No. 21.* EPA requests that an independent entity review spill plans to determine if the plans have been tested previously in the field and whether they are effective. Federal and state regulations require the development of Spill Prevention Control and Countermeasures (SPCC) Plans. These plans have to be kept at the site and made available to state and EPA inspectors upon request. The KIF SPCC Plan covers preventive measures required for TVA contractors and associated temporary tanks on TVA properties. The plan also provides for emergency response measures that have been successfully employed in the past. TVA SPCC Plans have been supplied to EPA Region IV along with spill incident reports, and no shortcomings have been identified. TVA has trained response personnel at the site as well as an emergency strike force located in strategic positions across the valley that can respond within an hour's notice. The SPCC Plan has been certified by a Professional Engineer and has been tested previously in the field.
- *Comment Nos. 24 and 25.* EPA expresses concern that the proposed earthen fill causeway across Swan Pond embayment would restrict water circulation and result in water quality problems in the embayment. EPA requests that a bridge over the embayment be considered. The earthen fill causeway proposed for crossing the Watts Bar Embayment area for Alternate C should allow good circulation and fish passage. Both navigational clearance considerations and drainage considerations influence the size of the culvert through the causeway. TVA shallow draft bridge clearance standards for the culvert in this causeway will be adequate in accommodating small recreational vessels. As stated in the FEIS, the standards require a minimum elevation of 6 feet vertically above normal maximum pool Elevation 741 and a horizontal clearance of a minimum 8 feet. Drainage considerations and sizing indicate the necessity for a large culvert. Preliminary culvert sizing indicates a concrete double barrel box culvert of size 13′ × 36′ as a minimum. This size box culvert is in effect a small bridge. The wind, rain, and inflows in the Watts Bar Embayment area should adequately flush the waters through the larger culvert and, thus, allow a good circulation in the embayment. In addition, the costs associated with bridging are substantial, and a bridge would not be the most economical decision.
- *Comment No. 31.* EPA states that the frequency and magnitude of train whistles near residential areas should be discussed. TVA has estimated the impacts at the closest residence in a ''worst-case'' scenario in the FEIS. Typically, there would be two train trips per day during daylight hours past a given point, with the train whistles lasting several seconds.
- *Comments No. 42–44.* EPA requests that Environmental Justice mitigation be provided for low-income populations affected by the Walnut Hill spur. All mitigation commitments to reduce noise and to ensure safety of the rail would apply throughout the route of the proposed rail line. TVA does not feel that special mitigation at this site is necessary for the following reasons. Under Alternative C (with Walnut Hill spur), virtually all of the minority population is located in Census Tract 308, Block Group 3. This block group also has a poverty rate of 30.1 percent, much higher than the 21 percent in the rest of the impact area. However, most of the residents of this block group are far enough removed from the rail site that the impacts range from minimal to essentially nonexistent. Within this block group, the rail will run through a largely unpopulated area between Fiske Road and the Emory River. The population of the block group is on the other side of Fiske Road extending toward the north for some distance. This consideration essentially eliminates impacts to minority populations and reduces the low-income population to a share not much higher than the county and state rates. If the proposed Walnut Hill spur is not built, all the coal would go the CSX Harriman Yard. The additional area impacted in transporting coal to the CSX Harriman Yard is about 10.6 percent minority, with a poverty rate of 26.9 percent. The overall impact area for the new rail line combined with the area between Walnut Hill and the CSX Harriman Yard has a 6.5 percent minority population, well below the state average of 17 percent but well above the county average of 3.8 percent. The poverty rate is well above both the state and county rates. However, the

route through the additional area to the CSX Harriman Yard would be on existing rail, not new rail, and would add routine transient traffic to an existing facility. EPA also requests data on how many of the affected people are low-income minorities. With the proposed Walnut Hill spur, the project impact area has approximately 53 persons (2.3 percent of the total population) who are both minority and low-income. Without the Walnut Hill spur (the coal goes to the CSX Harriman Yard), the impact area would have approximately 109 persons (2.8 percent of the total population) who are low-income minorities. TVA does not believe that these impacts are disproportionately high.

After carefully considering EPA comments, TVA has decided to implement Alternative C as identified in its Final EIS.

Environmentally Preferable Alternative

Because Alternative A, No Action, would result in no change in existing conditions, it could be characterized as the environmentally preferable alternative. However, Alternative A does not accomplish the goal of reducing fuel costs. Further, none of the action alternatives would be environmentally destructive and none would likely result in significant environmental impacts. Of the action alternatives, Alternative C is environmentally preferable due to fewer impacts to wetlands and prime farmlands.

Environmental Consequences and Commitments

In choosing Alternative C, all practical means to avoid or minimize environmental harm have been adopted. These measures are listed below:

- To minimize noise impacts in the rural Swan Pond Circle community, the radius of track curvature would be kept as high as possible to minimize wheel-squeal. Noise will also be reduced by the use of welded rail in the Swan Pond community area. Also, all construction equipment will be equipped with noise attenuating devices, such as mufflers and insulated engine housings.
- On-site open burning will not be conducted when an air stagnation advisory or a special dispersion statement issued by the National Weather Service is in effect for the area. Where necessary, a water wagon will be used to control dust associated with construction activities.
- Should a potentially adverse water pollution incident occur in association with construction, state regulators and upstream and downstream water supply operators will be notified. During construction, Best Management Practices for silt control will be utilized, including straw dikes, filter fabric, and where necessary, retention basins.
- Sinkhole subsidence or collapse will be avoided by appropriate planning and design based on sound geotechnical investigations. Proper spill prevention procedures will be put in place to prevent contamination of groundwater from fuels, oils, and solvents during construction.
- Appropriate hydraulic analyses will be performed to ensure that the project is consistent with local floodplain regulations.
- Direct impacts to riparian zone forests at the Emory River bridge crossing will be minimized by crossing the river at a 90-degree angle.
- Wetlands will be avoided in the Swan Pond embayment by keeping all construction for the rail spur above the 750-foot elevation except at stream crossings.
- Phase II and III archaeological surveys will be conducted during the Spring of 1997 to determine the significance of the four archaeological sites in the corridor, and to allow any needed data recovery from the sites.
- TVA will design the final centerline alignment such that the distance between road crossings is greater than 7000 feet.

Dated: March 10, 1997.

Gregory M. Vincent,

Vice President, Fuel Supply and Engineering Fossil and Hydro Power.

[FR Doc. 97–8513 Filed 4–2–97; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of 8 currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 2, 1997.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Ms. Gloria Swanson, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, or Ms. MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number _____.'' Alternatively, comments may be transmitted via facsimile to (202) 632–3843 or (202) 632–3876, or by E-mail to Ms. Swanson at gloria.swanson@fra.dot.gov, or to Ms. Johnson at maryann.johnson@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Swanson, Office of Planning and Evaluation division, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590 (telephone: (202) 632–3318) or MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590 (telephone (202) 632–3226). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(i), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii)

the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of 8 currently approved information collection activities that FRA will submit for clearance by OMB as required by the PRA:

Title: Certification of Glazing Material.

OMB Control Number: 2130–0525.

Abstract: The Federal Railroad Administration's Safety Glazing Standards (49 CFR part 223) establish minimum requirements for glazing materials to protect individuals from personal injury as a result of objects striking the windows of locomotives, passenger cars and cabooses. Specifically, appendix A of part 223 establishes requirements for the certification and permanent marking of glazing materials by the manufacturer along with the responsibility of the manufacturer to make available test verification data to railroads and the FRA upon request. The certification, marking and supporting testing data assure the railroads and the FRA that the particular type of glazing material has been tested and verified for use as either FRA Type I or Type II glazing.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 5 Manufacturers of Glazing Material.

Frequency of Submission: On occasion.

Reporting Burden:

Information collection requirement	Respondent universe	Total responses	Average time per response	Total annual burden hours
Request for Glazing Material	5 Manufacturers	105 requests	30 minutes	265
Preparing and recording glazing marking information.	5 Manufacturers	20,000 pieces of glazing material.	480 per hour	41.7
New certification tests	1 Manufacturer	1 every five years	70 hours	14

Respondent Universe: 5 Glazing Material Manufacturers.

Estimated Total Annual Burden Hours: 320.7.

Status: Regular Review.

Title: Rear-end Marking Devices.

OMB Control Number: 2130–0523.

Abstract: On January 11, 1977, FRA issued part 221 (Rear End Marking Device—Passenger, Commuter and Freight Trains) of Title 49, Transportation. Through the requirements of part 221, FRA ensures that marking devices for the trailing end of rear cars meet minimum requirements regarding visibility and display. The regulations establish the performance standards for ''highly visible'' marking devices in order to be approved by the Federal Railroad Administrator. The required submissions and record keeping requirements enable FRA's enforcement personnel to effectively control the use of illegal, ineffective, or approved devices which do not provide sufficient ''visibility'' to maintain the desired degree of safety in train operations.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 5 new railroads.

Frequency of Submission: On occasion.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Request for approval	5 railroads	5 requests	4 hour	20.
Recordkeeping	5 railroads	5 records	6 minutes	30 min.

Estimated Total Annual Burden Hours: 20.5 hours.

Status: Regular Review.

Title: Transmission of Train Order by Radio.

OMB Control Number: 2130–0524.

Abstract: As a result of increasing human-factor related accident rates, including those accidents attributed to misuse of radios in railroad operations, the Federal Railroad Administration determined that there was a need for stricter rules governing the use of radios in railroad operations. Many unsafe practices in the use of radios in railroad operations were occurring routinely. On January 27, 1977, the Federal Railroad Administration (FRA) published in the **Federal Register** a final rule establishing a new part 220 (Radio Standards and Procedures) which prescribes mandatory procedures governing the use of radio communications in connection with railroad operations. FRA's Office of Safety personnel review this information to determine that the minimum standards established by the regulation are being met and will enable both the railroads and the FRA to focus attention on these procedures which are unique to radio-train operations. FRA's analysis of the submittal will enable it to identify unsafe operating practices in the use of radio communications in railroad operations. If the submissions were not required, accidents would then be the primary method of identification and prevention efforts would be hampered.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 620 railroads.

Frequency of Submission: On occasion (record keeping).

Total Responses: 7,200,000 train orders annually.

Average Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 240,000 hours.

Status: Regular Review.

Title: Railroad Operating Rules and Radio Standards and Procedures.

OMB Control Number: 2130–0035.

Abstract: As a result of an increasing number of accidents caused by human factors, the Federal Railroad Administration (FRA) determined that railroad operating rules, implemented by all of the nation's railroads, needed regulatory review. On November 23, 1974, FRA issued part 217 (Railroad Operating Rules). 39 FR 41175 (1974). These rules were substantially revised on August 22, 1994. The requirements of this rule enable FRA to monitor each railroad's compliance with its operating rules regarding the movement of trains and other rolling equipment in the railroad industry and the operating rules instructions that each railroad provides to its employees. FRA's Office of Safety analyzes the information in considering waiver petitions, accident investigations, and inquires into operating practices on selected railroads. Information will also enable the FRA to review amendments to railroad operating rules, timetables, and timetable special instructions and evaluate those changes in reference to operational safety. Furthermore, this information enables FRA to monitor a railroad's compliance with its operating rules and evaluate a railroad's program to achieve employee compliance with its operating rules. If this information was not made available to FRA, such nondisclosure would impede prevention efforts, leaving accidents as the primary method to identify unsafe railroad operating practices.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe:

Frequency of Submission: On occasion.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Part 217.7—Filing of operating rules, timetable and timetable special instructions.	1 new railroad	1 filing	1 hour	1.
217.7—Filing of amendments to operating rules, timetables and timetable special instructions.	25 railroads	75 amendments	.33 hour	25.
217.7—Record keeping requirement—Class III railroads—copy of operating rules, timetables, and timetable special instructions.	25 new Class III RRs	25 records	.92 hour	23.
217.7—Class III RRs—Amendments to operating rules, timetables, and timetable special instructions.	595 railroads	1,785 amendments	15 minutes	446.
217.9				
—Program for periodic performance of operational tests and inspections.	25 new railroads	25 filings	9.92 hours	25.
—Filing of amendments to the program for periodic performance of operational tests and inspections.	620 railroads	3,100 amendments	1.92 hour	5,952.
—Records of operational tests and inspections.	620 railroads	495,000 records	15 minutes	123,750.
—Written summary	55 railroads	55 summaries	7 hours	385.
217.11				
—Program for periodic instructions of its employees.	25 railroads	25 programs	9.92 hours	248.
—Amendments to operating rules instruction program.	620 railroads	75 amendments	.92 hour	69.
220.21(b)—Radio Operating Rules	620 railroads	N/A	N/A	No additional burden—covered under 217.7.

Estimated Total Annual Burden Hours: 130,924.

Status: Regular Review.

Title: State Safety Participation Regulations.

OMB Control Number: 2130–0509.

Abstract: October 16, 1970, Congress enacted the Federal Railroad Safety Act of 1970 (45 U.S.C. 435). This Act gave the Secretary of Transportation the authority to prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety.

In order to establish nationally uniform railroad regulations, the statute envisioned that the Federal Government would be responsible for the establishment and primary enforcement of railroad safety regulations. To assist in achieving this goal, conflicting state rules were preempted. In lieu of their prior role, states were given the opportunity to participate with the Federal Government in carrying out a portion of the investigative and surveillance activities relating to any safety rules issued under this statute.

FRA implemented this statutory concept with the adoption of the State Participation Regulation in 1975 (49 CFR part 212) which provided the necessary administrative and legal framework for enforcement and funding purposes. Federal funding for the state participation program was eliminated in Fiscal Year 1986.

State inspectors are now authorized to work in all FRA inspection disciplines. States can currently inspect track, freight cars, locomotives, brake systems, operating practices, safety glazing, safety appliances, hazardous materials, and signal systems.

FRA continues to assist the states in (1) certifying their inspectors and provides on-the-job and classroom training and (2) coordinating and consolidating state inspection plans into FRA's National Inspection Plan. This plan is revised annually to reflect current safety issues and to establish the priority of national inspection efforts

and ensure coordination with state safety programs.

The information is collected in order to comply with Federal railroad safety laws and regulations concerning the State Participation Program. Inspection information received from state agencies on their railroad safety investigative and surveillance activities will be used by FRA to implement the statutory laws. A portion of the information is needed to establish the legal authority for certain aspects in processing administrative or litigation responses in noncompliance situations. The final portion of the information is needed for the overall administration and management of the program. These data are used in monitoring the effectiveness of the program and in preparing various annual safety reports including mandated reports to the Congress. From this information, FRA can determine if the State Participation Program is being productive and properly managed.

Form Number(s): 6180.10, 29, 29A, 67, 68, 68A, 69, 79, 96, 96A, 96B.

Affected Public: Businesses.

Respondent Universe: 49 States.

Frequency of Submission: On occasion; Record keeping; Annually.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Application for Participation:				
—Annual update	16 States	16 updates	2.5 hours	40
—Exhibit 3—training funding agreement.	32 States	32 agreements	1 hour	32
Annual Work Plan	32 States	32 reports	30 hours	960
Motive Power and Equipment Violation Report (6180.68, 68A, and 69).	18 States	335 reports	1 hour	335
Operating Practices Violation Report (6180.67).	9 States	40 reports	1 hour	40
Violation of Hazardous Materials Inspection Reports (FRA F 6180.67).	10 States	64 reports	13 hours	832
Violations of Locomotive Inspection Act Reports (FRA F 6180.10).	15 States	27 reports	40 minutes	18
Violation of Safety Appliance Law Report (FRA F 6180.29 & 29A).	17 States	53 reports	1 hour	53
Violation of Hours of Service Law Report (FRA F 6180.33).	9 States	21 reports	1 hour	21
Violation of Accident/Incident Reporting Rules Report (FRA F 6180.61).	9 States	10 reports	1 hour	5
Inspection Report (FRA F 6180.96, 96A, and 96B).	32 States	12,500 reports	33 minutes	6,875
Remedial Action Report	32 States	5,048 reports	15 minutes	1,262
Remedial Action Report—Written explanation.	620 railroads	1,010 written explanations	1 hour	1,010
Remedial Action Report—Delayed Reports.	620 railroads	505 reports	30 minutes	253

Estimated Total Annual Burden Hours: 11,736.

Status: Regular Review.

Title: Qualification of Locomotive Engineers.

OMB Control Number: 2130–0533.

Abstract: Section 4 of the Rail Safety Improvement Act of 1988 required FRA to adopt rules prescribing the licensing or certification of locomotive operators. Under the statute those rules were to be structured so that (1) FRA approves the qualification standards set by railroads; (2) FRA prescribes minimum training requirements; (3) FRA requires comprehensive knowledge of relevant operating procedures; and (4) consideration of motor vehicle driving records (including data on file with the National Driver Register maintained by National Highway Traffic Safety Administration) (NHTSA) is provided for. On June 19, 1991, FRA issued a final rule on Qualifications for Locomotive Engineers implementing the requirements of Section 4 of the Rail Safety Improvement Act of 1988.

Information collection requirements concerning individuals primarily will be used by railroads to evaluate each person's qualification to be a locomotive operator. Secondary usage will be made by FRA in monitoring those qualification determinations and in certain circumstances (appeals of improper denial or revocation of certification) direct review of the person's fitness to be a locomotive operator. Information concerning an individual encompasses four areas: (1) Eligibility to be a locomotive operator based on prior conduct; (2) physical fitness to perform the task in terms of visual and hearing acuity; (3) possession of adequate knowledge to perform the task as demonstrated by successful passage of examinations; and (4) possession of adequate operational skills as demonstrated by successful passage of performance skill tests. In the absence of the data or any subset of this data, it will not be possible for a railroad to determine whether a person is qualified to operate a locomotive. Stated conversely, railroads will be free to certify unqualified persons to operate locomotives. Furthermore, absent such data it would not be possible for FRA to determine whether a railroad had acted appropriately in granting or denying a person certification.

Information collection requirements concerning particular railroads will be used by FRA to evaluate the quality of each railroad's localized aspect of the overall program. Information concerning each railroad's program encompasses eight areas: (1) The selection of designated supervisors of locomotive engineers, (2) the selection of the classes of service for engineers, (3) the evaluation of the safety conduct of engineers, (4) the evaluation of engineers' hearing and visual acuity, (5) the education of engineers, (6) the testing of engineers, (7) the operational monitoring of engineers, and (8) the procedural aspects of the operation of the certification program. In the absence of the data or any subset of this data, it will not be possible for FRA to

determine whether a railroad has an appropriate method for determining that a person is qualified to operate a locomotive.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 620 Railroads.

Frequency of Submission: On occasion.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
240.9—Waivers	620 Railroads	10 waivers	1 hour	10.
240.101/103/107/109/119/121/123/125/127/129/303/Appendix B—Certification Program.	3 new Railroads	3 programs with student training.	200 hours	600.
	22 new railroads	22 programs without student program.	40 hours	880.
	25 railroads	25 reviews	1 hour	25.
240.111/Appendix C—Request for State driving license data and National Driver Register Data:				
—Driver's license data	11,333 certification candidates.	11,333 certifications	15 minutes	2,833.
—National Driver Register Data	N/A	N/A	N/A	Approved under OMB # 2127–0001.
—Request for NDR data from a State agency.	1,133 candidates	1,133 requests	30 minutes	567.
—Response from State agency on request for NDR data.	4 States	1,133 responses	15 minutes	283.
—Railroad Notification to candidate when there is an NDR match and subsequent request from candidate to State agency for relevant data.	227 candidates	227 notifications/requests.	30 minutes	114.
240.111(g)—Notice to railroad of absence of license.	34,000 candidates	4 notices	15 minutes	1.
240.113—Notice to railroad furnishing data on prior safety conduct as an employee of a different railroad.	227 candidates	227 notices	45 minutes	170.
240.115—Candidate's review and written comments on prior safety conduct data.	340 candidates	340 responses	30 minutes	170.
240.201/221—List of designated supervisor of locomotive engineers.	620 railroads	620 updates	15 minutes	155.
240.201/221—List of Designated qualified locomotive engineers.	620 railroads	620 updates	15 minutes	155.
240.201/223/301:				
—Locomotive engineers certificate.	620 railroads	11,333 certificates	5 minutes	944.
—List of designated persons authorized to sign locomotive engineers certificate.	620 railroads	20 lists	15 minutes	5.
240.205—Data to EAP Counselor	227 candidates	227 requests	5 minutes	19.
240.207—Medical Certificate	11,333 candidates	11,333 certificates	70 minutes	13,222.
240.209/211/213:				
—Written test	620 railroads	11,333 tests	2 hours	22,666.
—Performance test	620 railroads	11,333 tests	2 hours	22,666.
Recordkeeping for each certified locomotive engineer.	620 railroads	11,333 records	10 minutes	1,889.
Denial of certification:				
—notification and candidate's response.	620 railroads	1,113 denials—responses.	1.5 hours	1,700.
—notification to candidate of adverse decision.	620 railroads	1,113 notifications	1 hour	1,113.
240.227—Canadian certification data	_____ railroads	200 certifications	15 minutes	50.
240.303—Annual Operational Monitor Test.	620 railroads	34,000 tests	1 hour	34,000.
Annual Operational Observation	620 railroads	34,000 tests	2 hours	68,000.
240.305—Engineer's notification of non-qualification.	34,000 engineers	340 notifications	15 minutes	85.
240.305—Engineer's notice of loss of qualification.	34,000 engineers	510 notices	1 hour	510.
240.307—Notice to engineer of disqualification.	620 railroads	3,400 notices	1 hour	3,400.
Railroad Annual Review	75 railroads	75 reviews	80 hours	6,000.
Engineer's appeal to FRA when a certification is denied, revoked or suspended.	34,000 engineers	70 petitions	30 minutes	35.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Railroad's Response to Appeal	620 railroads	70 appeal cases	15 minutes	18.
Request for a Hearing	70 engineers	14 requests	30 minutes	7.
Appeals	14 engineers	2 appeals	30 minutes	1.

Estimated Total Annual Burden Hours: 182,293.

Status: Regular Review.

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Abstract: These requirements resulted from enactment of the Hours of Service Act of 1907, later revised in 1969 by Pub. L. 91–169. Further amendments were enacted as part of the Federal Railroad Safety Authorization Act of 1976, Pub. L. 94–348. The stated purpose of the Act is ''* * * to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees * * *.''

Congress enacted the Act because of the many serious accidents that were occurring before the limitations were imposed. The Act specified the maximum working hours of employees engaged in one or more critical categories of work. Through the requirements of 49 CFR part 228, the Federal Railroad Administration administers the requirements of the Hours of Service Act.

The record keeping requirements contained in 49 CFR part 228 were designed to collect the hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. These requirements serve as a deterrent to violations and to document violations for prosecution. Loss of life caused by excess service today is practically nonexistent.

The regulations pertaining to construction of employee sleeping quarters are contained in subpart C of 49 CFR part 228 (Hours of Service of Railroad Employees). A railroad that has developed plans for construction or reconstruction of sleeping quarters must obtain approval of the Federal Railroad Administration by filing a petition conforming to the requirements of §§ 228.101, 228.103, and 228.105.

FRA's Office of Safety utilizes the information while performing compliance, violation and accident investigations. Without this information, FRA would be impeded during enforcement and a railroad would permit excess service to occur.

The information contained in the petitions for approval for construction of employee sleeping quarters is used by FRA headquarters staff to prepare and issue the public notice, by regional staff in investigation of the petitions, and by the Associate Administrator for Safety to render an informed and logical approval or denial of such petitions.

Form Number(s): 6180.3.

Affected Public: Businesses.

Respondent Universe: 400 railroads.

Frequency of Submission: On occasion.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.11-Hours of duty records	400 railroads	5.475 million records	7 minutes	638,750
228.17-Dispatchers record of train movement.	150 dispatch offices	54,750 records	2 hours	109,500
228/19-Monthly reports of excess service	400 railroads	1,500 reports	15 minutes	375
228.103-Construction of employee sleeping quarters.	400 railroads	1 petition	16 hours	16
45 U.S.C. 61–641-Hours of Service Act-Request of exemption.	15 railroads	15 petitions	10 hours	150

Estimated Total Annual Burden Hours: 748,791.

Status: Regular Review.

Title: Designation of Qualified Persons (Track) and Records of Results of Track Inspections.

OMB Control Number: 2130–0010.

Abstract: The Track Standards (49 CFR part 213) establish requirements for the inspection of all track to determine its suitability for train operation and Section 213.7 prescribes that inspections for determination of safety compliance must be conducted by persons possessing the necessary qualifications and authority to institute immediate remedial action. Since the first indications of impending safety defects must be recognized and acted upon by the railroad employee assigned to inspect track, it is imperative that the individual assigned possess the experience and knowledge required to effectively perform that function. The railroads are required to assure themselves that any person assigned to inspect track or repair track is indeed qualified and to maintain a list of those employees. The form of that record is left to the discretion of the railroad and may be computerized. However, the record must show each designation in effect and the basis for each designation. These records must be kept current and available to Federal and State track inspectors engaged in the enforcement of the Track Standards.

Subpart F of the Track Standards (49 CFR part 213) establishes requirements for the inspection of all track by qualified persons to determine its suitability for train operation and § 213.241 prescribes that appropriate records of those inspections are maintained at the railroad's division headquarters. The form of that record is left to the discretion of the railroad and may be either preprinted or computerized. However, the record must show when the inspection was made, the specific track inspected, any conditions which require repair and must be signed by the inspector. Track inspection records must be retained at the railroad's division headquarters for one year. Rail inspection records must be retained for two years after the inspection.

These reports are used initially by the railroad companies to see that tracks are inspected periodically, that the inspectors are properly qualified, that the tracks are in safe condition for train operations, and the reports may be used for maintenance planning where repetitive defective conditions occur.

These same inspection reports are examined periodically by Federal and State investigators to determine the

railroad's compliance with the inspection frequency requirement of the Track Safety Standards and persons assigned to inspect tracks have been properly designated. By comparison of remedial action notations on the reports with actual track conditions, it is possible to judge the quality of railroad performed inspections. The railroads employ some 5,000 persons who are routinely engaged in track inspection and the review of these reports may reveal weaknesses, if any, in the railroad's inspection and maintenance program or discrepancies in employee designation. The absence of these inspection reports would substantially harm the Government's railroad safety program.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 620 railroads.

Frequency of Submission: On occasion.

Information collection requirement	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Track Inspection Records	620 railroads	1,622,000 inspection miles	10 miles of track inspected per hour + 5 min. for Report preparation.	1,757,166
Internal Rail Flaws	620 railroads	N/A	N/A	6,608
Records of Qualified Track Inspectors	620 railroads	2,000 updates	30 minutes	1,000

Estimated Total Annual Burden Hours: 1,764,774.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on March 31, 1997.

Marie S. Savoy,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 97–8540 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–62–M

Reports, Form and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment based on revisions to the current collection. Four of the several rules to amend 49 CFR Part 225, published on December 23, 1996 (61 FR 67477) contain amendments to the approved information collection activities, while one adds a new information collection requirement. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 24, 1996 (61 FR, page 67869).

DATES: Comments must be submitted on or before May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Swanson Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 632–3318) or Ms. Mary Ann Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 632–3226). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Federal Railroad Administration

Office of Safety

Title: Accident/Incident Reporting and Recordkeeping.

OMB No.: 2130–0500.

Affected Public: 679 Railroads.

Abstract: FRA uses this information to identify hazardous conditions associated with rail transportation and to assure compliance with railroad safety laws. FRA is excepting from the requirements regarding an Internal Control Plan delineated in § 225.33(a)(3) through (a)(10) the following: (i) Railroads that operate or own track on the general railroad system of transportation (general system) that have 15 or fewer employees covered by the hours of service laws (49 U.S.C. 21101–21107) and (ii) railroads that operate or own track exclusively off the general system. However, these excepted railroads must adopt and comply with the intimidation and harassment policies outlined in § 225.33(a) (1) and (2). FRA has developed model statements of policy on intimidation and harassment to be posted by these excepted railroads. 2. FRA is also excepting from the recordkeeping requirements regarding accountable injuries and illnesses and accountable rail equipment accidents/incidents found in § 225.25(a) through the following railroads: (i) Railroads that operate or own track on the general system that have 15 or fewer employees covered by the hours of service laws (49 U.S.C. 21101–21107) and (ii) railroads that operate or own track exclusively off the general system. 3. Further, FRA is excepting railroads that operate or own track exclusively off the general system from all the requirements of Part 225 to record or report injuries and illnesses incurred by all classifications of persons that result from most non-train incidents. (A small subcategory of non-train incidents involving in-service on-track equipment must continue to be reported and recorded.) 4. In order to minimize the burden of requiring the preparer's signature on each and every monthly list of reportable injuries and illnesses to be posted for each railroad's establishments, FRA is amending § 225.25(h)(12) so as to provide railroads with an alternative to signing each establishment's monthly list. Specifically, the preparer of the monthly list of reportable injuries and illnesses for the railroad may instead sign a cover sheet or memorandum attaching the monthly lists for each establishment for that railroad. The cover sheet memorandum must list all the establishments that post the monthly list of reportable injuries and illnesses and must be signed by the preparer. 5. Finally, FRA is amending § 225.25(h), by adding § 225.25(h)(15), to address any possible concerns with privacy rights of the employee by providing that the railroad is permitted not to post information on an injury or illness reported to FRA, if the employee who incurred the injury or illness makes a request in writing to the railroad's

reporting officer that his or her particular injury or illness not be posted.

Burden Estimate: The estimated burden is 63,058 hours annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, ATTN: FRA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions or the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on March 28, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–8520 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 97–003]

Additional Hazards Study

AGENCY: Coast Guard, DOT.

ACTION: Additional hazards study; Extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on the Additional Hazards Study in order to provide more time for collection of information for the expert panel which will consider the hazards to marine transportation in and around Puget Sound.

DATES: Comments must reach the Coast Guard on or before April 4, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) [CGD 97–003], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–001, or may deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this project. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Duane Boniface, Human Element and Ship Design Division (G–MSE–1), telephone 202–267–0178, fax 202–267–4816, email fldr-he@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments, concerning the subject matter of this notice. Persons submitting comments should include their names and addresses, identify this docket (CGD 97–003), and give the reason for each comment, providing specific examples whenever possible. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background and Purpose

On February 18, 1997, the Coast Guard published a notice of initiation of the Additional Hazards Study and request for comments in the Federal Register (62 FR 7292). This notice extends the comment period. The Additional Hazards Study will use information gathered at two public workshops held in Seattle, Washington on March 6, 1997, and collected from other sources which includes the public comments to the docket. During the course of the public workshops, several requests were made to extend the open period of the public docket to allow workshop participants to submit relevant material to the docket. The information developed during the workshops, along the information submitted to the docket and derived from other sources, will be used by an expert panel. The panel will use the information to identify and rank, by level of risk, the hazards related to a major spill of cargo or fuel oil by commercial vessels transiting the study area. The expert panel will also identify potential measures to decrease the risks.

A brief summary of the March 6, 1997 workshops, which includes potential hazards, potential additional measures, and attendees, is available by contacting the person listed above in **FOR FURTHER INFORMATION CONTACT.**

Dated: March 27, 1997.

Edward L. Ziff,

Director for Resources Management.

[FR Doc. 97–8523 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; Free Flight Steering Committee

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Free Flight Steering Committee meeting to be held April 17, 1997, from 1:00 p.m. until 5:00 p.m. The meeting will be held in Room 8 ABC of the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591.

The agenda will be as follows: (1) Chairmen's Introductory Remarks; (2) Review/Approval of Minutes of Previous Meeting; (3) Introduction of the 1997 Free Flight Steering Committee Members; (4) Presentation on Strategic Planning Issues; (5) Free Flight Select Committee Report; (6) Other Business; and (7) Date and Location of Next Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 28, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–8502 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Supplemental Draft Environmental Impact Statement: Savannah, Georgia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental draft Environmental Impact Statement (EIS) will be prepared for the proposed extension (phases III, IV, and V) of the Harry S. Truman Parkway, Savannah, Georgia.

FOR FURTHER INFORMATION CONTACT: Larry R. Dreihaup, P.E., Division Administrator, Federal Highway Administration, 61 Forsyth Street, SW., Suite 17T100, Atlanta, Georgia 30303, Telephone (404) 562–3630; or David E. Studstill, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environmental/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone (404) 699–4401.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT), will prepare a supplemental draft EIS on a proposal to construct a four-lane limited access highway on new location from the terminus of the existing Phase I segment at Derenne Avenue to the Abercorn Street extension. The project length is approximately 10.3 km. The proposed project is necessary to provide additional capacity to mitigate congestion for north-south traffic on the east side of Savannah.

A draft EIS for this project was approved on February 20, 1997; however, due to a recent discovery of an active bald eagle's nest near the applicant's preferred alternate, a supplemental draft EIS will be prepared. Letters describing this action and soliciting comments will be sent to the appropriate Federal, State, and local agencies. A public hearing will be held and a public notice will be given of the time and place of the hearing. Comments or questions concerning the supplemental draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. Georgia's approved clearinghouse review procedures apply to this program)

Issued on: March 18, 1997.

Marvin Woodward,

Transportation Manager, Atlanta, Georgia.

[FR Doc. 97–8549 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Yankton County, South Dakota and Cedar County, Nebraska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge project between Cedar County, Nebraska and Yankton County, South Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty Officer, Federal Highway Administration, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437–5521. Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479–4795. Mr. Tim Bjorneberg, Chief Road Design Engineer, South Dakota Department of Transportation, Transportation Building, 700 East Broadway, Pierre, South Dakota 57501, Telephone: (605) 773–3433.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads, the South Dakota Department of Transportation, and the City of Yankton, South Dakota, will prepare an environmental impact statement (EIS) for a proposal to construct a bridge over the Missouri River. The proposed project would connect Yankton County, South Dakota and Cedar County, Nebraska, in the vinicity of Yankton, South Dakota.

Alternatives under consideration include: (1) taking no action; (2) replacing the US 81 Bridge on the existing alignment; and (3) providing a new crossing upstream or downstream from the existing alignment.

The US 81 Bridge has been listed as a historic landmark in the National Register of Historic Places. The existing bridge consists of two concrete decks; the upper deck providing one lane of northbound traffic into Yankton and the lower deck serving one lane of southbound traffic into Cedar County, Nebraska.

An agency scoping meeting was held on December 10, 1996 and a public scoping meeting is planned. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the public scoping meeting and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Edward Kosola,

Realty Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 97–8511 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 97–03; Notice 2]

Decision That Nonconforming 1987 and 1988 Toyota Van Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1987 and 1988 Toyota Van multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1987 and 1988 Toyota Van MPVs 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 vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1987 and 1988 Toyota Van MPVs), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of April 3, 1997.

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), 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, 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**.

J.K. Motors of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to decide whether 1987 and 1988 Toyota Van MPVs are eligible for importation into the United States. NHTSA published notice of the petition on January 27, 1997 (62 FR 3940) 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–200 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 1987 and 1988 Toyota Van MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1987 and 1988 Toyota Van MPVs originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are 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: March 27, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–8522 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–129; Notice 2]

General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by General Motors Corporation (GM) of Warren, Michigan, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d), and 30120(h) for a noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices and Associated Equipment.'' The basis of the application is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the application was published on December 18, 1996, and an opportunity afforded for comment (61 FR 66744).

Paragraph S5.5.11(a)(2) of FMVSS No. 108 requires that any pair of lamps on the front of a passenger car, * * * other than parking lamps or fog lamps, may be wired to be automatically activated, as determined by the manufacturer of the vehicle, * * * provided that each such lamp is permanently marked ''DRL'' on its lens in letters not less than 3 mm high, unless it is optically combined with a headlamp.

GM's description of the noncompliance follows:

GM recently discovered that the combination park/turn signal lamp for the 1997 Pontiac Firebird vehicles had been released without the required ''DRL'' marking on the face of the lamp. The condition was corrected in September 1996. Approximately 4,500 vehicles were produced without ''DRL'' marked on the lamps.

GM supported its application for inconsequential noncompliance with the following reasons:

The park/turn signal lamps meet all substantive requirements of FMVSS 108 for all functions; the sole noncompliance concerns the marking on the lamps for the voluntary DRL function.

NHTSA adopted a lens marking requirement in the final rule promulgating DRL provisions because of a concern that state enforcement and vehicle inspection officials would not be able to ''distinguish between legal and illegal lamps and lamp combinations in the absence of marking.'' 58 Fed. Reg. 3504 (1993).

While NHTSA adopted ''DRL'' as the required marking, it had considered an alternate proposal to adopt the ''Y2'' identification code specified in SAE Recommended Practice J759, Lighting Identification Code, January 1995 (SAE J579). The agency chose to require the ''DRL'' marking apparently not because of a state inspection concern, but because the SAE specifications were not identical to the federal ones. NHTSA reasoned that ''to adopt the SAE designation would be inaccurate and confusing because it would signify adoption of the SAE requirements * * *'' Id.

In this instance, the subject vehicles include the ''Y2'' marking specified by SAE J759. Thus, while the lamps do not meet the explicit federal marking requirements, they do provide an indication to state officials that the lamps are intended to be used as DRLs. Moreover, the concern expressed by NHTSA in the final rule about the SAE designation does not apply here since the subject lamps meet the substantive requirements of both FMVSS 108 and SAE J759.

The owner's manual for the Firebird explains that the DRL function is provided by the park/turn signal lamp. A state inspector who is unclear about the ''Y2'' designation would have alternate means of confirming that the turn signal portion of the lamp properly provides a DRL function.

The population of subject vehicles is small, so any confusion created by the condition would be minimal.

GM is not aware of any customer complaints concerning the absence of the ''DRL'' marking.

No comments were received on the application.

Discussion and Recommendation

The agency has carefully reviewed GM's analyses. Because the lens marking requirement was initially promulgated by the agency to enable state enforcement and vehicle inspection officials to distinguish between legal and illegal lamps and lamp combinations, NHTSA believes that the omission of the ''DRL'' marking will not compromise motor vehicle safety for the reasons expressed by GM.

Accordingly, for the reasons expressed above, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety, and the agency grants GM's application for exemption from notification of the noncompliance as required by 49 U.S.C. 30118 and from remedy as required by 49 U.S.C. 30120. (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on: March 31, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–8537 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

[Preemption Determination No. PD–12(R) (Docket No. PDA–13(R))]

New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

PETITIONER: New York State Department of Environmental Conservation (NYDEC).

STATE LAWS AFFECTED: New York Codes, Rules and Regulations (NYCRR), Title 6, Section 372.3(a)(7).

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODES AFFECTED: Highway and Rail.

SUMMARY: In response to NYDEC's petition for reconsideration, RSPA is modifying its December 6, 1995 administrative determination concerning the requirement in 6 NYCRR 372.3(a)(7)(iii) for secondary containment at a transfer facility where hazardous wastes are transferred between vehicles or temporarily stored. RSPA had determined that this requirement was an obstacle to the accomplishment of the HMR's provisions on packaging and segregation. On reconsideration, RSPA now finds that there is insufficient information from which to determine whether this requirement, as enforced and applied, is an obstacle to the accomplishment and carrying out of Federal hazardous material transportation law and the HMR.

RSPA affirms its prior determination that Federal hazardous material transportation law preempts subsections (i) and (ii) of 6 NYCRR 372.3(a)(7) that (1) prohibit transporters from repackaging hazardous wastes ''incidental to transport,'' and (2) require an indication on the manifest of a transfer of hazardous wastes between vehicles of the same transporter.

This decision constitutes RSPA's final action on the September 1993 application for a preemption determination filed by the Chemical Waste Transportation Institute (CWTI). Any party who submitted comments in Docket No. PDA–13(R) (including the applicant) may seek judicial review within 60 days of this decision.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In September 1993, CWTI applied for a determination that Federal hazardous material transportation law preempted nine specific NYDEC requirements. These requirements imposed conditions on the transfer and storage of hazardous wastes ''incidental to transport'' that, if complied with, exempted a transporter from having to obtain the separate permit required for hazardous waste treatment, storage and disposal (TSD) facilities.

In amendments that took effect in January 1995, NYDEC eliminated or modified six of the challenged requirements, including those allowing storage only at a facility owned by the transporter, limiting storage to five days, and requiring daily inspections and a log of shipments and receipts. Following these amendments, the only requirements originally challenged in CWTI's application that remained in effect were:

(1) A prohibition against ''consolidation or transfer of loads * * * by repackaging in, mixing, or pumping from one container or transport vehicle into another.'' 6 NYCRR 372.3(a)(7)(i).

(2) A requirement to indicate on the hazardous waste manifest any ''transfer of hazardous waste from one vehicle to another.'' 6 NYCRR 372.3(a)(7)(ii).

(3) A requirement that the transfer or storage area where containers of hazardous waste are transferred from one vehicle to another, or unloaded for temporary storage, ''must be designed to meet secondary containment requirements'' set forth in 6 NYCRR 373–2.9(f). 6 NYCRR 372.3(a)(7)(iii).

On December 6, 1995, RSPA published in the **Federal Register** its determination that Federal hazardous material transportation law preempts these three requirements. PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation, 60 FR 62527. RSPA found that the repackaging prohibition is preempted because it is not substantively the same as provisions in the HMR concerning the packing, repacking, and handling of hazardous material, and that the manifest requirement is preempted because it is not substantively the same as the HMR's requirements for the preparation, contents, and use of shipping documents related to hazardous material. RSPA also concluded that the secondary containment requirement is preempted as an obstacle to the accomplishment and carrying out of the HMR's provisions on packaging and segregation. (RSPA did not address one additional restriction added in NYDEC's amendments that took effect in January 1995—that a transfer facility not be located on the site of a commercial TSD facility—because neither CWTI nor any other party discussed the effect of this restriction on hazardous waste transporters or argued that it is preempted by 49 U.S.C. 5125.)

In Part II of its decision, RSPA discussed the applicability of Federal hazardous material transportation law to the transportation of hazardous wastes and the standards for making determinations of preemption. 60 FR at 62529–62532. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a State (or other non-Federal) requirement is preempted if:

—It is not possible to comply with both the State requirement and a requirement in the Federal hazardous material transportation law or regulations;

—The State requirement, as applied or enforced, is an ''obstacle'' to the accomplishing and carrying out of the Federal hazardous material transportation law or regulations; or

—The State requirement concerns a ''covered subject'' and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law or regulations. Among the five covered subjects are (1) the ''packing, repacking [and] handling * * * of hazardous material,'' and (2) the ''preparation, execution, and use of shipping documents relating to hazardous material'' including requirements related to the contents of those documents.

See 49 U.S.C. 5125 (a) & (b). These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create ''the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements,'' and that

safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials.'' Pub. L. 101–615 §§ 2(3) & 2(4), 104 Stat. 3244.

Within the 20-day time period provided in 49 CFR 107.211(a), NYDEC filed a petition for reconsideration of PD–12(R). NYDEC certified that it had mailed a copy of its petition to CWTI and all others who had submitted comments. Responses to NYDEC's petition for reconsideration were submitted by the Association of Waste Hazardous Materials Transporters (AWHMT), the Hazardous Materials Advisory Council (HMAC), and CWTI.[1]

II. Petition for Reconsideration

In its petition, NYDEC contends that its repackaging prohibition and its requirement for additional information on the manifest are not substantively different from requirements in the HMR. It states that its prohibition ''against commingling of wastes does in fact conform significantly to the federal prohibitions against transferring hazardous materials from one container to another.'' NYDEC claims to find consistency between its absolute prohibition against transferring wastes from one container to another and specific provisions in the HMR forbidding combinations of hazardous materials that cause unsafe conditions. It argues that the prohibition in 49 CFR 177.834(h) against tampering with containers of hazardous materials makes it ''clear'' that transporters are not to do ''anything that could undermine the integrity of the container * * * until it reaches its 'billed destination.' '' According to NYDEC, its repackaging prohibition and manifest requirement are both necessary to ''preserve the integrity of the generator accountability concept'' and are ''appropriate for the protection of public health and the environment, and preventing releases, the mixing of incompatible materials and deliberate 'cocktailing.' ''

NYDEC states that its requirement to indicate any transfer of hazardous waste from one vehicle to another is not significant because it is simply ''additional information that can neither be viewed as a significant alteration nor as a burden upon the transporter.'' It argues that the uniform hazardous waste manifest required by the HMR ''is not integral to transportation; it is simply paperwork'' and only EPA has the authority ''to determine issues that arise from the manifesting of hazardous waste * * *''

NYDEC also argues that its ''regulation pertaining to secondary containment is consistent with and complementary of the HMR * * *'' and does not create ''confusion'' or ''frustrate Congress' goal.'' It states that ''RSPA has not satisfied its burden of establishing that the New York Regulation poses an obstacle to the accomplishment and carrying out of the HMR,'' and points to EPA's containment requirements applicable to the storage of used oil and wastes containing polychlorinated biphenyls (PCBs) at transfer facilities.

More generally, NYDEC states that its regulations should not be found to be preempted because they advance safety in the transportation of hazardous wastes as well as ''generator accountability, a central * * * concept'' of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* According to NYDEC, its ''requirements at issue are expressly contemplated by RCRA.'' It declares that, because ''Congress did not intend to preempt states from enacting their own hazardous waste requirements pursuant to RCRA,'' RSPA lacks authority to find that New York's regulation are preempted. It asserts that only ''EPA, not DOT, is the appropriate venue for resolving'' whether States may impose additional, nonuniform requirements on transporters of hazardous waste. NYDEC also states that, ''in the absence of federal regulation, a federal statutory policy of national uniformity does not preclude state regulation,'' and asserts that RSPA has improperly applied the statutory standard to find ''preemption of the entire field'' of State regulations on hazardous waste transporters.

III. Discussion

A. Repackaging Prohibition

RSPA's December 1995 determination noted that ''the HMR do not contain any general prohibition against the transfer of hazardous material from one container to another, or the combination of commodities in the same packaging.'' 60 FR at 62534. RSPA further explained that the HMR's specific prohibitions against tampering with a container of hazardous materials, or combining hazardous materials that would cause an unsafe condition, are substantively different from New York's absolute prohibition against repackaging hazardous wastes. 60 FR at 62536.

NYDEC has never challenged the statement in CWTI's application that combining the contents of several smaller containers of hazardous waste into a bulk packaging achieves ''efficiencies in transportation that promote safety'' by reducing the overall risks that are generally associated with a greater number of smaller packagings. Nor did NYDEC respond to the comments discussed in the December 1995 determination that repackaging promotes safety when shipments of hazardous wastes are transferred between trucks and railroads. 60 FR at 62535. As RSPA noted, in 1980, EPA disclaimed any intention of discouraging intermodal (truck to rail) transfers of hazardous wastes. 60 FR at 62536. Yet, the restriction in 6 NYCRR 372.3(a)(7)(i) completely forbids transferring hazardous wastes from one bulk packaging to another (*e.g.*, between cargo tank motor vehicles and rail tank cars), and it also prevents the combining (or bulking) of identical wastes from the same generator (*e.g.*, transferring the contents of numerous 55-gallon drums into a single cargo tank). Safe transportation of hazardous wastes is not furthered by a repackaging prohibition that is substantively different from the HMR's requirements for packing, repacking, and handling hazardous materials.

The comments of NYDEC and other States also failed to support the claim that ''generator accountability'' would be frustrated without the requirements found preempted, including NYDEC's repackaging prohibition. Indeed, EPA's regulations specify that, when a transporter commingles wastes of different DOT shipping descriptions, it makes itself accountable for complying with all generator requirements. 40 CFR 263.10(c)(2).

Because this prohibition against the transfer or repackaging of hazardous wastes is not substantively the same as the HMR's requirements for ''the packing, repacking, [and] handling'' of hazardous material, 6 NYCRR 372.3(a)(7)(i) is preempted by 49 U.S.C. 5125(b)(1).

B. Manifest Entry for Transfer Between Vehicles

In its December 1995 determination, RSPA referred to EPA's development of a manifest system which would ''allow 'the regulated community to adapt its present practices, notably DOT's

[1] RSPA has considered CWTI's comments, even though submitted after the 20-day deadline, under a policy similar to that applied in rulemaking proceedings. *See* 49 CFR 106.23 (''Late filed comments are considered so far as practicable.'') CWTI states that it did not receive a copy of NYDEC's petition for reconsideration directly from NYDEC, and that bad weather further delayed its preparation of responding comments. Under all the circumstances, including the absence of any apparent prejudice to NYDEC, it is appropriate to consider the comments submitted by CWTI.

requirement for shipping papers, to accommodate the new EPA requirements.' '' 60 FR at 62538, quoting from 49 FR at 10490. EPA's requirements for a manifest, in 40 CFR Parts 262 and 263, specifically apply when hazardous wastes are being transported or offered for transportation. The HMR explicitly provide that the EPA hazardous waste manifest may be used as the DOT shipping paper (so long as the manifest contains the information required by DOT), 49 CFR 172.205(h), and shipping papers ''includ[e] hazardous waste manifests.'' 49 CFR 171.3(c)(3). RSPA has previously found that requirements affecting a hazardous waste manifest are ones that concern a ''covered subject'' in 49 U.S.C. 5125(b)(1). PD–2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11182 (Feb. 23, 1993). The hazardous waste manifest is clearly integral to transportation, contrary to NYDEC's assertions.

A *uniform* hazardous waste manifest was implemented in 1984 because of the burden caused by the ''proliferation of manifests [when] various States decided to develop and print their own forms.'' 49 FR 10490. Given the number of States and other jurisdictions that regulate hazardous waste, additional and conflicting requirements in this area are, by their very nature, more than an ''[e]ditorial or other similar *de minimis*'' change, 49 CFR 107.202(d), and sufficient to create confusion and reduce safety in the transportation of hazardous materials. For this reason, RSPA disagrees with NYDEC's conclusory statements that its requirement to indicate a transfer of hazardous waste between vehicles is not a ''significant alteration nor a burden upon the transporter.''

Because the requirement to indicate on the manifest any transfer of hazardous waste from one vehicle to another is not substantively the same as the HMR's requirements for ''the preparation, execution and use of documents related to hazardous material and requirements related to the * * * contents * * * of those documents,'' 6 NYCRR 372.3(a)(7)(ii) is preempted by 49 U.S.C. 5125(b)(1).

C. Secondary Containment

In its December 1995 determination, RSPA analyzed NYDEC's requirement for secondary containment under the obstacle test in 49 U.S.C. 5125(a)(2). It noted that the HMR focus on the suitability of the container to contain hazardous material during transportation and proper handling practices; the HMR do not contain any requirements concerning the physical design or construction of fixed facilities where transporters may exchange hazardous materials between vehicles, including intermodal operations. 60 FR at 62539. RSPA also rejected NYDEC's arguments that its requirement for secondary containment at a fixed transfer facility is not a ''transportation issue.'' RSPA explained that ''transportation-related loading, unloading, and storage of hazardous materials (are) within the scope of Federal hazardous material transportation law, including the preemption provisions in 49 U.S.C. 5125.'' *Id.* at 62541. Based largely on its earlier decision in IR–28, San Jose, California; Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8893 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992), RSPA found that NYDEC's ''secondary containment requirement creates confusion as to requirements in the HMR and increases the likelihood of noncompliance with the HMR.'' *Id.* at 62542.

In response to NYDEC's petition, RSPA has reexamined the grounds for its decision in IR–28, and it has reviewed CWTI's application and all the comments submitted. The specific San Jose storage requirements found preempted in IR–28 were broader than NYDEC's secondary containment requirement, because San Jose applied both a subjective secondary containment standard and provisions for separation (or segregation) of different classes of hazardous materials. State or local segregation requirements that differ from those in the HMR, at 49 CFR 177.848, affect the handling of every container of hazardous material at a transfer facility; they invariably create confusion and complicate compliance with the Federal requirements. Moreover, no one disputed the effect of the San Jose storage requirements which, according to the applicant in IR–28,

> Would force it to transfer its hazardous materials operations to its Oakland facility, thereby causing transportation of larger quantities of hazardous materials for greater distances, as well as greater stockpiling of hazardous materials by businesses in San Jose which could not be as quickly served as they presently are.

55 FR at 8889. Thus, it may be too broad to read IR–28 as finding that any non-Federal requirement for secondary containment at a transfer facility is unnecessary and an obstacle to the accomplishment and carrying out of the HMR.

RSPA agrees with CWTI that packaging standards are fundamental to the HMR; a rule of general applicability is that any packaging used for transporting hazardous waste (or other hazardous material) must be ''designed, constructed, maintained, filled, its contents so limited, and closed, so that *under conditions normally incident to transportation* * * * there will be no identifiable * * * release of hazardous materials.'' 49 CFR 173.24(b)(1) (emphasis supplied). Nonetheless, some releases do occur, from mishandling of packages or other circumstances. Moreover, New York's secondary containment requirement must be considered applicable to situations when containers are being opened as part of consolidation or bulking operations, because the prohibition against repackaging in 6 NYCRR 372.3(a)(7)(i) has been found to be preempted. The opening of containers and transfer of their contents was not considered in IR–28.

CWTI appears to acknowledge that some containment measures are desirable; it states that, ''in practice, industry conducts activities associated with loading, unloading and storage of waste hazardous materials in transportation on impervious surfaces.'' This limits the issue to whether the specific conditions mandated by NYDEC are an obstacle to the HMR. Although CWTI argues that ''sloping and spill/runoff containment are unnecessary,'' and increase the ''likelihood of shipment delay,'' there is insufficient evidence that New York's particular secondary containment requirement, considered separately from the preempted prohibition against repackaging, actually causes delays or diversions in shipments of hazardous waste.

Some motor carriers stated only generally that they did not transfer hazardous wastes from one vehicle to another, or store them temporarily at a transfer facility, because of the existence of the NYDEC requirements (including those repealed or modified in January 1995). *See* the affidavits of officers of Autumn Industries, Inc. and J.B. Hunt Special Commodities, Inc., filed with CWTI's March 11, 1994 comments. Others, such as Dart Trucking Company and Nortru, Inc., stated that they did not conduct transfer operations because they did not own a transfer facility within the State of New York (although Dart did mention that NYDEC's secondary containment requirement kept it from transferring containers of hazardous waste between vehicles). The Association of American Railroads concluded that NYDEC was not applying its ''storage requirements'' to rail yards, because ''[a] rail car moving

from origin to destination cannot be in a 'containment system' having 'sufficient capacity to contain 10 percent of the volume of containers or the volume of the largest container, whichever is greater.' ''

On reconsideration, these limited comments do not support a finding that NYDEC's secondary containment requirement, as applied and enforced, causes the unnecessary delays in transportation of hazardous materials and creates the very ''potential for unreasonable hazards in other jurisdictions,'' about which Congress expressed its concerns. *See* 60 FR 62530 (quoting Pub. L. sec. 2(3), 104 Stat. 3244). In the absence of more specific evidence of the effects of this requirement on the transportation of hazardous waste, including the repackaging and consolidation of wastes, there is not sufficient information to make a finding that this requirement is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law and the HMR. For this reason, RSPA withdraws that part of the December 1995 determination that Federal hazardous material transportation law preempts 6 NYCRR 372.3(a)(7)(iii).

D. RSPA's ''Authority'' To Issue Preemption Determinations

RSPA has already considered, and specifically rejected, arguments that it has no authority to find that NYDEC's regulations are preempted. 60 FR at 62532, 62533–34. As AWHMT points out in its comments, EPA has stated that the rules and regulations of EPA and DOT with respect to the standards for transporters of hazardous waste are ''interrelated.'' EPA Final Rule, Standards Applicable to Transporters of Hazardous Waste, 45 FR 12737, 12738 (Feb. 26, 1980). RCRA itself mandates that EPA's regulations on hazardous waste transporters must be consistent with the HMR, 42 U.S.C. 6923(b), and the two agencies ''worked together to develop standards for transporters of hazardous waste in order to avoid conflicting requirements.'' 40 CFR 263.10, note. Accordingly, except for bulk shipments by water, a hazardous waste transporter who obtains an EPA identification number and fulfills any clean-up responsibilities will be in compliance with EPA's transporter rules if it ''meets all applicable requirements of'' the HMR. *Id.* To further ensure compatibility, EPA also requires that a generator who transports hazardous waste off-site (or offers hazardous waste for transportation) must comply with DOT's requirements on packaging, labeling, marking, and placarding. 40 CFR 262.30, 262.31, 262.32, 262.33.

EPA has explicitly stated that it does not consider issues of preemption under 49 U.S.C. 5125 when it approves a State hazardous waste program. *See* the discussion in PD–12(R), 60 FR at 62534. Accordingly, RSPA cannot accept NYDEC's assertion that its challenged requirements ''are expressly contemplated by RCRA.'' Moreover, NYDEC's requirement for a transporter to indicate on the manifest any transfer of hazardous waste (between the same transporter's own vehicles) appears inconsistent with EPA's regulation that: ''No State, however, may impose enforcement sanctions on a transporter during transportation of the shipment for failure of the [manifest] form to include preprinted information or optional State information items.'' 40 CFR 271.10(h)(3). EPA has also explained that ''States through which hazardous waste shipments pass are not allowed to place additional information requirements on the transporter as a condition of transportation.'' EPA Final Rule, Hazardous Waste Management System, 49 FR 10490, 10495 (Mar. 20, 1984).

RSPA also disagrees with NYDEC's overall conclusion that the decision in PD–12(R) sacrifices safety ''in the name of uniformity.'' As HMAC points out, uniformity of hazardous materials regulations and safety are not conflicting goals. Rather, Congress has specifically found that, ''consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable.'' *Id.* (quoting Pub. L. 101–615 sec. 2(4)). AWHMT represents that 19 different States, including New York, enforce hazardous waste transfer facility requirements that differ from, or add to, the Federal standards. Local governments and Indian tribes often impose their own requirements, all in the name of safety. *E.g.*, IR–32, Montevallo, Alabama, Ordinance on Hazardous Waste Transportation, 55 FR 36738 (Sept. 6, 1990); *Public Serv. Co. of Colorado* v. *Shoshone-Bannock Tribes*, 30 F.3d 1203 (9th Cir. 1994) (tribal ordinance regulating shipment of spent nuclear fuel). However, these separate non-Federal requirements do not advance overall safety when they require shippers and carriers to ascertain, understand, and comply with additional conditions applicable in the many jurisdictions through which a hazardous materials shipment may be transported. Less safety, rather than more, is the result when shippers and carriers then fail to comply with the HMR, choose longer routes to avoid a jurisdiction with additional requirements, or do both.

IV. Ruling

For the reasons set forth above, NYDEC's petition for reconsideration is denied with respect to 6 NYCRR 372(a)(7) (i) and (ii). This decision incorporates and reaffirms the determination that Federal hazardous material transportation law preempts subsection 372.3(a)(7)(i), prohibiting the repackaging of hazardous wastes, because it concerns the packing, repacking and handling of hazardous materials and is not substantively the same as the HMR, and subsection 372.3(a)(7)(ii), requiring an indication on the manifest of a transfer of hazardous wastes between vehicles, because it concerns the preparation, use and contents of shipping documents related to hazardous material and is not substantively the same as the HMR. 49 U.S.C. 5125(b)(1) (B) and (C).

NYDEC's petition for reconsideration is granted with respect to 6 NYCRR 372(a)(7)(iii). Because there is insufficient information that this requirement, as enforced and applied, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law and the HMR, RSPA makes no determination whether 49 U.S.C. 5125(a)(2) preempts NYDEC's requirement for secondary containment at a transfer facility where hazardous wastes are stored or transferred.

V. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on CWTI's application for a determination of preemption as to the NYDEC transfer and storage requirements in 6 NYCRR 372.3(a)(7). Any party to this proceeding ''may bring a civil action in an appropriate district court of the United States for judicial review of [this] decision * * * not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

Issued in Washington, DC, on March 26, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–8553 Filed 4–2–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4782

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4782, Employee Moving Expense Information.

DATES: Written comments should be received on or before June 2, 1997 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 form and instructions 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: Employee Moving Expense Information.

OMB Number: 1545–0182.

Form Number: 4782.

Abstract: 26 CFR 31.6051–1(e) requires employers to give employees a statement showing a detailed breakdown of reimbursements or payments of moving expenses. The information is used by employees to figure their moving expense deduction on their income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and State or local governments.

Estimated Number of Respondents: 1,039,500.

Estimated Time Per Respondent: 4 hr. 23 min.

Estimated Total Annual Burden Hours: 4,565,254

The following paragraph applies to all of the collections of information covered by this notice: 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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–8556 Filed 4–2–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8827

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8827, Credit for Prior Year Minimum Tax—Corporations.

DATES: Written comments should be received on or before June 2, 1997 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 form and instructions 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: Credit for Prior Year Minimum Tax—Corporations.

OMB Number: 1545–1257.

Form Number: 8827.

Abstract: Internal Revenue Code Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year. Form 8827 is used by corporations to compute the minimum tax credit, if any, for alternative minimum tax incurred in prior tax years and to compute any minimum tax credit carryforward.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice: 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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–8557 Filed 4–2–97; 8:45 am]

BILLING CODE 4830–01–U

Thursday
April 3, 1997

Part II

Federal Communications Commission

47 CFR Parts 2 and 90

Provision for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253; FCC 97–57]

Provision for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a *Third Report and Order and Fifth Notice of Proposed Rulemaking* in this proceeding. The *Fifth Notice of Proposed Rulemaking* portion of this decision is summarized elsewhere in this issue of the **Federal Register**. The *Third Report and Order* adopts rules to govern the future operation and licensing of the 220–222 MHz band. This action is taken as part of the Commission's continuing implementation of the regulatory framework for mobile radio services enacted by Congress in the Omnibus Budget Reconciliation Act of 1993. This *Third Report and Order* also contains proposed and/or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). These will be submitted to the Office of Management and Budget (OMB) for review under the PRA. The general public and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Effective: August 21, 1997. Written comments by the public on the proposed and/or modified information collections are due June 2, 1997.

ADDRESSES: 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, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Marty Liebman or Mary Woytek, 202–418–1310, or Frank Stilwell, 202–418–0660. For additional information concerning the information collections contained in this *Third Report and Order,* contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Third Report and Order* portion of the *Third Report and Order and Fifth Notice of Proposed Rulemaking* in PR Docket No. 89–552, GN Docket No. 93–252, and PP Docket No. 93–253, FCC 97–57, adopted February 19, 1997, and released March 12, 1997. The *Fifth Notice of Proposed Rulemaking* is summarized elsewhere in this edition of the **Federal Register**. The complete text of the *Third Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Paperwork Reduction Act

1. This *Third Report and Order* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Third Report and Order,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 2, 1997. 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.

OMB Approval Number: New Collection.

Title: Private Land Mobile Radio Services Part 90.

Form No.: N/A.

Type of Review: New collection.

Respondents: Licensees in the 220–222 MHz band; applicants for licenses in the 220–222 MHz band; and governmental entities.

Number of Respondents: Approximately 34,200.

Estimated Time Per Response: Approximately 5 hours.

Total Annual Burden: Approximately 176,400 hours.

Needs and Uses: The information collected will be used by the Commission to verify licensee compliance with Commission rules and regulations, to ensure the integrity of the 220 MHz service, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934.

Synopsis of the Third Report and Order

2. This *Third Report and Order* adopts rules to govern the future operation and licensing of the 220–222 MHz band (220 MHz service). This action is taken as part of the Commission's continuing implementation of the regulatory framework for mobile radio services enacted by Congress in section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, which amended sections 3(n) and 332 of the Communications Act of 1934.[1] As part of the implementation of the Budget Act, the Commission initiated a series of rulemaking proceedings to provide guidelines for the regulation of commercial and private mobile radio services, including the 220 MHz service, consistent with the policy of regulatory symmetry as reflected in the revisions to section 332 of the Act.

3. One of the Commission's actions resulting from these proceedings, the *CMRS Third Report and Order* in GN Docket No. 93–252, 59 FR 59945 (November 21, 1994), addressed a variety of issues relating to the licensing of the 220 MHz service, but deferred a detailed examination of that service to a separate rulemaking proceeding. That proceeding was initiated by the adoption of the *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* in PR Docket No. 89–552, 60 FR 46564 (September 7, 1995), where the Commission proposed a new licensing plan for 220 MHz service. The *Third Report and Order* adopted today generally establishes that proposal for the Phase II[2] licensing of the 220–222 MHz band, with some modifications. The Commission's decisions in the *Third Report and Order* are summarized as follows:

4. The Commission will return the pending, mutually exclusive applications for the four non-commercial, Phase I nationwide licenses and adopt a new licensing procedure for the 30 channels associated with these licenses. The 30 channels will be licensed on a nationwide basis to all applicants—*i.e.*, applicants that intend to use the channels to offer commercial

[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Title VI, sections 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) (Budget Act). Section 3(n) of the Communications Act has been redesignated as section 3(14). *See* section 3(c)(4) of the Telecommunications Act of 1996. The reference to former section 3(n) in section 332 has been changed to a reference to section 3. *See* section 3(d)(2) of the Telecommunications Act of 1996.

[2] We refer herein to licenses granted pursuant to this new framework as Phase II licenses. Licenses granted under the rules that existed prior to the adoption of this Order are referred to herein as Phase I licenses.

services as well as applicants that intend to use the channels for their private, internal use. The channels will be assigned, in the form of three 10-channel authorizations, through competitive bidding, based upon the Commission's conclusion that the principal use of the spectrum will be for the provision of for-profit, subscriber-based services. The license term will be ten (10) years, and licensees will be required to meet five- and ten-year construction benchmarks.

5. The Commission will assign Phase II, non-nationwide 220 MHz channels as follows: Fifty channels will be assigned in 175 geographic areas defined as Economic Areas by the Bureau of Economic Analysis, Department of Commerce (''EA licenses'') and 75 channels in the geographic areas defined by six ''Regional Economic Area Groupings'' (''Regional licenses''). Codes and names for the Economic Areas are listed in Appendix D of the full text of this decision. The Regional Economic Area Groupings are described in Appendix E of the full text of this decision. The Commission will make these channels available to all eligible applicants, and resolve mutually exclusive applications for these channels through competitive bidding. EA and Regional licensees will be permitted to operate stations anywhere within their geographic borders, provided that their transmissions do not exceed a predicted field strength of 38 dBuV/m at their border, and they protect the base stations of Phase I licensees in accordance with the existing co-channel separation criteria for 220 MHz stations. The Commission adopts a 10-year license term for EA and Regional licensees, and will require EA and Regional licensees to meet five- and ten-year construction benchmarks.

6. The Commission adopts the following Phase II band plan for non-nationwide channels:

NON-NATIONWIDE 220 MHZ CHANNEL ALLOCATION PLAN

	Channels
EA Block	
A: Channel Groups [3] 2, 13	10
B: Channel Groups 3, 16	10
C: Channel Groups 5, 18	10
D: Channel Groups 8, 19	10
E: Channels 171–180	10
Total	50
Regional Block	
F: Channel Groups 1, 6, 11	15
G: Channel Groups 4, 9, 14	15
H: Channel Groups 7, 12, 17	15
I: Channel Groups 10, 15, 20	15
J: Channels 186–200	15
Total	75

[3] The Channel Groups indicated in the allocation plan are the 5-channel, non-contiguous assignments identified as ''Group Nos. 1, 2, 3,'' *etc.,* in § 90.721 of the Commission's rules, 47 CFR 90.721.

7. The Commission will continue to assign, on a single-station basis, 10 channels to applicants eligible in the Public Safety Radio Service (PSRS) and five channels to applicants eligible in the Emergency Medical Radio Service (EMRS) to meet internal communications needs. The Commission will assign five of the 10 PSRS channel pairs on a shared basis to all public safety eligibles. This will enable public safety licensees within a particular geographic area to share these channels and coordinate the location and operation of base stations on these channels, which will enable them to communicate more effectively with each other during emergencies. The Commission will assign channels in the PSRS and EMRS pools on a first-come, first-served basis and resolve mutually exclusive applications by random selection procedures.

8. The Commission will allow Phase I and Phase II, nationwide and non-nationwide 220 MHz licensees to operate paging systems without the requirement that such use be on an ancillary basis to land mobile operations. Phase I and Phase II, nationwide and non-nationwide 220 MHz licensees, will also be allowed to aggregate any and all of their authorized, contiguous channels to operate on channels wider than 5 kHz, so long as they comply with a prescribed spectrum efficiency standard.

9. The Commission also modifies existing 220 MHz rules with regard to certain technical and operational matters. Specifically, Phase I and Phase II, nationwide and non-nationwide non-CMRS 220 MHz licensees will be permitted to operate fixed stations without the requirement that such use be on an ancillary basis to land mobile operations; and licensees using the 220–222 MHz band for geophysical telemetry operations will be permitted to operate fixed stations on a temporary basis, without the requirement that such use be ancillary to land mobile operations, and on a secondary basis to Phase I and Phase II licensees authorized to operate on 220 MHz channels on a primary basis.

10. The Commission adopts procedures and definitions for initial applications, amended applications, applications to modify authorizations, and renewal of authorizations. First, the Commission defines initial applications for 220 MHz licenses as applications for the nationwide, EA, and Regional licenses to be assigned in Phase II. Second, the Commission adopts the same procedures for amending applications and modifying authorizations for Phase II 220 MHz licenses that are established for other Part 90 Commercial Mobile Radio Services (CMRS). Third, the Commission adopts the same procedures for obtaining grants of Special Temporary Authority for Phase II 220 MHz licenses that are established for other Part 90 CMRS services. Fourth, the Commission adopts for all 220 MHz licensees the renewal standards adopted in the *CMRS Third Report and Order* for Part 90 CMRS services.

Auction Rules

Competitive Bidding Design

11. A total of 908 licenses (3 nationwide, 30 Regional, and 875 Economic Area (''EA'') licenses) will be awarded in the Phase II 220 MHz service. The Commission will use a simultaneous multiple round auction to award these licenses. These licenses will be significantly interdependent, because of the desirability of aggregation across spectrum blocks and geographic areas. 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.

License Grouping

12. Grouping interdependent licenses and putting them up for bid at the same time facilitates 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. As a result, the Commission plans to hold a single simultaneous multiple round auction for all nationwide, Regional, and EA 220 MHz licenses. The Commission reserves the discretion, however, to auction each of these license groupings (*i.e.,* nationwide, Regional, EA) separately or in different combinations (*e.g.,* nationwide and Regional) if there are administrative reasons for doing so.

Bid Increments and Tie Bids

13. The general guidelines for bid increments will be announced by Public Notice prior to the auction. In the case of a tie bid, the high bidder will be determined by the order in which the bids were received by the Commission.

Stopping Rules

14. The Commission adopts a simultaneous stopping rule for the 220 MHz service auction, and elects not to employ a hybrid rule or a market-by-market closing rule. Under a simultaneous stopping rule, bidding will remain open on all licenses in an auction until bidding stops on every license. The Commission concludes that the substitutability between and among licenses in different geographic areas and the importance of preserving bidders' ability to pursue back-up strategies support the use of a simultaneous stopping rule. The Phase II 220 MHz service auction will close after one round passes in which no new valid bids or proactive activity rule waivers (as discussed below) are submitted. The Commission retains the discretion, however, 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 this discretion is exercised, 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 closing.

15. The Commission further retains the discretion to declare, at any point, that the auction will end after some specified number of additional rounds. If this option is exercised, 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.

Activity Rules

16. The Commission will employ the Milgrom-Wilson activity rule in conjunction with the simultaneous stopping rule in a manner similar to that employed in prior FCC auctions. In each round of Stage I, a bidder that wishes to maintain its current eligibility must be active on licenses encompassing at least sixty percent of the activity units for which it currently is eligible. In each round of Stage II, a bidder that wishes to maintain its current eligibility in the next round is required to be active on at least eighty percent of the activity units for which it is eligible in the current round. In each round of Stage III, a bidder that wishes to maintain its current eligibility must be active on licenses encompassing at least ninety-eight percent of the activity units for which it is eligible in the current round.

17. The Commission believes that initially establishing required activity at these levels will achieve a proper balance between allowing for bidder flexibility and completing the auction within a reasonable time. Requiring a 100 percent level of activity in Stage III, as originally proposed, might inhibit bidder flexibility and be unduly restrictive. In addition, activity levels of sixty, eighty and ninety-eight percent are far easier to administer, both for bidders and for the Commission, than the fractional one-third, two-thirds and 100 percent activity levels initially proposed. In addition to easing administrative burdens, the increased activity requirement will require bidders to focus their bidding and will contribute to increasing the pace of the auction.

18. As in prior auctions, the transition from one stage to the next in the Phase II 220 MHz auction will be determined based on a variety of measures of bidder activity, including, but not limited to, the auction activity level (*i.e.*, the sum of bidding units of those licenses whose high bid increased in the current round, as a percentage of the total bidding units of all licenses in the auction), the percentage of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. In no case can the auction revert to an earlier stage. The Wireless Telecommunications Bureau will announce when the auction will move from one stage to the next. 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, bidders will be provided with five activity rule waivers that may be used in any round during the course of the auction. Bidders will have the option to proactively enter an activity rule waiver during the bid submission period. A proactive waiver, as distinguished from an automatic waiver, is one requested by the bidder. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

Duration of Bidding Rounds

19. The Wireless Telecommunications Bureau will announce the duration of and intervals between bidding rounds, either by Public Notice prior to the auction or by announcement during the auction.

Pre-Auction Application Procedures

20. Bidders will be able to submit bids from remote locations using special bidding software or by telephone. The Commission has adopted a fee schedule for obtaining access to the Commission's database and remote bidding software packages. The remote access bidding software package is available for $175.00. The charge for on-line remote access via a 900 number is $2.30 per minute. Bidders also may bid via telephone for no charge. There is no charge for the first Bidder Information Package, and a $16.00 fee for each additional package that is subsequently requested by the same party. Bidders will be permitted to bid electronically only if they have filed a short-form application electronically. Bidders who file their short-form applications manually may bid only telephonically. When submitting bids telephonically, bidders may utilize the Internet to learn the round-by-round results of the auction. 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.

Short-Form Applications

21. Applicants for 220 MHz service licenses will be required to file a short-form application, FCC Form 175 and 175–S, prior to the auction. If only one application that is acceptable for filing is received for a particular license, and thus there is no mutual exclusivity, a Public Notice will be issued cancelling the auction for that license and establishing a date for the filing of a long-form application. Filing deadlines will be announced by Public Notice.

Short-Form Application Amendments and Modifications

22. Upon reviewing the short-form applications, the Commission will issue a Public Notice listing all defective applications. Applicants with minor defects in their applications will be given an opportunity to cure them and resubmit a corrected version.

Upfront Payments

23. The Commission proposed to require 220 MHz auction participants to tender in advance to the Commission an upfront payment of $2,500 or $0.02 per MHz-pop, whichever is greater, for the largest combination of MHz-pops (bidding units) on which they anticipate bidding in any round. In the *Competitive Bidding Second Report and Order*, 59 FR 22980, (May 4, 1994), the Commission indicated that upfront payments should equal approximately five percent of the expected amounts of winning bids. In general, the license values in previous auctions have exceeded expectations. Based upon defaults occurring in the broadband PCS, IVDS and MDS auctions, and to guard against future defaults, the Commission believes that there is a need to obtain a higher payment upfront than the one proposed. Authority is delegated to the Wireless Telecommunications Bureau to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area and the value of similar spectrum. In no event will the upfront payment for any license be less than $2,500, and the Wireless Telecommunications Bureau will retain the flexibility to modify this minimum if it finds that a higher amount would better deter speculative filings. Prior to the 220 MHz auction, the Wireless Telecommunications Bureau will publish a Public Notice listing the upfront payment amounts required for the licenses to be auctioned. The number of bidding units determines the amount of upfront payment for the license. Although a bidder may file applications for every license being auctioned, the total upfront payment submitted by each applicant will determine the combinations on which the applicant will actually be permitted to be active in any single round of bidding. Upfront payments will be due by a date specified by Public Notice, but generally no later than 14 days before the scheduled auction.

Down Payments and Full Payments

24. All winning bidders, including small businesses and very small businesses will be required to 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.

25. Winning bidders, except small businesses and very small businesses, must submit the required down payment by cashier's check or wire transfer to the Commission's lock-box bank within ten business days following release of a Public Notice announcing the close of bidding. All auction winners, except those eligible for an installment payment plan, will be required to make full payment of the balance of their winning bids within ten business days following release of a Public Notice mailed to the successful applicant that the Commission is prepared to award the license. The Commission generally will grant uncontested licenses within ten business days after receiving full payment.

Bid Withdrawal, Default, and Disqualification

26. The Commission will apply the bid withdrawal rules set forth in Part 1 of its rules in the 220 MHz auction. Any bidder that withdraws a high bid 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, if this subsequent ''winning bid'' is lower than the withdrawn bid.

27. 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 a license which is the subject of withdrawal or default is offered to the highest losing bidders in the initial auction, as opposed to being re-auctioned, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer.

28. After bidding closes, the Commission will 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. This additional payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. In the unlikely event that there is more than one bid withdrawal on the same license, each withdrawing bidder will be held responsible for the difference between its withdrawn bid and the amount of the winning bid the next time the license is offered for auction.

29. If a bidder has withdrawn a bid or defaulted, but the amount of the default payment cannot yet be determined, the bidder will be required to make a deposit of up to 20 percent of the amount bid on the license. When it becomes possible to calculate and assess the default 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.

30. The Commission recently addressed the issue of how its bid withdrawal provisions apply to bids that are mistakenly placed and withdrawn in a decision involving the 900 MHz Specialized Mobile Radio (SMR) and broadband Personal Communication Service (PCS) C block auctions. See Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Request to Waive Bid Withdrawal Payment Provisions, FCC 96–203, Order (released May 3, 1996) (summarized in 61 FR 25807 (May 23, 1996)), *recon. pending.* 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.

Long-Form Applications

31. The Commission will apply its Part 1 long-form procedures to the 220 MHz auction. 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 winning bidder's down payment and long-form application are received, the Commission will review the application to determine if it is acceptable for filing. Upon acceptance for filing, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If all petitions to deny are dismissed or denied, the license(s) will be granted to the auction winner.

Petitions To Deny and Limitations on Settlements

32. In the *Third Notice*, the Commission proposed to adopt petition to deny procedures based on former § 22.30 of its rules, which provided for

procedures regarding opposition to applications. In addition, the Commission proposed to adopt rules similar to former § 22.943 of its rules, which provided for procedures regarding the withdrawal of applications, to prevent the filing of speculative applications and pleadings designed to extract money from sincere 220 MHz license applicants. The Commission adopted these proposals. The restrictions in § 90.162, 47 CFR 90.162 (which replaced § 22.943 for purposes of CMRS), were established to prevent the filing of speculative applications and pleadings (or threats of the same) designed to extract money from license applicants. Thus, the Commission will limit the consideration that an individual or entity is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the applicant or petitioner.

Anti-Collusion Rules

33. The Commission will require 220 MHz licensees to comply with the reporting requirements and rules prohibiting collusion embodied in §§ 1.2105 and 1.2107 of the Commission's rules, 47 CFR 1.2105 and 1.2107. Even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant nevertheless is subject to existing antitrust laws. Moreover, 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 possible prohibition from participating in future auctions.

Transfer Disclosure Requirements

34. The Commission will apply § 1.2111(a) of its rules, 47 CFR 1.2111(a), to all Phase II 220 MHz licenses obtained through the competitive bidding process. The Commission has also adopted specific rules that will apply solely to small business licensees, as discussed in subsequent sections. 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 it may determine if any unforeseen problems relating to unjust enrichment have occurred.

Treatment of Designated Entities

Minority- and Women-Owned Businesses

35. In the Phase II 220 MHz service, as in other auctionable services, the Commission is committed to meeting the objectives of 47 U.S.C. 309(j) of promoting economic opportunity and competition, of avoiding excessive concentrations of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including businesses owned by members of minority groups and women. Commenters did not cite any evidence of specific discrimination for purposes of creating a record sufficient to support special provisions for minorities under the strict scrutiny standard of judicial review, which applies to federal race-based provisions. *Adarand Constructors, Inc.* v. *Peña,* 115 S.Ct. 2097 (1995). The Commission is also concerned that the record would not support gender-based provisions under intermediate scrutiny, the standard of judicial review applicable to such provisions. *United States* v. *Virginia,* 116 S.Ct. 2263 (1996). Balancing the Commission's statutory obligation to provide opportunities for women- and minority-owned businesses to participate in spectrum-based services against the statutory duties to facilitate the rapid delivery of new services to the American consumer and promote efficient use of the spectrum, the Commission concludes that it should not delay the Phase II 220 MHz service auction for the amount of time it would take to adduce sufficient evidence to support race- and gender-based provisions. Moreover, the Commission believes that most minority- and women-owned businesses will be able to take advantage of the specific provisions that the Commission is adopting for small businesses, as discussed *infra*.

36. The Commission also notes that it has initiated a separate inquiry to gather information regarding barriers to entry faced by minority- and women-owned firms as well as small businesses. *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry,* GN Docket No. 96–113, 61 FR 33066 (June 26, 1996). The Commission will continue to track the rate of participation in its auctions by minority- and women-owned firms. It will evaluate this information, together with other data gathered, with the goal of developing a record to support race- and gender-based provisions that will satisfy judicial scrutiny. If a sufficient record can be adduced, the Commission will consider race- and gender-based provisions for future auctions. Finally, the Commission will continue to look for other ways to reduce barriers to entry for women- and minority-owned businesses, such as extending partitioning and disaggregation of licenses to entities that do not currently qualify, an adjustment to its rules that may be helpful to small businesses generally.

Small Businesses

37. Congress specifically cited the needs of small businesses in enacting Section 309(j), directing the Commission to promote economic opportunities for small businesses. The Commission believes that small businesses applying for 220 MHz licenses should be entitled to some type of bidding credit and should be allowed to pay their bids in installments. In order to ensure the meaningful participation of small business entities in the 220 MHz auction the Commission adopts a two-tiered definition of small business with thresholds applicable across all three categories of license. This approach will give qualifying small businesses flexibility to bid for a Regional license or, on the other hand, elect to bid for several EAs, without having to choose which type of license to bid for prior to the start of the auction. For purposes of bidding on the nationwide, Regional, and EA licenses, therefore, the Commission will define (1) a very small business as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the three preceding years; and (2) a small business as an entity that, together with affiliates and controlling principals, has average gross revenues that are not more than $15 million for the three preceding years. Bidding credits will be determined, as discussed *infra,* based upon this two-tiered approach.

38. The Commission believes the cost of building out a 220 MHz system most closely resembles the cost of a 900 MHz SMR system, and that it is therefore appropriate to establish definitions of ''small business'' and ''very small business'' for the 220 MHz service that

are consistent with the definitions adopted for the 900 MHz SMR service. The Commission's experience in conducting the 900 MHz SMR auction indicates that its definitions of eligible small businesses in that service were appropriate, and that it would substantially dilute the value of the small business preferences to increase the size of small businesses eligible for special bidding provisions in the 220 MHz service.

39. For purposes of the Phase II 220 MHz small business definition, the Commission will consider the gross revenues of the small business applicant, its controlling principals, and its affiliates. The Commission will not impose specific equity requirements on the controlling principals of entities that meet the small business definition. The Commission will still require, however, that in order for an applicant to qualify as a small business or very small business, qualifying small business principals must maintain control of the applicant, including both *de facto* and *de jure* control. For this purpose, the Commission will borrow from certain Small Business Administration rules that are used to determine when a firm should be deemed an affiliate of a small business. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. The Commission cautions that, while it is not imposing specific equity requirements on small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business or very small business.

40. Exceptions will apply for small business consortia and publicly traded corporations with widely dispersed voting power. Specifically, eligible small businesses or very small businesses will be permitted to form consortia and not aggregate their gross revenues. Additionally, a small corporation that has dispersed voting stock ownership and no controlling affiliates will not be required to aggregate with its own revenues the revenues of each shareholder for purposes of small business or very small business status. Thus, an applicant may qualify, even in the absence of identifiable control being held by particular investors.

41. Applicants and licensees claiming eligibility as a small business, a very small business, a consortium of small businesses, or a consortium of very small businesses, are subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors. Consent to such audit is part of the certification included in the short-form application (FCC Form 175). Such consent includes 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 also includes inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business or keeping records regarding licensed Phase II 220 MHz service, and will also include consent to the interview of principals, employees, customers, and suppliers of the applicant or licensee.

Bidding Credits

42. The Commission adopts bidding credits consistent with its two-tiered definition of small business that will apply to all three license groups. Very small businesses that, together with affiliates and controlling principals, have average gross revenues that are not more than $3 million for the three preceding years, will receive a 25 percent bidding credit, available for all three categories of Phase II 220 MHz licenses. Likewise, small businesses that, together with affiliates and controlling principals, have average gross revenues that are not more than $15 million for the three preceding years, will receive a bidding credit of ten percent, available for all three categories of Phase II 220 MHz licenses. While the 25 percent bidding credit is less than the 40 percent bidding credit proposed for one of the nationwide licenses and the Regional geographic area licenses, the Commission concludes that this bidding credit is appropriate since the Commission is now going to offer bidding credits generally for all channel blocks. The Commission also had favorable results in previous auctions with bidding credits at this level or lower.

Installment Payments, Upfront Payments, and Down Payments

43. The Commission will make installment payment plans available to small businesses that are winners in the 220 MHz auction(s). Licensees who qualify as small businesses or very small businesses in the 220 MHz auction(s) 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. The rate for ten-year U.S. Treasury obligations will be determined by taking the coupon rate of interest on the ten-year U.S. Treasury notes most recently auctioned by the Treasury Department before licenses are conditionally granted. These licensees will be able to make interest-only payments for the first two years of the license term. Timely payment of all installments will be a condition of the license grant, and failure to make such timely payments will be grounds for revocation of the license.

44. The Commission will not adopt a second installment payment plan with a longer interest-only period for very small businesses with average gross revenues of not more than $3 million. The Commission believes that the two-year interest-only period in the single plan it adopts will provide all small businesses with the appropriate level of financing to overcome difficulties in attracting capital.

45. The Commission also concludes that there should be a late payment fee in connection with the installment payment plan for Phase II 220 MHz licensees. The Commission stated in the *Third Notice* that timely payment of all installments would be a condition of the award of a license. Therefore, when licensees are more than fifteen days late in their scheduled installment payments, the Commission will charge a late payment fee equal to five percent of the amount of the past due payment. For example, if a $50,000 payment is due on June 1, then on June 16, $2,500 is due in addition to the payment. Without such a fee licensees may not have adequate financial incentives to make installment payments on time and may attempt to maximize their cash flow at the government's expense by paying late. The five percent payment is an approximation of late payment fees applied in typical commercial lending transactions. Payments will be applied in the following order: late charges, interest charges, and principal payments.

46. Substantial upfront payments are necessary for both large and small businesses to deter speculation and ensure participation by sincere bidders only. The Commission therefore declines to adopt a reduced upfront payment provision for small businesses or very small businesses.

47. The Commission likewise concludes that small businesses should be required to pay a down payment of 20 percent of their winning bid(s). Such a requirement is consistent with ensuring that winning bidders have the financial capability of building out their systems, will provide the Commission with stronger assurance against defaults than a ten percent down payment, and should cover the required payments in the unlikely event of default. Thus, small businesses will be required to bring their deposit up to ten percent of their winning bid within ten business days of the close of the auction. Prior to licensing, they will be required to pay an additional ten percent. Specific procedures for payment will be provided in a Public Notice.

Partitioning

48. The Commission will permit any holder of an EA, Regional, or nationwide Phase II 220 MHz license to partition portions of its authorization and enter into contracts with eligible parties, and will allow such parties to file long-form applications for the usable channels within the partitioned area. The Commission concludes that allowing holders of EA, Regional and nationwide Phase II 220 MHz licenses to partition their geographic service areas will facilitate the provision of services in small markets and rural areas. Partitioning will also furnish providers of Phase II 220 MHz service with operational flexibility that will serve to promote the most efficient use of the spectrum and encourage participation by a wide variety of service providers.

49. The Commission will not, at this time, authorize spectrum disaggregation for the Phase II 220 MHz service. Instead, the Commission will seek comment on the feasibility of spectrum disaggregation for the 220 MHz service in a notice of proposed rulemaking adopted concurrently with this *Third Report and Order*.

50. Providers of 220 MHz service will be permitted to acquire partitioned licenses in either of two ways: (1) By forming bidding consortia to participate in auctions, and then partitioning the licenses won among consortium members; and (2) by acquiring partitioned 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. In the event the Commission receives applications requesting FCC consent to partitioning transfers prior to the adoption of rules governing such issues as whether to permit partitioning based on any license area defined by the parties—upon which the Commission seeks comment in a notice of proposed rulemaking—action on such applications will be deferred.

Transfer Restrictions and Unjust Enrichment Provisions

51. To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, the Commission adopts unjust enrichment provisions similar to those adopted for narrowband PCS and the 900 MHz SMR service. Licensees seeking to transfer their licenses to entities which do not qualify as small businesses (or very small businesses seeking to transfer their licenses to small businesses or large companies), as a condition of approval of the transfer, must remit to the government a payment equal to a portion of the total value of the benefit conferred by the government. Thus, for example, a small business that received a bidding credit seeking to transfer or assign a license to an entity that does not qualify as a small business will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer will be permitted. Similarly, a very small business that received a bidding credit seeking to transfer or assign a license to a small business that qualified for a lesser bidding credit will be required to reimburse the government for the difference between the amount of its bidding credit and the lesser credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer will be permitted. The amount of this payment will be reduced over time as follows: (1) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or, in the case of very small businesses transferring to small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible); (2) in year three of the license term the payment will be 75 percent; (3) in year four the payment will be 50 percent, and (4) in year five the payment will be 25 percent, after which there will be no required payment. These assessments will have to be paid to the U.S. Treasury as a condition of approval of the assignment or transfer.

52. In addition, if a licensee that qualifies for installment payments seeks to assign or transfer control of its license during its term to an entity that does not meet the small business or very small business definition, the Commission will require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer. Also, if an investor subsequently purchases an interest in the business and, as a result, the gross revenues of the business exceed the applicable financial caps, this unjust enrichment provision will apply. The Commission will apply these payment requirements for the entire license term to ensure that small businesses will look first to other small businesses when deciding to transfer their licenses. However, the Commission will not impose a holding period or other transfer restrictions on these licensees.

Spectrum Set Asides

53. Because there will be both a large number and a large variety of licenses available in the Phase II 220 MHz auction, the Commission will not adopt an entrepreneurs' block for the service. Small businesses will have a significant opportunity to compete for Phase II 220 MHz licenses, particularly given the special provisions that have been adopted for small businesses.

Procedural Matters; Ordering Clauses

Final Regulatory Flexibility Analysis

54. As required by the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, as amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847, 5 U.S.C. 601 *et seq.*, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact of the rule changes adopted in this proceeding on small entities. The Secretary shall send a copy of this *Third Report and Order and Fifth Notice of Proposed Rulemaking*, including the Final 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.[4]

[4] Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1980).

Final Regulatory Flexibility Analysis

55. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Notice of Proposed Rulemaking* in this proceeding (*Third Notice*).[5] The Commission sought written public comments on the proposals in the *Third Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *220 MHz Third Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA).[6]

I. Need for and Objective of the Rules

56. The rules adopted in this decision will establish a flexible regulatory scheme that will allow for efficient licensing and use of the 220 MHz service, eliminate unnecessary regulatory burdens on existing and future 220 MHz licensees, provide a wide variety of radio services to the public, enhance the competitive potential of 220 MHz services in the mobile marketplace, and continue to provide a home for the development of spectrally efficient technologies. By establishing competitive bidding procedures pursuant to section 309(j) of the Communications Act, this decision will promote economic opportunity and ensure 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. The adoption of competitive bidding rules will also permit the recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

57. No issues were raised specifically in response to the IRFA. However, we have considered the significant economic impact on a substantial number of small entities through consideration of comments that pertained to issues of concern to small businesses. For example, two equipment manufacturers, SEA and Securicor, argued against allowing Phase I and Phase II licensees to aggregate their contiguous channels to create wider bandwidth channels.[7] (*See* para. 98 of the full text of this decision). These commenters, who have developed radio equipment in the 220 MHz band using spectrally efficient technologies, argue that allowing aggregation of channels would severely jeopardize their ability to continue to develop and market their technology. The Commission decided in favor of allowing licensees to aggregate their channels, agreeing with those commenters who support allowing such aggregation because this type of flexibility will allow 220 MHz licensees to offer a wider variety of communications services and more effectively compete in the wireless marketplace. While allowing channel aggregation, the Commission agreed with SEA and Securicor that it should also require licensees and equipment manufacturers to meet a spectrum efficiency standard. In adopting a spectrum efficiency standard, the Commission sought to ensure that the 220 MHz band would continue to be a home for the development of spectrally efficient technologies.

58. The Commission proposed two classifications of non-nationwide 220 MHz licensing—*i.e.*, Economic Area (EA) licenses and Regional licenses. Pagenet endorsed this proposal, noting that such assignments would be a ''complement to nationwide'' licensing, and would allow ''participation by small, medium and large carriers in which local to nationwide service will be provided by a number of different licensees in each marketplace.'' (*See* para. 79 of the full text of this decision). The Commission adopted this proposal. (*See* para. 80 of the full text of this decision).

59. American Mobile Telecommunications Association (AMTA) and Comtech asked that no limit be placed on the number of channels a licensee may obtain within an EA or Region through our auction procedures. Comtech also asked that EA and Regional licensees not be required to construct a minimum number of channels at all of their base stations. The Commission adopted both of these proposals.

60. The Commission also adopted a proposal by Fairfield to allow for fixed operations on a secondary basis. In so doing, the Commission acknowledged the concerns of other commenters that such operations might cause interference to primary users of the band. We thus required secondary licensees to notify nearby primary users of their secondary facilities, limited secondary licensees' operating parameters beyond those initially proposed, and restricted secondary licensees from operating on public safety, Emergency Medical Radio Service (EMRS), or Federal Government 220–222 MHz channels.

61. A number of commenters asked that we provide greater protection to Phase I base stations than initially proposed. We decided to adopt our proposed co-channel protection criteria because we concluded that, *inter alia*, this decision would provide protection to Phase I base stations consistent with other recent Commission decisions establishing protection criteria in other mobile services. Commenters were also opposed to our proposal for limiting field strength at EA and Regional borders. We adopted our proposal in order to afford Phase II licensees the maximum degree of flexibility in designing their systems and to enable them to provide a quality signal at the borders of their service areas.

62. Association of Public-Safety Communications Officials—International (APCO) asked that we refrain from assigning the 125 non-nationwide channels not reserved for Public Safety or EMRS eligibles by competitive bidding in order to give public safety entities a realistic opportunity to obtain authorization for more than ten 220 MHz channels. We decided that such channels should be assigned through competitive bidding because we could not conclusively determine the demand by public safety entities for 220 MHz channels, and because we intend to fully explore the spectrum needs of the public safety community in a future rulemaking proceeding.

63. A number of commenters urged the Commission to maintain a non-commercial set-aside for the 220 MHz service, arguing that there is a continuing demand for such a set-aside and that it is necessary for licensees' internal communications. Other commenters disagreed. We found that it would not be in the public interest to establish a non-commercial set-aside based in part on our continuing commitment to efficient use of the spectrum. As discussed in para. 42 of the full text of this *Third Report and*

[5] *Third Notice*, 11 FCC Rcd at 287.

[6] Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[7] The Commission received comments from five equipment manufacturers: Fairfield Industries (Fairfield), SEA Inc. (SEA), Securicor Radiocoms, Ltd. (Securicor), Ericsson Corporation, and E. F. Johnson Company. Of these commenters, Fairfield, SEA, and Securicor may be small businesses under the definition used in this analysis. Securicor is a corporation based in England. A sixth equipment manufacturer, Motorola, while not submitting formal comments, filed *ex parte* presentations in this proceeding.

Order, we agree with those commenters who believe that it is unnecessary to set aside spectrum for exclusively internal communications, given the apparent demand for nationwide spectrum for the provision of service to the public and the fact that we are not precluding a nationwide licensee from using all or part of its spectrum for internal communications.

64. Commenters disagreed regarding how the Commission should treat pending applications for nationwide 220 MHz licenses. Many commenters urged the Commission to exercise its discretion to award the licenses through lotteries. Other commenters argued that the pending applications should be returned and the licenses should be awarded through auctions. We found that it would be in the public interest to return the pending applications for the 220 MHz service without prejudice and award the licenses through competitive bidding. We concluded that, because the nature of the 220 MHz service is undergoing a substantial change, it would be unfair to preclude new applicants from having the opportunity to apply for these licenses. We also noted that awarding licenses through auctions benefits the public by ensuring that licenses go to those who value them the most and to those who have an incentive to build their systems quickly, thereby speeding the provision of service to the public.

III. Description and Estimate of the Small Entities Involved

65. The Commission anticipates receiving approximately 2,220 total applications for the Phase II 220 MHz service—*i.e.,* 2,000 Public Safety applications (including 1,000 EMRS applications), 90 applications for Economic Area channels, 20 applications for Regional channels, 100 applications for secondary service, and 10 applications for nationwide channels. These applicants, many of whom may be small businesses, as well as approximately 3,800 Phase I 220 MHz licensees, many of whom may be small entities, and at least six equipment manufacturers, three of which may be small businesses, will be subject to the rules adopted in the *220 MHz Third Report and Order.*

66. The Commission has not developed a definition of small entities applicable to 220 MHz Phase I licensees, or equipment manufacturers for purposes of this Final Regulatory Flexibility Analysis, and since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that are associated with the 220 MHz service. However, we have adopted criteria for defining small businesses and very small businesses for purposes of determining eligibility for auction bidding credits and installment payments.[8] We will therefore use this definition for estimating the number of potential Phase II entities applying for auctionable spectrum that are small businesses. To estimate the number of Phase I licensees and the number of 220 MHz equipment manufacturers that are small businesses, and the number of Phase II entities applying for non-auctionable spectrum (*i.e.,* public safety and EMRS channels) we shall turn to the relevant definitions as provided by the Small Business Administration (SBA).

Phase I Licensees

There are approximately 3,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. To estimate the number of such entities that are small businesses, we apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[9] However, the size data provided by the SBA do not allow us to make a meaningful estimate of the number of 220 MHz providers that are small entities because they combine all radiotelephone companies with 500 or more employees.[10] We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicate that only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees—and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees.[11] But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the 220 MHz service.

Phase II Entities Applying for Auctionable Spectrum

The *220 MHz Third Report and Order* adopts a two-tiered definition of small business for the purpose of competitive bidding. The Commission defines a ''very small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; and a ''small business'' as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. For purposes of determining small business status, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. The Commission is not imposing specific equity requirements on the controlling principals that meet this small business definition. In order for an applicant to qualify as a small business, qualifying small business principals must maintain both *de facto* and *de jure* control of the applicant.

67. As noted above, the SBREFA was not in effect at the time the *Third Notice* was issued, so comment was not sought on the number of prospective Phase II applicants in the 220 MHz service which might qualify as small businesses. Therefore, the Commission cannot accurately predict the number of applicants in the 220 MHz service who will fit the description of a small business. However, using the definitions of small business and very small business we adopted for the purpose of determining eligibility for bidding credits and installment payments, the Commission can attempt to estimate the number of applicants for 220 MHz licenses that are small businesses by looking at the number of applicants in similar services that qualified as small businesses. For example, the 900 MHz SMR service utilized a definition of very small business based on gross revenues of not more than $3 million and a definition of small business based on gross revenues of not more than $15 million. A total of 128 applications were received in the 900 MHz SMR auction, and, of these applications, 71 qualified as very small businesses and an additional 30 qualified as small businesses.

68. Approximately 900 licenses will be made available for authorization in

[8] Approval from the Small Business Administration for this definition is pending.

[9] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[10] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, Table 3, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[11] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

the 220 MHz auction. In the 900 MHz SMR auction, 1050 licenses were made available. Given that 128 qualified applications were received in the 900 MHz auction, we anticipate receiving slightly fewer, or 120 applications in the 220 MHz auction. Given that 71 applicants qualified as very small businesses and 30 applicants qualified as small businesses in the 900 MHz SMR auction, we estimate that proportionately fewer, or 65 applicants, will qualify as very small businesses, and 27 applicants will qualify as small businesses in the 220 MHz auction.

Phase II Entities Applying for Non-Auctionable Spectrum

We estimate that approximately 1,000 applications will be filed for authorization on the 220 MHz public safety channels, and we estimate that approximately 1,000 applications will be filed for authorization on the 220 MHz EMRS channels. To estimate the number of such applicants that are small entities, we apply the definition of a small entity under the SBA rules applicable to small governmental entities. The SBREFA requires that we estimate the number of governmental entities with populations of less than 50,000 for which our rules will apply.[12] According to the Census Bureau, 96 percent of the nation's counties, cities, and towns have populations of fewer than 50,000.[13] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. We thus estimate that 96 percent of all governmental entities are small; and further estimate that, because the estimated 1,000 applications for the public safety channels will be from governmental entities, that 960 of these applications may be from small governmental entities. Some EMRS applicants will be governmental entities, while others will be non-governmental (*e.g.*, hospitals, ambulance services). Because we assume that *all* such non-governmental entities applying for EMRS licenses will be small entities, we estimate that a slightly higher percentage of applicants for EMRS licenses, or 98 percent of EMRS applicants, will be small entities. We therefore estimate that approximately 980 applications for the EMRS channels will be from small entities.

Radio Equipment Manufacturers

We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[14] Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.[15] We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, because three of these manufacturers (Motorola, Ericsson and E.F. Johnson) are major, nationwide radio equipment manufacturers, we conclude that these manufacturers would *not* qualify as small businesses.

IV. Summary of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

69. The *220 MHz Third Report and Order* adopts a number of rules that will entail reporting, recordkeeping, and/or third party consultation. However, the Commission believes that these requirements are the minimum needed to ensure the integrity of the 220 MHz service. The Commission considers the effects of these requirements first on Phase II applicants and licensees and then on Phase I licensees.

Phase II Applicants

Applicants for the Phase II 220 MHz auction will be required to submit a completed FCC Form 175. Auction winners, as well as applicants for the 220 MHz public safety and EMRS channels, will be required to file a completed FCC Form 600. In addition, applicants for the 220 MHz EMRS channels, like all other EMRS applicants, must furnish a statement from the governmental body having jurisdiction over the state emergency plan indicating that the applicant is included in the emergency plan, or is otherwise supporting the application.

Phase II Licensees

Phase II licensees authorized on Channels 161–200 and Channels 1–40 will be required to coordinate among themselves to locate their base stations to avoid interference. Regional licensees operating on Channels 196–200 may operate stations at powers exceeding 2 watts ERP or at antenna heights greater than 20 feet provided that they obtain the written concurrence of all Phase I and Phase II licensees operating base stations on Channels 1–40 within 6 km of the base stations of the Regional licensees.

70. Phase II licensees operating secondary, fixed stations will be required to notify any co-channel primary licensees authorized in the area of their operation of the location of their secondary facilities. Phase II licensees implementing nationwide land mobile or paging systems will be required to meet construction ''benchmarks'' and must submit maps and other supporting documentation to demonstrate compliance with these benchmarks five and ten years after grant of the initial license. Also, nationwide licensees implementing fixed systems, in lieu of meeting the construction benchmarks described above, may make a showing of ''substantial service'' within five and ten years of the initial license grant. To comply with these requirements, such licensees must also submit maps and other supporting documents five and ten years after grant of the initial license. Regional licensees and EA licensees implementing land mobile, paging, or fixed systems must also comply with 5- and 10-year construction or substantial service requirements and must also provide maps and other supporting documents to demonstrate compliance with such requirements. Preparation of maps and supporting documentation may involve engineering expertise. Failure by nationwide, EA, or Regional licensees to meet either the five- or ten-year construction requirement will result in automatic cancellation of the licensees' nationwide authorization. Phase II licensees will not be permitted to construct their stations less than 120 km from a constructed and operating Phase I, co-channel station unless they submit a technical analysis demonstrating that the predicted 28 dBuV/m interfering contour of their base station does not overlap the predicted 38 dBuV/m service contour of the Phase I licensee's station. This technical analysis will involve engineering expertise. Phase II licensees may also locate their stations less than 120 km from the station of an existing Phase I co-channel licensee or with less 10 dB protection to such co-channel's station's 38 dBuV/m contour if the Phase II licensee obtains the written consent of the affected Phase I

[12] *See* 5 U.S.C. 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

[13] *See* 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[14] 13 CFR 121.201, (SIC) Code 3663.

[15] U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

licensee. Finally, Phase II licensees operating in adjacent EAs or Regions may exceed the specified field strength limit at their border if all affected, co-channel EA and Regional licensees agree to the higher field strength.

71. Section 309(j)(4)(E) of the Communications Act directs 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.'' [16] The Commission adopted safeguards designed to ensure that the requirements of this section are satisfied, including a transfer disclosure requirement for licenses obtained through the competitive bidding process for the 220 MHz service. An applicant seeking approval for a transfer of control or assignment of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license.

72. With respect to small businesses, we have adopted unjust enrichment provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use the competitive bidding process to obtain a license at a lower cost than they would otherwise have to pay and to later sell it at a profit, and to ensure that large businesses do not become the unintended beneficiaries of measures meant to help small firms. Small business licensees seeking to transfer their licenses to entities which do not qualify as small businesses (or very small businesses seeking to transfer their licenses to small businesses or large companies), as a condition of approval of the transfer, must remit to the government a payment equal to a portion of the total value of the benefit conferred by the government.

73. Finally, applicants and licensees claiming eligibility for competitive bidding as a small business, a very small business, or a consortium of small businesses (or very small businesses) are subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors. Consent to such audit is part of the certification included in the short-form application (FCC Form 175).

Phase I Licensees

Phase I nationwide licensees intending to operate primary, fixed or paging operations instead of or in addition to their land mobile operations must revise their 10-year schedule for construction of their land mobile system to describe the fixed or paging system they intend to deploy. They must also certify that the financial showings and all other certifications they had previously provided in demonstrating their ability to construct and operate their nationwide land mobile system remain applicable to their planned, primary fixed or paging system, or they must revise their financial showings and provide all other relevant certifications to demonstrate their ability to construct and operate a nationwide, primary fixed or paging system. These certifications and showings may involve engineering and financial expertise. The Commission anticipates that two Phase I licensees will seek to deploy primary fixed or paging operations.

74. Phase I nationwide licensees intending to operate primary fixed systems will be required to comply with existing construction, recordkeeping, and reporting requirements, but, rather than constructing base stations (for base and mobile operations) and placing them in operation to meet their 4-, 6- and 10-year construction benchmarks, must demonstrate how their fixed stations are providing ''substantial service'' to the public. This demonstration of substantial service will be provided in the same form as documentation currently required for nationwide Phase I licensees providing evidence of the construction of their primary land mobile systems.

All 220 MHz Licensees

All 220 MHz licensees seeking renewal of their authorizations will be required, *inter alia,* to demonstrate that they have provided substantial service during their past license term, and submit a showing explaining why they should receive a renewal expectancy.

V. Significant Alternatives and Steps Taken by Agency to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

75. The Commission's chief objectives in adopting the *220 MHz Third Report and Order* are to establish a regulatory plan for the 220 MHz service that will allow for the efficient licensing and use of the service, to eliminate unnecessary regulatory burdens, to enhance the competitive potential of the 220 MHz service in the mobile services marketplace, to provide a wide variety of radio services to the public, and to continue to provide a home for the development of spectrally efficient technologies. A number of the Commission's original proposals were modified in order to minimize the significant economic impact on small entities consistent with these objectives, based on issues and suggestions raised in the public comment.

76. For example, the Commission made significant changes to the proposed Phase II channel band plan based on an analysis of the comments. Most of the commenters favored the assignment of larger numbers of channels to individual EA and Regional licensees than the proposed 5-channel blocks. The Commission concurred with the commenters' argument that proposed 5-channel blocks would unjustly inhibit licensees' revenue-producing ability and therefore decided to authorize 10- and 15-channel EA and Regional assignments, respectively. We concluded that adoption of a licensing scheme that provides for 10-channel and 15-channel assignments should enable Phase II licensees, many of which are likely to be small businesses, to establish more viable radio services. Commenters were also generally opposed to the Commission's use of contiguous channel assignments in our proposed Phase II band plan after having previously adopted predominantly non-contiguous assignments in Phase I. The Commission found merit in the argument of those who emphasized the difficulties that are likely to be encountered by both Phase I licensees and Phase II licensees, many of which are likely to be small businesses, if we adopted completely inconsistent Phase II and Phase I band plans. We therefore adopted a Phase II band plan that mirrored the existing Phase I plan. We concluded that adopting a Phase II band plan patterned after the Phase I plan will benefit both Phase I and Phase II licensees because Phase I licensees will be able to more easily expand on their existing authorized channels, and Phase II licensees will be able to more easily provide protection to co-channel Phase I licensees. In addition, at the suggestion of a commenter, we decided not to require EA, Regional or nationwide licensees to construct a minimum number of channels at all of their base stations.

77. In order to provide licensees with maximum flexibility to employ a variety

[16] 47 U.S.C. 309(j)(4)(E).

of technologies, the Commission decided to allow them to aggregate their contiguous channels. However, in so doing the Commission agreed with the views of commenters SEA and Securicor and adopted a spectrum efficiency standard. In adopting a spectrum efficiency standard, we rejected other commenters' arguments that a standard is not necessary because licensees acquiring spectrum assigned on contiguous channels through competitive bidding will have an incentive to use that spectrum as efficiently as possible, and that adoption of a particular spectrum efficiency standard could limit the types of services that licensees would be able to provide. The Commission concluded that a standard was needed to ensure that the 220 MHz band would continue to be a home for the development of spectrum efficient technologies.

78. The Commission also attempted, wherever possible, to offer licensees the most flexibility with a minimum regulatory burden. For example, the Commission elected to allow Phase I and Phase II licensees the flexibility to conduct paging operations on a primary basis. The commenters were divided on this issue. Commenters opposed to allowing paging on a primary basis maintained that to do so would transform the 220 MHz band into merely an additional band for the provision of paging services, and that this would be unfair to existing paging licensees in other bands. These commenters argued that there are a sufficient number of paging bands already in existence and that the 220 MHz band should continue to be used to advance the development of narrowband technology. The Commission, however, decided to allow paging on a primary basis in the 220 MHz band in order to provide additional spectrum for a rapidly growing communications service and to enable 220 MHz licensees to compete more effectively in the wireless marketplace.

79. The Commission also decided to allow 220 MHz licensees to conduct fixed operations on a primary basis to provide them with the flexibility to offer a wider array of communications services to the public. Similarly, the Commission decided that 220 MHz licensees conducting geophysical telemetry operations should be permitted to obtain secondary authorizations to operate their fixed facilities on a non-interference basis to licensees authorized to operate on a primary basis. In making this decision, the Commission acknowledged concerns raised by commenters about possible interference to primary operations, but concluded that the risk of interference from secondary, geophysical telemetry operations was minimal, and that such operations should therefore be allowed.

80. In prescribing rules for the 220 MHz service auction, we initially proposed to begin by auctioning the nationwide licenses and the Regional licenses in one simultaneous multiple round auction. We proposed to then auction the economic area (EA) licenses in a subsequent auction. The SMR Advisory Group supported this approach. After further consideration, however, we concluded that all three categories of licenses are highly interdependent. Grouping such licenses and putting them up for bid at the same time facilitates awarding licenses to bidders who value them the most highly by providing bidders, including small businesses, with information about the prices of complementary and substitutable licenses during the course of an auction. We therefore announced our plan to hold a single, simultaneous multiple round auction for all classes of licenses. We did, however, reserve the discretion to auction each of these license groupings (nationwide, Regional, EA) separately or in different combinations (*e.g.*, nationwide and Regional together) if there are administrative reasons for doing so.

81. In establishing bidding procedures, the Commission proposed the use of the Milgrom-Wilson activity rule. We proposed a minimum activity level requiring bidders to be active on at least one-third of the MHz-pops for which they are eligible in Stage I, two-thirds of the MHz-pops for which they are eligible in Stage II, and 100 percent of the MHz-pops for which they are eligible in Stage III. The SMR Advisory Group and AMTA supported use of the Milgrom-Wilson activity rule. However, NTIA stated that requiring a 100 percent level of activity in Stage III may inhibit bidder flexibility and be unduly restrictive. We agree with NTIA and decided not to require a 100 percent level of activity in Stage III. Moreover, in order to enhance bidder flexibility at the end of the auction and to make the figures easier to administer, we eliminated the use of fractions. Thus, we adopted eligibility levels of 60 percent, 80 percent, and 98 percent, for Stages I, II, and III, respectively. This change will benefit all bidders, including small businesses.

82. In establishing auction rules for the 220 MHz service, the Commission adopted a number of provisions to support the participation of small businesses. For example, the Commission established bidding credits and an installment payment plan, designed to increase the opportunities for small businesses to become 220 MHz service providers. In addition, the Commission established rules for the partitioning of geographic area licenses, which will increase opportunities for small businesses to participate in the 220 MHz service. Through partitioning, small businesses may acquire licenses for portions of geographic areas, a less expensive alternative to acquiring a license for an entire area.

83. The Commission initially proposed to define small business, for purposes of eligibility for such provisions as bidding credits and installment payments as follows: For companies wishing to bid on nationwide and Regional licenses, we proposed to define small businesses as those entities with $15 million or less in average annual gross revenues for the preceding three years. For EA licenses, we proposed to define small businesses as those entities with $6 million or less in average annual gross revenues for the preceding three years. AMTA and the SMR Advisory Group agreed with this definition. We concluded, however, that while the nationwide and Regional Phase II 220 MHz licenses would have higher build-out and operational costs than would the EA licenses, it is likely that bidders will attempt to aggregate licenses across regions or EAs to establish their markets. Thus, for example, bidders may elect to aggregate EA licenses to create a Regional market, rather than bid for the Regional license itself. In order to ensure the meaningful participation of small business entities in the auction, we adopted a two-tiered definition of small business with gross revenues limits applicable across all three categories of license. This approach will give qualifying small businesses flexibility to bid for a Regional license or, on the other hand, elect to bid for several EAs, without having to choose which type of license to bid for prior to the start of the auction. For purposes of bidding for the nationwide, Regional and EA licenses, therefore, we defined (1) a very small business as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of no more than $3 million and (2) a small business as an entity that, together with affiliates and controlling principals, has average gross revenues for the preceding three years of no more than $15 million. Defining a ''very small business'' at the $3 million threshold, rather than at the $6 million threshold, is consistent with the

definitions successfully used in the 900 MHz SMR service, where build-out costs are similar to those in the 220 MHz service. Bidding credits are based upon this two-tiered approach.

84. We disagreed with the suggestion of Metricom that we should increase the gross revenues threshold of our small business definition to $25 million, because, based upon our experience in the 900 MHz SMR auction, such an increase would be far too inclusive. In the 900 MHz SMR auction, we established small business definitions of $15 million and $3 million. Of the 128 applicants that qualified to participate in the auction, 101 qualified for the small business or very small business bidding credits. Because we believe the cost of building out a 220 MHz system most closely resembles the cost of a 900 MHz SMR system, and because it would substantially dilute the value of the small business preferences for virtually all applicants to qualify for them, we declined to adopt the Metricom proposal.

85. For purposes of determining small business status, we will attribute the gross revenues of the applicant, all controlling principals of the applicant, and their affiliates. This is a much simpler approach than we utilized in broadband PCS, because it does not require a control group. We will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain ''control'' of the applicant, including both *de facto* and *de jure* control. Thus, small businesses will have less difficulty determining their eligibility. We declined to adopt Comtech's suggestion that, for determining whether an entity qualifies as a small business, revenues and assets of investors holding more than 25 percent of an applicant's voting stock and revenues and assets of all affiliates should be attributable to the applicant. Our approach is a more accurate indicator of the control of an applicant.

86. With respect to bidding credits, in order to ensure that small businesses have a realistic opportunity to acquire Phase II 220 MHz nationwide and Regional licenses, we proposed a 40 percent bidding credit for all qualified designated entities. For Phase II 220 MHz nationwide licenses, we proposed, *inter alia*, to offer this bidding credit on only one of the available channel blocks. For Phase II 220 MHz Regional licenses, we proposed to offer the bidding credit on all available channel blocks. Because we believed that the Phase II 220 MHz EA licenses are similar in their number and in the level of incumbency to the licenses offered in the 900 MHz SMR service, we proposed offering the same 10 percent bidding credit to qualified small businesses bidding on Phase II 220 MHz EA licenses as we did in the 900 MHz SMR auction. SMR Advisory Group supported these proposals. AMTA, U.S. MobilComm, Roamer, and Incom also supported these proposals, although they supported bidding credits solely for regional and EA licenses. Comtech agreed with a 40 percent bidding credit for Regional licenses, but suggested this credit should be extended to all nationwide licenses as well.

87. We concluded, however, that small businesses are in the best position to decide which blocks of licenses to bid on. As we have stated, based upon our experience in prior auctions, it is very likely that bidders will attempt to aggregate Regional and EA licenses in the development of their bidding strategies, particularly if these licenses are auctioned together. Thus, in order to enhance bidder flexibility, we elected to establish bidding credits consistent with our two-tiered definition of small business that will apply to all three license groups. For very small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $3 million, we will give a 25 percent bidding credit, applicable for all three categories of licenses. Likewise, we will give small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $15 million, a bidding credit of 10 percent, available for all three categories of licenses. While the 25 percent bidding credit is less than originally proposed for the nationwide and Regional licenses, we believe it is appropriate since we are now going to offer bidding credits generally for all channel blocks. Moreover, we had favorable results—*i.e.*, a significant number of small business applicants were winning bidders—in previous auctions with bidding credits at this level or lower.

88. We initially proposed the use of installment payments and reduced down payments for all small businesses bidding for any of the Phase II 220 MHz nationwide, Regional and EA licenses. The SMR Advisory Group supported these positions. We also tentatively concluded that reduced upfront payments for small businesses would be unnecessary.

89. We adopted an installment payment plan for small businesses and very small businesses participating in the 220 MHz auction. We declined to provide very small businesses with a longer interest-only period than the two-year period provided for small businesses. We determined that a two-year interest-only period in the single plan we adopted provides all small businesses with the appropriate level of financing to overcome difficulties in attracting capital. Given that we are making additional financial assistance available to very small businesses in the form of a 25 percent bidding credit, we concluded that a longer interest-only period is not needed. We also concluded that small businesses should not be permitted to pay a reduced down payment. As we stated in the case of the broadband PCS D, E and F Block auction, we believe that a substantial down payment is necessary to ensure that winning bidders have the financial capability of building out their systems, and will provide us with stronger assurance against defaults than a reduced down payment. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public. We also believe that a 20 percent down payment should cover the required payments in the unlikely event of default.

90. Finally, we elected not to adopt a spectrum set-aside for designated entities, including small businesses. Because there will be both a large number and a large variety of licenses available in the Phase II 220 MHz auction, we decided not to adopt an entrepreneur's block for this service. Small businesses, we concluded, will have a significant opportunity to compete for Phase II 220 MHz licenses, particularly given the special provisions adopted for small businesses.

91. In making its various decisions in this proceeding, the Commission considered all available alternatives. It believes that the rules it has adopted in this decision represent the best balance of providing licensees, many of whom are small businesses, with the most flexibility and the smallest regulatory burden, and enables them to offer a variety of radio services to the public and compete effectively in the mobile communications marketplace.

VI. Report to Congress

92. The Commission shall send a copy of this Final Regulatory Flexibility Analysis (FRFA) along with this *220 MHz Third Report and Order*, in a report to Congress pursuant to 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

93. Authority for issuance of this Third Report and Order is contained in sections 4(i), 303(r), 309(j), and 332 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), 309(j), 332.

94. Accordingly, *it is ordered* that part 90 of the Commission's rules, 47 CFR part 90, *is amended* as set forth below, effective August 21, 1997.

95. *It is further ordered* that the Petitions for Reconsideration filed by Columbia Cellular Corporation, PLMRS Narrowband Corp. and 360 Mobile Data Joint Venture on August 6, 1993, *are dismissed* as moot.

96. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chief, Wireless Telecommunications Bureau, *is granted delegated authority* to implement and modify auction procedures in the Phase II 220 MHz service, including the general design and timing of an auction; the number and grouping of authorizations to be offered in any particular auction; the manner of submitting bids; the amount of minimum opening bids and bid increments; activity and stopping rules; and application and payment requirements, including the amount of upfront payments; and to announce such procedures by Public Notice.

97. *It is further ordered* that all pending nationwide and non-nationwide 220 MHz applications, together with the appropriate filing fees, will be returned to applicants, without prejudice.

98. *It is further ordered* that a Public Notice will be issued announcing the acceptance of applications for authorizations on Channels 161–170 and Channels 181–185 after August 21, 1997.

99. *It is further ordered* that applications for temporary, secondary authorizations for geophysical telemetry operations will be accepted beginning August 21, 1997.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 2 and 90 of Title 47 of the Code of Federal Regulations are 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: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise entries for 220–222 MHz;

b. Remove international footnote 625; and

c. Add United States footnote US335.

§ 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)
*	*	*	*	*	*	*
220–222 BROADCASTING	220–222 AMATEUR FIXED MOBILE Radiolocation 627	220–222 FIXED MOBILE BROADCASTING	220–222 FIXED LAND MOBILE Radiolocation 627	220–222 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90)	
621 623 628 629		626	G2 US335	627 US335		
*	*	*	*	*	*	*

United States (US) Footnotes

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US335 The primary Government and non-Government allocations for the various segments of the 220–222 MHz band are divided as follows: (1) the 220.0–220.55/221.0–221.55, 220.6–220.8/221.6–221.8, 220.85–220.90/221.85–221.90 and 220.925–221.0/221.925–222.0 MHz bands (Channels 1–110, 121–160, 171–180 and 186–200, respectively) are available for exclusive non-Government use; (2) the 220.55–220.60/221.55–221.60 MHz bands (Channels 111–120) are available for exclusive Government use; and (3) the 220.80–220.85/221.80–221.85 and 220.900–220.925/221.900–221.925 MHz bands (Channels 161–170 and 181–185, respectively) are available for shared Government and non-Government use. The exclusive non-Government band segments are also available for temporary fixed geophysical telemetry operations on a secondary basis to the fixed and mobile services.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

2. Section 90.7 is amended by revising the definitions for ''EA-based or EA license'' and ''Economic Areas (EAs),'' and by adding definitions for ''Geophysical Telemetry,'' ''Regional Economic Area Groupings (REAGs),''

''Regional License,'' and ''220 MHz Service'' 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 and 220–222 MHz spectrum within one of 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 defined as of February 1995, with the following exceptions:

(1) Guam and Northern Mariana Islands are licensed as a single EA-like area (identified as *EA 173* in the 220 MHz Service);

(2) Puerto Rico and the U.S. Virgin Islands are licensed as a single EA-like area (identified as *EA 174* in the 220 MHz Service); and

(3) American Samoa is licensed as a single EA-like area (identified as *EA 175* in the 220 MHz Service).

* * * * *

Geophysical Telemetry. Telemetry involving the simultaneous transmission of seismic data from numerous locations to a central receiver and digital recording unit.

* * * * *

Regional Economic Area Groupings (REAGs). The six geographic areas for Regional licensing in the 220–222 MHz band, based on the United States Department of Commerce Bureau of Economic Analysis Economic Areas (see 60 FR 13114 (March 10, 1995)) defined as of February 1995, and specified as follows:

REAG 1 (Northeast): REAG 1 consists of the following EAs: EA 001 (Bangor, ME) through EA 011 (Harrisburg-Lebanon-Carlisle, PA); and EA 054 (Erie, PA).

REAG 2 (Mid-Atlantic): REAG 2 consists of the following EAs: EA 012 (Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD) through EA 026 (Charleston-North Charleston, SC); EA 041 (Greenville-Spartanburg-Anderson, SC–NC); EA 042 (Asheville, NC); EA 044 (Knoxville, TN) through EA 053 (Pittsburgh, PA–WV); and EA 070 (Louisville, KY–IN).

REAG 3 (Southeast): REAG 3 consists of the following EAs: EA 027 (Augusta-Aiken, GA–SC) through EA 040 (Atlanta, GA–AL–NC); EA 043 (Chattanooga, TN–GA); EA 069 (Evansville–Henderson, IN–KY–IL); EA 071 (Nashville, TN–KY) through EA 086 (Lake Charles, LA); EA 088 (Shreveport-Bossier City, LA–AR) through EA 090 (Little Rock-North Little Rock, AR); EA 095 (Jonesboro, AR–MO); EA 096 (St. Louis, MO–IL); and EA 174 (Puerto Rico and the U.S. Virgin Islands).

REAG 4 (Great Lakes): REAG 4 consists of the following EAs: EA 055 Cleveland-Akron, OH–PA) through EA 068 (Champaign-Urbana, IL); EA 097 (Springfield, IL–MO); and EA 100 (Des Moines, IA–IL–MO) through EA 109 (Duluth-Superior, MN–WI).

REAG 5 (Central/Mountain): REAG 5 consists of the following EAs: EA 087 (Beaumont-Port Arthur, TX); EA 091 (Forth Smith, AR–OK) through EA 094 (Springfield, MO); EA 098 (Columbia, MO); EA 099 (Kansas City, MO–KS); EA 110 (Grand Forks, ND–MN) through EA 146 (Missoula, MT); EA 148 (Idaho Falls, ID–WY); EA 149 (Twin Falls, ID); EA 152 (Salt Lake City-Ogden, UT–ID); and EA 154 (Flagstaff, AZ–UT) through EA 159 (Tucson, AZ).

REAG 6 (Pacific): REAG 6 consists of the following EAs: EA 147 (Spokane, WA–ID); EA 150 (Boise City, ID–OR); EA 151 (Reno, NV–CA); EA 153 (Las Vegas, NV–AZ–UT); EA 160 (Los Angeles-Riverside-Orange County, CA–AZ) through EA 173 (Guam and the Northern Mariana Islands); and EA 175 (American Samoa).

Regional License. A license authorizing the right to use a specified block of 220–222 MHz spectrum within one of six Regional Economic Area Groupings (REAGs).

* * * * *

220 MHz Service. The radio service for the licensing of frequencies in the 220–222 MHz band.

* * * * *

3. Section 90.41(a) is revised to read as follows:

§ 90.41 Disaster relief organizations.

(a) *Eligibility.* Organizations established for disaster relief purposes having an emergency radio communications plan are eligible to hold authorizations to operate radio stations for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of emergency situations during periods of actual or impending emergency, or disaster, and until substantially normal conditions are restored. In addition, the stations may be used for training exercises, incidental to the emergency communications plan, and for operational communications of the disaster relief organization or its chapter affiliates.

* * * * *

4. Section 90.137 is amended by revising paragraph (a)(3) to read as follows:

§ 90.137 Applications for operation at temporary locations.

(a) * * *

(3) Applications for operation at temporary locations exceeding 180 days must be accompanied by evidence of frequency coordination, except that applications for operation at temporary locations exceeding 180 days by applicants using 220–222 MHz spectrum for geophysical telemetry operations need not be accompanied by evidence of frequency coordination.

* * * * *

5. Section 90.203 is amended by adding paragraph (k) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(k)(1) For transmitters operating on frequencies in the 220–222 MHz band, type acceptance will only be granted for equipment with channel bandwidths up to 5 kHz, except that type acceptance will be granted for equipment operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz if the equipment meets the following spectrum efficiency standard: Applications for Part 90 type acceptance of transmitters designed to operate on frequencies in the 220–222 MHz band must include a statement that the equipment meets a spectrum efficiency standard of at least one voice channel per 5 kHz of channel bandwidth (for voice communications), and a data rate of at least 4,800 bits per second per 5 kHz of channel bandwidth (for data communications). Type acceptance for transmitters operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz will be granted without the requirement that a statement be included that the

equipment meets the spectrum efficiency standard if the requests for type acceptance of such transmitters are filed after December 31, 2001.

(2) Type acceptance may be granted on a case-by-case basis by the Commission's Equipment Authorization Division for equipment operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/ 221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz and *not* satisfying the spectrum efficiency standard identified in paragraph (k)(1) of this section, if requests for Part 90 type acceptance of such transmitters are accompanied by a technical analysis that satisfactorily demonstrates that the transmitters will provide more spectral efficiency than that which would be provided by use of the spectrum efficiency standard.

6. Section 90.701 is revised to read as follows:

§ 90.701 Scope.

(a) Frequencies in the 220–222 MHz band are available for land mobile and fixed use for both Government and non-Government operations. This subpart sets out the regulations governing the licensing and operation of non-Government systems operating in the 220–222 MHz band. It includes eligibility requirements, application procedures, and operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflicts, the provisions of this subpart shall govern with respect to licensing and operation in this frequency band.

(b)(1) Licensees granted initial authorizations for operations in the 220–222 MHz band from among applications filed on or before May 24, 1991 are referred to in this subpart as ''Phase I'' licensees;

(2) Applicants that filed initial applications for operations in the 220–222 MHz band on or before May 24, 1991 are referred to in this subpart as ''Phase I'' applicants; and

(3) All assignments, operations, stations, and systems of licensees granted authorizations from among applications filed for operations in the 220–222 MHz band on or before May 24, 1991 are referred to in this subpart as ''Phase I'' assignments, operations, stations, and systems, respectively.

(c)(1) Licensees granted initial authorizations for operations in the 220–222 MHz band from among applications filed after May 24, 1991 are referred to in this subpart as ''Phase II'' licensees;

(2) Applicants that filed initial applications for operations in the 220–222 MHz band after May 24, 1991 are referred to in this subpart as ''Phase II'' applicants; and

(3) All assignments, operations, stations, and systems of licensees granted authorizations from among applications filed for operations in the 220–222 MHz band after May 24, 1991 are referred to in this subpart as ''Phase II'' assignments, operations, stations, and systems, respectively.

(d) The rules in this subpart apply to both Phase I and Phase II licensees, applicants, assignments, operations, stations, and systems, unless otherwise specified.

7. Section 90.705 is revised to read as follows:

§ 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 90.1009 and 90.1013. Phase II applications for radio facilities operating on public safety/mutual aid channels (Channels 161 through 170) or Emergency Medical Radio Service channels (Channels 181 through 185) under this subpart must be prepared on FCC Form 600 and submitted or filed in accordance with § 90.127.

8. Paragraphs (a) and (c) of § 90.709 are revised and paragraph (e) is added to read as follows:

§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) Except as indicated in paragraph (b) of this section, the Commission will not consent to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to assign or transfer a license for a Phase I, non-nationwide system prior to the completion of construction of facilities; or

(3) Any application to transfer or assign a license for a Phase I nationwide system before the licensee has constructed at least 40 percent of the proposed system pursuant to the provisions of § 90.725(a) or § 90.725(h), as applicable.

* * * * *

(c) The assignee or transferee of a Phase I nationwide system is subject to the construction benchmarks and reporting requirements of § 90.725. The assignee or transferee of a Phase I nationwide system is not subject to the entry criteria described in § 90.713.

* * * * *

(e) The assignee or transferee of a Phase II system is subject to the provisions of § 90.1017 and § 1.2111(a) of this chapter.

9. Section 90.711 is revised to read as follows:

§ 90.711 Processing of Phase II applications.

(a) Phase II applications for authorizations on Channels 166 through 170 and Channels 181 through 185 will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for these frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (*i.e.*, if all applications were granted, violation of the station separation provisions of § 90.723(i) would result), these applications will be considered mutually exclusive and will be subject to random selection procedures pursuant to § 1.972 of this chapter.

(1) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(2) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the date on which the application was received by the Commission in its Gettysburg, Pennsylvania office (or the address set forth at § 1.1102 of this chapter for applications requiring the fees established by part 1, subpart G of this chapter).

(3) Each application that is accepted for filing will then be reviewed to determine whether it can be granted. Frequencies will be assigned by the Commission pursuant to the provisions of § 90.723.

(4) An application which is dismissed will lose its place in the processing line.

(5) If an application is returned for correction and resubmitted and received by the Commission within 60 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 60 days, it will lose its place in the processing line.

(b) All applications for Channels 161 through 165 that comply with the applicable rules of this part shall be

granted. Licensees operating on such channels shall cooperate in the selection and use of frequencies and resolve any instances of interference in accordance with the provisions of § 90.173.

(c) Phase II applications for authorization on all non-Government channels other than Channels 161 through 170 and 181 through 185 shall be processed in accordance with the provisions of subpart W of this part.

10. Section 90.713 is revised to read as follows:

§ 90.713 Entry criteria.

(a) As set forth in § 90.717, four 5-channel blocks are available for nationwide, commercial use to non-Government, Phase I applicants. Applicants for these nationwide channel blocks must comply with paragraphs (b), (c), and (d) of this section.

(b)(1) An applicant must include certification that, within ten years of receiving a license, it will construct a minimum of one base station in at least 70 different geographic areas designated in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; and that each base station will have all five assigned nationwide channels constructed and placed in operation (regularly interacting with mobile and/or portable units).

(2) An applicant must include certification that it will meet the construction requirements set forth in § 90.725.

(3) An applicant must include a ten-year schedule detailing plans for construction of the proposed system.

(4) An applicant must include an itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term.

(5) An applicant must include proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed land mobile system for the first four years of the license term; *i.e.*, that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(c) An applicant relying on personal or internal resources for the showing required in paragraph (b) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. An applicant must also submit an unaudited balance sheet, current within 60 days of the date of submission, that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system, and a certification by the applicant or an officer of the applicant organization attesting to the validity of the balance sheet.

(d) An applicant submitting evidence of a firm financial commitment for the showing required in paragraph (b) of this section must obtain the commitment from a bona fide commercially acceptable source, *e.g.*, a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is not a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including an audited financial statement, and has determined that the applicant is creditworthy;

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing, if the applicant is seeking a Phase I, commercial nationwide license, to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40 percent of the system and operation of the system for the first four years of the license term.

(e) A Phase II applicant for authorization in a geographic area for Channels 166 through 170 in the public safety/mutual aid category may not have any interest in another pending application in the same geographic area for Channels 166 through 170 in the public safety/mutual aid category, and a Phase II applicant for authorization in a geographic area for channels in the Emergency Medical Radio Service (EMRS) category may not have any interest in another pending application in the same geographic area for channels in the EMRS category.

11. Section 90.717 is revised to read as follows:

§ 90.717 Channels available for nationwide systems in the 220–222 MHz band.

(a) Channels 51–60, 81–90, and 141–150 are 10-channel blocks available to non-Government applicants only for nationwide Phase II systems.

(b) Channels 21–25, 26–30, 151–155, and 156–160 are 5-channel blocks available to non-Government applicants only for nationwide, commercial Phase I systems.

(c) Channels 111–115 and 116–120 are 5-channel blocks available for Government nationwide use only.

12. Section 90.719 is revised to read as follows:

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

(a) Channels 171 through 200 are available to both Government and non-Government Phase I applicants, and may be assigned singly or in contiguous channel groups.

(b) Channels 171 through 180 are available for any use by Phase I applicants consistent with this subpart.

(c) Channels 181 through 185 are set aside for Phase II Emergency Medical Radio Service (EMRS) use under subpart B of this part.

(d) Channels 161 through 170 and 181 through 185 are the only 220–222 MHz channels available to Phase II non-nationwide, Government users.

13. Section 90.720 is revised to read as follows:

§ 90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees whose licenses reflect a two-letter radio service code beginning with the letter ''P'' (except for licensees whose licenses reflect a two-letter radio service code beginning with the letters ''PS'' and are not eligible under §§ 90.35, 90.37, 90.41, and 90.45) are authorized by this rule to use mobile and/or portable units on Channels 161–170 throughout the United States, its territories, and possessions to transmit:

(1) Communications relating to the immediate safety of life;

(2) Communications to facilitate interoperability among public safety entities and Special Emergency Radio Service (SERS) entities eligible under §§ 90.35, 90.37, 90.41 and 90.45; or

(3) Communications on behalf of and by members of organizations established for disaster relief purposes having an emergency radio communications plan (*i.e.*, licensees eligible under § 90.41) for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of emergency conditions during periods of actual or impending emergency, or disaster, until substantially normal conditions are restored; for limited training exercises incidental to an emergency radio

communications plan, and for necessary operational communications of the disaster relief organization or its chapter affiliates.

(b) Any Government entity and any non-Government entity eligible to obtain a license under subpart B of this part or eligible to obtain a license under §§ 90.35, 90.37, 90.41 and 90.45 is also eligible to obtain a license for base/mobile operations on Channels 161 through 170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability among public safety entities and the above-specified SERS entities, may only be conducted on a secondary non-interference basis to such communications.

14. Section 90.721 is revised to read as follows:

§ 90.721 Other channels available for non-nationwide systems in the 220–222 MHz band.

(a) The channel groups listed in the following Table are available to both Government and non-Government Phase I applicants for trunked operations or operations of equivalent or greater efficiency for non-commercial or commercial operations.

TABLE 1.—PHASE I TRUNKED CHANNEL GROUPS

Group No.	Channel Nos.
1	1–31–61–91–121
2	2–32–62–92–122
3	3–33–63–93–123
4	4–34–64–94–124
5	5–35–65–95–125
6	6–36–66–96–126
7	7–37–67–97–127
8	8–38–68–98–128
9	9–39–69–99–129
10	10–40–70–100–130
11	11–41–71–101–131
12	12–42–72–102–132
13	13–43–73–103–133
14	14–44–74–104–134
15	15–45–75–105–135
16	16–46–76–106–136
17	17–47–77–107–137
18	18–48–78–108–138
19	19–49–79–109–139
20	20–50–80–110–140

(b) The channels listed in the following Table are available to non-Government applicants for Phase II assignments in Economic Areas (EAs) and Regional Economic Area Groupings (REAGs) (*see* §§ 90.761 and 90.763).

TABLE 2.—PHASE II EA AND REGIONAL CHANNEL ASSIGNMENTS

Assignment	Assignment area	Group Nos. (from table 1)	Channel Nos.
A	EA	2 and 13.	
B	EA	3 and 16.	
C	EA	5 and 18.	
D	EA	8 and 19.	
E	EA		171–180
F	REAG	1, 6, and 11.	
G	REAG	4, 9, and 14.	
H	REAG	7, 12, and 17.	
I	REAG	10, 15, and 20.	
J	REAG		186–200

15. Section 90.723 is revised to read as follows:

§ 90.723 Selection and assignment of frequencies.

(a) Phase II applications for frequencies in the 220–222 MHz band shall specify whether their intended use is for 10-channel nationwide systems, 10-channel EA systems, 15-channel Regional systems, public safety/mutual aid use, or EMRS use. Phase II applicants for frequencies for public safety/mutual aid use or EMRS use shall specify the number of frequencies requested. All frequencies in this band will be assigned by the Commission.

(b) Phase II channels will be assigned pursuant to §§ 90.717, 90.719, 90.720, 90.721, 90.761 and 90.763.

(c) Phase II applicants for public safety/mutual aid and EMRS channels will be assigned only the number of channels justified to meet their requirements.

(d) Phase I base or fixed station receivers utilizing 221–222 MHz frequencies assigned from Sub-band A as designated in § 90.715(b) will be geographically separated from those Phase I base or fixed station transmitters utilizing 220–221 MHz frequencies removed 200 kHz or less and assigned from Sub-band B as follows:

GEOGRAPHIC SEPARATION OF SUB-BAND A; BASE OR FIXED STATION RECEIVERS AND SUB-BAND B; BASE OR FIXED STATION TRANSMITTERS EFFECTIVE

Separation distance (kilometers)	Radiated power (watts) [1]
0.0–0.3	([2])
0.3–0.5	5
0.5–0.6	10
0.6–0.8	20
0.8–2.0	25
2.0–4.0	50
4.0–5.0	100
5.0–6.0	200

GEOGRAPHIC SEPARATION OF SUB-BAND A; BASE OR FIXED STATION RECEIVERS AND SUB-BAND B; BASE OR FIXED STATION TRANSMITTERS EFFECTIVE—Continued

Separation distance (kilometers)	Radiated power (watts) [1]
Over 6.0	500

[1] Transmitter peak envelope power shall be used to determine effective radiated power.

[2] Stations separated by 0.3 km or less shall not be authorized. This table does not apply to the low-power channels 196–200. See § 90.729(c).

(e) Phase II licensees authorized on 220–221 MHz frequencies assigned from Sub-band B will be required to geographically separate their base station or fixed station transmitters from the base station or fixed station receivers of Phase I licensees authorized on 221–222 MHz frequencies 200 kHz removed or less in Sub-band A in accordance with the Table in paragraph (d) of this section.

(f) Phase II licensees with base or fixed stations transmitting on 220–221 MHz frequencies assigned from Sub-band B and Phase II licensees with base or fixed station stations receiving on Sub-band A 221–222 MHz frequencies, if such transmitting and receiving frequencies are 200 kHz or less removed from one another, will be required to coordinate the location of their base stations or fixed stations to avoid interference and to cooperate to resolve any instances of interference in accordance with the provisions of § 90.173(b).

(g) A mobile station is authorized to transmit on any frequency assigned to its associated base station. Mobile units not associated with base stations (*see* § 90.720(a)) must operate on ''mobile'' channels.

(h) A licensee's fixed station is authorized to transmit on any of the licensee's assigned base station frequencies or mobile station frequencies.

(i) Except for nationwide assignments, the separation of co-channel Phase I base stations, or fixed stations transmitting on base station frequencies, shall be 120 kilometers. Except for Phase I licensees seeking license modification in accordance with the provisions of §§ 90.751 and 90.753, shorter separations between such stations will be considered by the Commission on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an existing Phase I station's predicted 38 dBu signal level

contour. The existing Phase I station's predicted 38 dBu signal level contour shall be calculated using the F(50,50) field strength chart for Channels 7–13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential. The 10 dB protection to the existing Phase I station's predicted 38 dBu signal level contour shall be calculated using the F(50,10) field strength chart for Channels 7–13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

16. Section 90.725 is amended by revising the section heading and paragraphs (f) and (h) to read as follows:

§ 90.725 Construction requirements for Phase I licensees.

* * * * *

(f) Licensees authorized Phase I non-nationwide systems, or authorized on Channels 161 through 170 or Channels 181 through 185, must construct their systems (*i.e.*, have all specified base stations constructed with all channels) and place their systems in operation, or commence service in accordance with the provisions of § 90.167, within twelve months of the initial license grant date. Authorizations for systems not constructed and placed in operation, or having commenced service, within twelve months from the date of initial license grant cancel automatically.

* * * * *

(h) The requirements and conditions of paragraphs (a) through (e) and paragraph (g) of this section apply to nationwide licensees that construct and operate stations for fixed or paging operations on a primary basis instead of, or in addition to, stations for land mobile operations on a primary basis except that, in satisfying the base station construction and placed in operation requirements of paragraph (a) of this section and the system progress report requirements of paragraphs (d) and (e) of this section, licensees operating stations for fixed operation on a primary basis instead of, or in addition to, stations for land mobile or paging operations on a primary basis in a given geographic area may demonstrate how such fixed stations are providing substantial service to the public in those geographic areas.

17. The section heading of § 90.727 is revised to read as follows:

§ 90.727 Extended implementation schedules for Phase I licensees.

* * * * *

18. Section 90.729 is revised to read as follows:

§ 90.729 Limitations on power and antenna height.

(a) The permissible effective radiated power (ERP) with respect to antenna heights for land mobile, paging, or fixed stations transmitting on frequencies in the 220–221 MHz band shall be determined from the following Table. These are maximum values and applicants are required to justify power levels requested.

ERP VS. ANTENNA HEIGHT TABLE [2]

Antenna height above average terrain (HAAT), meters	Effective radiated power, watts [1]
Up to 150	500
150 to 225	250
225 to 300	125
300 to 450	60
450 to 600	30
600 to 750	20
750 to 900	15
900 to 1050	10
Above 1050	5

[1] Transmitter PEP shall be used to determine ERP.

[2] These power levels apply to stations used for land mobile, paging, and fixed operations.

(b) The maximum permissible ERP for mobile units is 50 watts. Portable units are considered as mobile units. Licensees operating fixed stations or paging base stations transmitting on frequencies in the 221–222 MHz band may not operate such fixed stations or paging base stations at power levels greater than 50 watts ERP, and may not transmit from antennas that are higher than 7 meters above ground, except that transmissions from antennas that are higher than 7 meters above ground will be permitted if the effective radiated power of such transmissions is reduced below 50 watts ERP by 20 $\log_{10}(h/7)$ dB, where h is the height of the antenna above ground, in meters.

(c) Base station and fixed station transmissions on base station transmit Channels 196–200 are limited to 2 watts ERP and a maximum antenna height of 6.1 meters (20 ft) above ground. Licensees authorized on these channels may operate at power levels above 2 watts ERP or with a maximum antenna height greater than 6.1 meters (20 ft) above ground if:

(1) They obtain the concurrence of all Phase I and Phase II licensees with base stations or fixed stations receiving on base station receive Channels 1–40 and located within 6 km of their base station or fixed station; and

(2) Their base station or fixed station is not located in the United States/Mexico or United States/Canada border areas.

§ 90.731 [Removed]

19. Section 90.731 is removed.

20. Section 90.733 is amended by removing paragraph (d), revising paragraphs (a)(1), and (c) and adding new paragraphs (d), (e), (f), (g), (h), and (i) to read as follows:

§ 90.733 Permissible operations.

(a) * * *

(1)(i) For government and non-government land mobile operations, *i.e.*, for base/mobile and mobile relay transmissions, on a primary basis; or

(ii) For the following operations instead of or in addition to a licensee's land mobile operations: One-way or two-way paging operations on a primary basis by all non-Government Phase II licensees, fixed operations on a primary basis by all non-Government Phase II licensees and all Government licensees, one-way or two-way paging or fixed operations on a primary basis by all non-Government Phase I licensees, except that before a non-Government Phase I licensee may operate one-way or two-way paging or fixed systems on a primary basis instead of or in addition to its land mobile operations, it must meet the following requirements:

(A) A nationwide Phase I licensee must;

(*1*) Meet its two-year benchmark for the construction of its land mobile system base stations as prescribed in § 90.725(a); and

(*2*) Provide a new 10-year schedule, as required in § 90.713(b)(3), for the construction of the fixed and/or paging system it intends to construct instead of, or in addition to, its nationwide land mobile system; and

(*3*) Certify that the financial showings and all other certifications provided in demonstrating its ability to construct and operate its nationwide land mobile system, as required in §§ 90.713 (b), (c) and (d), remain applicable to the nationwide system it intends to construct consisting of fixed and/or paging operations on a primary basis instead of, or in addition to, its land mobile operations; or

(*4*) In lieu of providing the requirements of paragraph (a)(1)(ii)(A)(*3*) of this section, provide the financial showings and all other certifications required in §§ 90.713 (b), (c) and (d) to demonstrate its ability to construct and operate a nationwide system consisting of fixed and/or paging operations on a primary basis instead of, or in addition to, its land mobile operations.

(B) A non-nationwide Phase I licensee must first meet the requirement to construct its land mobile base station and place it in operation, or commence

service (in accordance with § 90.167) as prescribed in § 90.725(f) or § 90.727, as applicable.

* * * * *

(c) For operations requiring less than a 4 kHz bandwidth, more than a single emission may be utilized within the authorized bandwidth. In such cases, the frequency stability requirements of § 90.213 do not apply, but the out-of-band emission limits of § 90.210(f) must be met.

(d) Licensees, except for licensees authorized on Channels 161 through 170 and 181 through 185, may combine any number of their authorized, contiguous channels to form channels wider than 5 kHz. In so doing, licensees must comply with the following spectrum efficiency standard, which will remain in effect through December 31, 2001:

(1) For voice communications, licensees must employ equipment that provides at least one voice channel per 5 kHz of channel bandwidth; and

(2) For data communications, licensees must employ equipment that operates at a data rate of at least 4,800 bits per second per 5 kHz of channel bandwidth.

(3) Licensees authorized on channels other than Channels 161 through 170 and 181 through 185 may combine any number of their authorized, contiguous channels to form channels wider than 5 kHz *without* complying with the spectrum efficiency standard identified in paragraphs (d)(1) and (d)(2) of this section if they operate with equipment that has been granted type acceptance in accordance with the provisions of § 90.203(k)(2).

(e) In combining authorized contiguous channels to form channels wider than 5 kHz, the emission limits in § 90.210(f) must be met only at the outermost edges of the contiguous channels. Transmitters shall be tested to confirm compliance with this requirement with the transmission located as close to the band edges as permitted by the design of the transmitter. The frequency stability requirements in § 90.213 shall apply only to the outermost of the contiguous channels authorized to the licensee. However, the frequency stability employed for transmissions operating inside the outermost contiguous channels must be such that the emission limits in § 90.210(f) are met over the temperature and voltage variations prescribed in § 2.995 of this chapter.

(f) A Phase I non-nationwide licensee operating a paging base station, or a fixed station transmitting on frequencies in the 220–221 MHz band, may only operate such stations at the coordinates of the licensee's authorized land mobile base station.

(g) The transmissions of a Phase I non-nationwide licensee's paging base station, or fixed station transmitting on frequencies in the 220–221 MHz band, must meet the requirements of §§ 90.723 (d) and (i), and 90.729, and such a station must operate at the effective radiated power and antenna height-above-average-terrain prescribed in the licensee's land mobile base station authorization.

(h) Licensees using 220–222 MHz spectrum for geophysical telemetry operations are authorized to operate fixed stations on a secondary, non-interference basis to licensees operating in the 220–222 MHz band on a primary basis under the conditions that such licensees:

(1) Provide notification of their operations to co-channel non-nationwide Phase I licensees with an authorized base station, or fixed station transmitting on frequencies in the 220–221 MHz band, located within 45 km of the secondary licensee's station, to co-channel, Phase II EA or Regional licensee authorized to operate in the EA or REAG in which the secondary licensee's station is located, and to co-channel Phase I or Phase II nationwide licensees;

(2) Operate only at temporary locations in accordance with the provisions of Section 90.137;

(3) Not transmit at a power level greater than one watt ERP;

(4) Not transmit from an antenna higher than 2 meters (6.6 feet) above ground; and

(5) Not operate on Channels 111 through 120, 161 through 170, or 181 through 185.

(i) All licensees constructing and operating base stations or fixed stations on frequencies in the 220–222 MHz band must:

(1) Comply with any rules and international agreements that restrict use of their authorized frequencies, including the provisions of § 90.715 relating to U.S./Mexican border areas;

(2) Comply with the provisions of § 17.6 of this chapter with regard to antenna structures; and

(3) Comply with the provisions of §§ 1.1301 through 1.1319 of this chapter with regard to actions that may or will have a significant impact on the quality of the human environment.

21. Paragraph (d) of § 90.735 is revised to read as follows:

§ 90.735 Station identification.

* * * * *

(d) Digital transmissions may also be identified by digital transmission of the station call sign. A licensee that identifies its station in this manner must provide the Commission, upon its request, information (such as digital codes and algorithms) sufficient to decipher the data transmission to ascertain the call sign transmitted.

22. The section heading of § 90.737 is revised to read as follows:

§ 90.737 Supplemental reports required of Phase I licensees.

* * * * *

23. Section 90.739 is revised to read as follows:

§ 90.739 Number of systems authorized in a geographical area.

(a) No licensee will be authorized more than one Phase I system in the 220–222 MHz band in a single category (*i.e.,* one nationwide system, one 5-channel trunked system, one data-only local system of 1 to 5 channels, one unrestricted non-trunked local system of 1 to 5 channels, or one public safety/mutual aid local system of 1 to 5 channels) within 64 kilometers (40 miles) of an existing system authorized to that licensee in the same category, unless the licensee can demonstrate that the additional system is justified on the basis of its communications requirements.

(b) There is no limit on the number of Phase II nationwide, EA or Regional licenses that may be authorized to a single licensee.

24. The section heading and introductory text of § 90.741 are revised to read as follows:

§ 90.741 Urban areas for Phase I nationwide systems.

Licensees of Phase I nationwide systems must construct base stations, or fixed stations transmitting on frequencies in the 220–221 MHz band, in a minimum of 28 of the urban areas listed in the following Table within ten years of initial license grant. A base station, or fixed station, is considered to be within one of the listed urban areas if it is within 60 kilometers (37.3 miles) of the specified coordinates.

* * * * *

25. A new § 90.743 is added to read as follows:

§ 90.743 Renewal expectancy.

(a) All licensees seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 90.149. Licensees must demonstrate, in their application, that:

(1) They have provided ''substantial'' service during their past license term. ''Substantial'' service is defined in this rule as service that is sound, favorable,

and substantially above a level of mediocre service that just might minimally warrant renewal; and

(2) They have substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(b) In order to establish its right to a renewal expectancy, a renewal applicant must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) For an EA, Regional, or nationwide licensee, an explanation of its record of expansion, including a timetable of the construction of new stations to meet changes in demand for service;

(3) A description of its investments in its system;

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and

(5) A list of any pending proceedings that relate to any matter described in this paragraph.

(c) Phase I non-nationwide licensees have license terms of 5 years, and therefore must meet these requirements 5 years from the date of initial authorization in order to receive a renewal expectancy. Phase I nationwide licensees and all Phase II licensees have license terms of 10 years, and therefore must meet these requirements 10 years from the date of initial authorization in order to receive a renewal expectancy.

26. Section 90.751 is revised to read as follows:

§ 90.751 Minor modifications of Phase I, non-nationwide licenses.

Phase I non-nationwide licensees will be given an opportunity to seek modification of their license to relocate their initially authorized base station, *i.e.,* locate their base station at a site other than its initially authorized location. The conditions under which modifications will be granted and the procedures for applying for license modifications are described in §§ 90.753, 90.755, and 90.757. For CMRS licensees, these modifications will be treated as minor modifications in accordance with § 90.164.

27. A new centered heading is added following § 90.757 to read as follows:

Policies Governing the Licensing and Use of Phase II EA, Regional and Nationwide Systems

28. A new § 90.761 is added to read as follows:

§ 90.761 EA and Regional licenses.

(a) EA licenses for spectrum blocks listed in Table 2 of § 90.721(b) are available in 175 Economic Areas (EAs) as defined in § 90.7.

(b) Regional licenses for spectrum blocks listed in Table 2 of § 90.721(b) are available in six Regional Economic Area Groupings (REAGs) as defined in § 90.7.

29. A new § 90.763 is added to read as follows:

§ 90.763 EA, Regional and Nationwide system operations.

(a) A nationwide licensee authorized pursuant to § 90.717(a) may construct and operate any number of land mobile or paging base stations, or fixed stations, anywhere in the Nation, and transmit on any of its authorized channels, provided that the licensee complies with the requirements of § 90.733(i).

(b) An EA or Regional licensee authorized pursuant to § 90.761 may construct and operate any number of land mobile or paging base stations, or fixed stations, anywhere within its authorized EA or REAG, and transmit on any of its authorized channels, provided that:

(1) The licensee affords protection to all authorized co-channel Phase I non-nationwide base stations as follows:

(i) The EA or Regional licensee must locate its land mobile or paging base stations, or fixed stations transmitting on base station transmit frequencies, at least 120 km from the land mobile or paging base stations, or fixed stations transmitting on base station transmit frequencies, of co-channel Phase I licensees, except that separations of less than 120 km shall be considered on a case-by-case basis upon submission by the EA or Regional licensee of:

(A) A technical analysis demonstrating at least 10 dB protection to the predicted 38 dBu service contour of the co-channel Phase I licensee, *i.e.,* demonstrating that the predicted 28 dBu interfering contour of the EA or Regional licensee's base station or fixed station does not overlap the predicted 38 dBu service contour of the co-channel Phase I licensee's base station or fixed station; or

(B) A written letter from the co-channel Phase I licensee consenting to a separation of less than 120 km, or to less than 10 dB protection to the predicted 38 dBu service contour of the licensee's base station or fixed station.

(ii) The Phase I licensee's predicted 38 dBu service contour referred to in paragraph (a)(1)(i) of this section is calculated using the F(50,50) field strength chart for Channels 7–13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential, and is based on the licensee's authorized effective radiated power and antenna height-above-average-terrain. The EA or Regional licensee's predicted 28 dBu interfering contour referred to in paragraph (a)(1)(i) of this section is calculated using the F(50,10) field strength chart for Channels 7–13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

(2) The licensee complies with the requirements of § 90.733(i).

(3) The licensee limits the field strength of its base stations, or fixed stations operating on base station transmit frequencies, in accordance with the provisions of § 90.771.

(4) The licensee notifies the Commission within 30 days of the completion of the addition, removal, relocation or modification of any of its facilities within its authorized area of operation. Such notification must be made by submitting an FCC Form 600, and must include the appropriate filing fee, if any.

(c) In the event that the authorization for a co-channel Phase I base station, or fixed station transmitting on base station transmit frequencies, within an EA or Regional licensee's border is terminated or revoked, the EA or Regional licensee's channel obligations to such stations will cease upon deletion of the facility from the Commission's official licensing records, and the EA or Regional licensee then will be able to construct and operate without regard to the previous authorization.

30. A new § 90.765 is added to read as follows:

§ 90.765 Licenses term for Phase II licenses.

Nationwide licenses authorized pursuant to § 90.717(a), EA and Regional licenses authorized pursuant to § 90.761, and non-nationwide licenses authorized pursuant to §§ 90.720 and 90.719(c) will be issued for a term not to exceed ten years.

31. A new § 90.767 is added to read as follows:

§ 90.767 Construction and implementation of EA and Regional licenses.

(a) An EA or Regional licensee must construct a sufficient number of base stations (*i.e.,* base stations for land mobile and/or paging operations) to provide coverage to:

(1) At least one-third of the population of its EA or REAG within five years of the issuance of its initial license; and

(2) At least two-thirds of the population of its EA or REAG within ten

years of the issuance of its initial license.

(b) EA and Regional licensees offering fixed services as part of their system, and EA and Regional licensees that have one or more incumbent, co-channel Phase I licensees authorized within their EA or REAG may meet the construction requirements of paragraph (a) of this section by demonstrating an appropriate level of substantial service at their five- and ten-year benchmarks.

(c) Licensees must submit maps or other supporting documents to demonstrate compliance with the construction requirements of paragraphs (a) and (b) of this section.

(d) Failure by an EA or Regional licensee to meet the construction requirements of paragraph (a) or (b) of this section, as applicable, will result in automatic cancellation of its entire EA or Regional license. In such instances, EA or Regional licenses will not be converted to individual, site-by-site authorizations for already constructed stations.

(e) EA and Regional licensees will not be permitted to count the resale of the services of other providers in their EA or REAG, *e.g.*, incumbent, Phase I licensees, to meet the construction requirement of paragraph (a) or (b) of this section, as applicable.

(f) EA and Regional licensees will not be required to construct and place in operation, or commence service on, all of their authorized channels at all of their base stations or fixed stations.

32. A new § 90.769 is added to read as follows:

§ 90.769 Construction and implementation of Nationwide licenses.

(a) A nationwide licensee must construct a sufficient number of base stations (*i.e.*, base stations for land mobile and/or paging operations) to provide coverage to:

(1) A composite area of at least 750,000 square kilometers or 37.5 percent of the United States population within five years of the issuance of its initial license; and

(2) A composite area of at least 1,500,000 square kilometers or 75 percent of the United States population within ten years of the issuance of its initial license.

(b) Nationwide licensees offering fixed services as part of their system may meet the construction requirements of paragraph (a) of this section by demonstrating an appropriate level of substantial service at their five- and ten-year benchmarks.

(c) Licensees must submit maps or other supporting documents to demonstrate compliance with the construction requirements of paragraphs (a) and (b) of this section.

(d) Failure by a nationwide licensee to meet the construction requirements of paragraphs (a) or (b) of this section, as applicable, will result in automatic cancellation of its entire nationwide license. In such instances, nationwide licenses will not be converted to individual, site-by-site authorizations for already constructed stations.

(e) Nationwide licensees will not be required to construct and place in operation, or commence service on, all of their authorized channels at all of their base stations or fixed stations.

33. A new § 90.771 is added to read as follows:

§ 90.771 Field strength limits.

(a) The transmissions from base stations, or fixed stations transmitting on base station transmit frequencies, of EA and Regional licensees may not exceed a predicted 38 dBu field strength at their EA or REAG border. The predicted 38 dBu field strength is calculated using the F(50,50) field strength chart for Channels 7–13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential.

(b) Licensees will be permitted to exceed the predicted 38 dBu field strength required in paragraph (a) of this section if all affected, co-channel EA and Regional licensees agree to the higher field strength.

(c) EA and Regional licensees must coordinate to minimize interference at or near their EA and REAG borders, and must cooperate to resolve any instances of interference in accordance with the provisions of § 90.173(b).

34. A new subpart W consisting of §§ 90.1001 through 90.1025 is added to part 90 to read as follows:

Subpart W—Competitive Bidding Procedures for the 220 MHz Service

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Subpart W—Competitive Bidding Procedures for the 220 MHz Service

§ 90.1001 220 MHz service subject to competitive bidding.

Mutually exclusive initial applications for 220 MHz geographic area licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 90.1003 Competitive bidding design for the 220 MHz service.

A simultaneous multiple round auction will be used to choose from among mutually exclusive initial applications for 220 MHz geographic area licenses, unless the Commission specifies otherwise by Public Notice prior to the competitive bidding procedure.

§ 90.1005 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which 220 MHz geographic area licenses are auctioned.

(b) *Grouping.* The Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Minimum bid increments.* The Commission may, by public announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping rules.* The Commission may establish stopping rules before or during an auction in order to terminate the auction within a reasonable time.

(e) *Activity rules.* The Commission may 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 may request waivers of such rule during the auction. The Commission may, by public announcement either before or during the auction, specify or vary the number of waivers available to each bidder.

§ 90.1007 Withdrawal, default and disqualification payments.

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 terminates, or who are

disqualified. When the Commission conducts a simultaneous multiple round auction, payments will be calculated as set forth in §§ 1.2104(g) and 1.2109 of this chapter. When the amount of such a payment cannot be determined, a deposit of up to 20 percent of the amount bid on the license will be required.

§ 90.1009 Bidding application (FCC Form 175 and 175–S Short-form).

Each applicant to participate in competitive bidding for 220 MHz geographic area licenses must submit an application (FCC Forms 175 and 175–S) pursuant to the provisions of § 1.2105 of this chapter.

§ 90.1011 Submission of upfront payments and down payments.

(a) The Commission will require applicants to submit an upfront payment prior to the start of a 220 MHz service auction. The amount of the upfront payment for each geographic area license auctioned and the procedures for submitting it will be set forth by the Wireless Telecommunications Bureau in a Public Notice in accordance with § 1.2106 of this chapter.

(b) Each winning bidder in a 220 MHz service auction, except those that qualify as small businesses or very small businesses pursuant to § 90.1021(b)(1) or § 90.1021(b)(2), must submit a down payment to the Commission in an amount sufficient to bring its total deposits up to 20 percent of its winning bid within ten (10) business days following the release of a Public Notice announcing the close of bidding. Small businesses and very small businesses must submit a down payment to the Commission in accordance with § 90.1017(c).

§ 90.1013 Long-form application (FCC Form 600).

Each successful bidder for a 220 MHz geographic area license must submit a long-form application (FCC Form 600) within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications for 220 MHz geographic area licenses on FCC Form 600 must be submitted in accordance with § 1.2107 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the Commission may issue in connection with an auction. After an auction, the Commission will not accept long-form applications for 220 MHz geographic area licenses from anyone other than the auction winners and parties seeking partitioned licenses pursuant to agreements with auction winners under § 90.1019.

§ 90.1015 License grant, denial, default, and disqualification.

(a) Each winning bidder, except those eligible for installment payments, will be required to pay the full balance of its winning bid within ten (10) business days following Public Notice that the Commission is prepared to award the license.

(b) A bidder that withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, is subject to the payments specified in § 1.2104(g), § 1.2109 of this chapter and § 90.1007, as applicable.

§ 90.1017 Bidding credits, down payments, and installment payments for small businesses and very small businesses.

(a) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 90.1021(b)(1) or § 90.1021(b)(4) may use a bidding credit of 10 percent to lower the cost of its winning bid. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 90.1021(b)(2) or § 90.1021(b)(4) may use a bidding credit of 25 percent to lower the cost of its winning bid.

(b) *Unjust enrichment—bidding credits.* (1) If a small business or very small business (as defined in §§ 90.1021(b)(1) and 90.1021(b)(2), respectively) that utilizes a bidding credit under this section seeks to transfer control or assign an authorization to an entity that is not a small business or a very small business, or seeks to make any other change in ownership that would result in the licensee losing eligibility as a small business or very small business, the small business or very small business must seek Commission approval and reimburse the U.S. government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, as a condition of approval of the assignment, transfer, or other ownership change.

(2) If a very small business (as defined in § 90.1021(b)(2)) that utilizes a bidding credit under this section seeks to transfer control or assign an authorization to a small business meeting the eligibility standards for a lower bidding credit, or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the U.S. government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee, or licensee is eligible under this section, plus interest at the rate imposed for installment financing at the time the license was awarded, as a condition of the approval of such assignment, transfer, or other ownership change.

(3) The amount of payments made pursuant to paragraphs (b)(1) and (b)(2) of this section will be reduced over time as follows: A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the post-transfer licensee is eligible); in year 3 of the license term the payment will be 75 percent; in year 4 the payment will be 50 percent; and in year 5 the payment will be 25 percent, after which there will be no assessment.

(c) *Down payments.* Winning bidders in a 220 MHz service auction that qualify as small businesses under § 90.1021(b)(1) or very small businesses under § 90.1021(b)(2) 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. Small businesses and very small businesses must bring their deposit up to 10 percent of their winning bids within ten (10) business days following a Public Notice announcing the close of bidding. Prior to licensing, by a date and time to be specified by Public Notice, they must pay an additional 10 percent.

(d) *Installment payments.* (1) Each licensee that qualifies as a small business under § 90.1021(b)(1) or as a very small business under § 90.1021(b)(2) may pay the remaining 80 percent of the net auction price for the license in installment payments over the term of the geographic area license. Interest charges shall 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. An eligible licensee may make interest-only payments for two years. Payments of interest and principal shall be amortized over the remaining eight years of the license term.

(2) Late installment payment. Any licensee that submits a scheduled installment payment more than fifteen days late will be charged a late payment fee equal to five percent of the amount of the past due payment.

(3) Payments will be applied in the following order: Late charges, interest charges, principal payments.

(e) *Unjust enrichment—installment payments.* (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 financing, the licensee must seek Commission approval and make full payment of the remaining unpaid principal and unpaid interest accrued through the date of assignment or transfer as a condition of Commission 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 before making such a change in ownership structure and must make full payment of the remaining unpaid principal and unpaid interest accrued through the date of such change in ownership structure as a condition of Commission approval.

§ 90.1019 Eligibility for partitioned licenses.

If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(a) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in 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* 47 CFR 1.2105(a)(2)(viii));

(b) Each party to an agreement to partition the license must file a long-form application (FCC Form 600) for its respective, mutually agreed-upon geographic license area together with the application for the remainder of the geographic license area filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the geographic area license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 90.153.

§ 90.1021 Definitions concerning competitive bidding process.

(a) *Scope.* The definitions in this section apply to §§ 90.1001 through 90.1025, unless otherwise specified in those sections.

(b) *Small business; very small business; consortium of small businesses or very small businesses.* (1) A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (b)(1) or (b)(2) of this section, the gross revenues of the entity, its affiliates, and controlling principals shall be considered on a cumulative basis and aggregated.

(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which individually satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(c) *Gross revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold). Gross revenues are evidenced by audited financial statements for the relevant number of calendar or fiscal years preceding the filing of the applicant's short-form application (FCC Form 175). 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. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate.*—(1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties who also control or have 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 (d)(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 stock 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 if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (d)(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/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 controlling principals of 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.

(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 (d)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in a 220 MHz service geographic area license 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/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/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/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 (d)(5). If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in a 220 MHz service geographic area license 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 (d)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in a 220 MHz service geographic area license 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 A, 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 (d)(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.

§ 90.1023 Certifications, disclosures, records maintenance and audits.

(a) *Short-Form Applications: Certifications and Disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for a 220 MHz service geographic area license which qualifies as a small business, very small business, consortium of small businesses, or consortium of very small businesses, shall append the following information as an exhibit to its FCC Form 175:

(1) The identity of the applicant's affiliates and controlling principals, and, if a consortium of small businesses

(or consortium of very small businesses), the members of the joint venture; and

(2) The applicant's gross revenues, computed in accordance with § 90.1021.

(b) *Long-Form Applications: Certifications and Disclosure.* In addition to the requirements in § 90.1013, each applicant submitting a long-form application for a 220 MHz service geographic area license and qualifying as a small business or very 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 § 90.1021, for each of the following: The applicant, the applicant's affiliates, the applicant's controlling principals, and, if a consortium of small businesses (or consortium of very 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 or very small business under §§ 90.1017 through 90.1023, including the establishment of *de facto* and *de jure* control; such agreements and instruments include, but are not limited to, 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 or very small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.1021. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business or very small business or consortium of small businesses (or consortium of very small businesses) under §§ 90.1017 through 90.1023 shall be subject to audits by the Commission. 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 220 MHz service, and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms affiliate, small business, very small business, consortium of small businesses (or consortium of very small businesses), and gross revenues used in this section are defined in § 90.1021.

§ 90.1025 Petitions to deny and limitations on settlements.

(a) Procedures regarding petitions to deny long-form applications in the 220 MHz service will be governed by §§ 1.2108(b) through 1.2108(d) of this chapter and § 90.163.

(b) The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or a petition to deny will be limited by the provisions set forth in § 90.162 and § 1.2105(c) of this chapter.

[FR Doc. 97–8014 Filed 4–2–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253; FCC 97–57]

Provision for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service; Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services; and Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Third Report and Order and Fifth Notice of Proposed Rulemaking* regarding the use of the 220–222 MHz Band (220 MHz service) by the Private Land Mobile Radio Service. The *Third Report and Order* portion of this decision is summarized elsewhere in this edition of the **Federal Register**. The *Fifth Notice of Proposed Rulemaking* (*Fifth NPRM*) seeks comment on various issues related to the partitioning of 220 MHz licenses and whether to permit full partitioning and disaggregation in the 220 MHz service. This action is taken to establish a record from which to consider the specific rules that should govern partitioning and the benefits and drawbacks of full partitioning and disaggregation, and to reach an ultimate decision.

DATES: Comments are due on or before April 15, 1997, and reply comments are due on or before April 30, 1997. Written comments by the public on the proposed and/or modified information collections are due June 2, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. 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, NW, Washington, DC 20554, or via the Internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Mary Woytek, (202) 418–1310, or Frank Stilwell, (202) 418–0660, Wireless Telecommunications Bureau. For additional information concerning the information collections contained in this *Fifth NPRM*, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Fifth Notice of Proposed Rulemaking* segment of the *Third Report and Order and Fifth Notice of Proposed Rulemaking* in PR Docket No. 89–552, FCC 97–57, adopted February 19, 1997, and released March 12, 1997. The *Third Report and Order* portion of this decision is summarized elsewhere in this edition of the **Federal Register**. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554 and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Paperwork Reduction Act

This *Fifth NPRM* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Fifth NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments are due June 2, 1997. 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.

OMB Approval Number: New Collection (which adds respondents to three existing collections 3060–0105, FCC 430; 3060–0319, FCC 490; 3060–0623, FCC 600).

Title: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service.

Form No.: FCC Forms 430, 490, and 600.

Type of Review: New collection.

Respondents: 220 MHz applicants and potential applicants and licensees.

Number of Respondents; Estimated Time Per Response and Total Annual Burden: If the proposed changes in the Fifth NPRM are adopted the respondents and burden for the FCC Form's 430, 490 and 600 as follows:

The FCC 430 has 1,900 respondents, to be increased to 23,050; the estimated time for completion is 2 hours per respondent. The total annual burden for the FCC 430 would increase to 46,100 hours. The Form 490 has 5,000 respondents, to be increased to 28,500; the estimated time for completion is 3 hours per respondent. The total annual burden for the FCC 490 would increase to 85,500. The FCC 600 has 194,769 respondents, which may be increased by the *Third Report and Order* to 197,777, and further increased to 244,777 by the *Fifth NPRM*. The estimated time for completion is 4 hours per respondent. The total annual burden is 779,076. This figure will be increased to 791,108 by an information collection adopted in the *Third Report and Order* portion of this decision and to 979,108 hours if the changes proposed in the *Fifth NPRM* are adopted.

Needs and Uses: The information will be used by Commission personnel to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Additionally, the information will be used by Commission personnel to determine who is using spectrum and thus maintain the integrity of the spectrum.

Synopsis of the Fifth Notice of Proposed Rulemaking

1. The Commission has concluded in the *Third Report and Order* that it will permit any holder of a Phase II Economic Area (EA), nationwide, or Regional 220 MHz license to partition portions of its authorization.[1] In this *Fifth NPRM*, the Commission considers the issue of full partitioning for Phase I nationwide 220 MHz licensees and the establishment of disaggregation rules for the 220 MHz service. As we indicated in the recent *Partitioning Report and Order* (which expanded the Commission's rules to permit geographic partitioning and disaggregation for all broadband PCS licensees), the Commission believes that partitioning and disaggregation are an effective means of providing broadband PCS licensees with the flexibility they need to tailor their service offerings to meet market demands.[2] The *Partitioning Report and Order* further concluded that partitioning and disaggregation may be used to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by small businesses, rural telephone companies, and minority- and female-owned

[1] The Commission refers to such licenses as ''Covered Phase II licenses.''

[2] *Report and Order and Further Notice of Proposed Rule Making* in GN Docket No. 96–113, 62 FR 653 (January 6, 1997).

businesses.[3] The Commission seeks comment on whether these benefits similarly justify the extension of partitioning rules to Phase I nationwide licensees and the establishment of disaggregation rules for the 220 MHz service.

2. The Commission seeks comment as to how various requirements imposed on covered Phase II licensees may be modified if such licensees partition their authorization. The Commission also invites comment as to whether partitioning of 220 MHz Phase I nationwide licenses should be permitted in a manner similar to the rules for partitioning that have been adopted for broadband PCS licensees. The Commission tentatively concludes that it should not adopt partitioning for those Phase II licensees that are not covered Phase II licensees and non-nationwide Phase I licensees because such licenses are awarded on a site-specific rather than for a geographic area basis. In addition, the Commission seeks comment as to whether all Phase I and Phase II 220 MHz licensees should be permitted to disaggregate their licensed spectrum. Since the 220 MHz service includes non-commercial uses by Public Safety and EMRS entities, the Commission seeks comment as to whether additional rules for partitioning and disaggregation should be adopted to address the use of the 220 MHz service for possible commercial and non-commercial services.

3. The full text of this *Fifth NPRM* solicits comment on specific aspects of partitioning and disaggregation, which will need to be addressed if the Commission decides to adopt partitioning for Phase I nationwide licensees and disaggregation for all 220 MHz licensees. For example, Phase I nationwide licensees are not currently permitted to assign or transfer a license before the licensee has constructed at least 40 percent of the proposed system. The Commission therefore seeks comment as to whether a Phase I nationwide licensee should be permitted to partition or disaggregate prior to constructing at least 40 percent of its proposed system. The Commission also seeks comment as to whether there are technical or regulatory constraints unique to the 220 MHz service that would render partitioning or disaggregation impractical or administratively burdensome.

4. Covered Phase II 220 MHz service areas are based on nationwide, Economic Areas or Regional Areas. In addition, there are Phase I nationwide licenses in the 220 MHz service. The Commission tentatively concludes that a flexible approach to partitioned areas, similar to the one adopted for broadband PCS, is appropriate for the 220 MHz service. The Commission therefore proposes to permit partitioning of Phase I nationwide and covered Phase II 220 MHz licenses based on any license area defined by the parties. Comment is invited on this proposal, and in particular on whether this proposal is consistent with the Commission's licensing of the 220 MHz service, and whether there are any technical or other issues unique to the 220 MHz service that might impede the adoption of a flexible approach to defining the partitioned license area.

5. The Commission next seeks comment as to whether, if disaggregation in the 220 MHz service is permitted, minimum disaggregation standards are necessary. The Commission seeks to determine whether, given the unique characteristics of the 220 MHz service, technological and administrative considerations warrant the adoption of such standards. The Commission seeks comment as to whether to adopt standards which would be flexible enough to encourage disaggregation while providing a standard which is consistent with its technical rules and by which it would be able to track disaggregated spectrum and review disaggregation proposals in an expeditious fashion.

6. The Commission further seeks comment regarding whether combined partitioning and disaggregation should be permitted for the 220 MHz service. The Commission tentatively concludes that it should permit such combinations in order to provide parties the flexibility they need to respond to market forces and demands for service relevant to their particular locations and service offerings.

7. The Commission seeks comment as to whether it should adopt rules for covered Phase II licensees to establish dual construction options and attendant requirements for 220 MHz service partitioners and partitionees, similar to those adopted for broadband PCS. Under the first option, the partitionee certifies that it will satisfy the same construction requirements as the original licensee. The partitionee then must meet the prescribed service requirements in its partitioned area while the partitioner is responsible for meeting those requirements in the area it has retained. Under the second option, the original licensee certifies that it has already met or will meet its 5-year construction requirement and that it will meet the 10-year requirement for the entire market involved. Because the original licensee retains the responsibility for meeting the construction requirements for the entire market, the partitionee is permitted to comply with a less rigorous construction requirement—the partitionee must only meet a substantial service requirement for its partitioned license area at the end of the 10-year license term. The Commission particularly seeks comment as to the appropriateness of the lesser construction requirement for the second option.

8. The Commission invites comment as to whether to adopt rules for covered Phase II licensees similar to the disaggregation rules adopted for broadband PCS. Under this certification approach, the disaggregating parties would be required to submit a certification, signed by both the disaggregator and disaggregatee, stating whether one or both of the parties will retain responsibility for meeting the 5- and 10-year construction requirements for the 220 MHz market involved. If one party takes responsibility for meeting the construction requirements, then that party would be subject to license forfeiture for failing to meet the construction requirements, but such a failure would not affect the status of the other party's license. If both parties agree to share the responsibility for meeting the construction requirements, then both parties' licenses would be subject to forfeiture if either party fails to meet the construction requirements.

9. The Commission proposes rules for licensees other than covered Phase II licensees that differ from the approach taken in the *Partitioning Report and Order*. Phase I non-nationwide licensees and Phase II licensees authorized on Public Safety or EMRS channels are not authorized to operate within a particular geographic area, but instead are authorized to construct a single land mobile base station for base and mobile operations. Phase I non-nationwide licensees must construct their systems, having all specified base stations constructed with all channels, and place their systems in operation within eight months of the initial license grant.

10. The Commission proposes that Phase I non-nationwide licensees be permitted to disaggregate their licensed spectrum only after they have met the applicable construction deadline. The Commission also proposes that Phase II licensees operating on Public Safety or EMRS channels should be permitted to disaggregate their licensed spectrum only after they have met the applicable construction deadline. Since the construction deadline would therefore

[3] *Id.*

be met before any disaggregation is allowed, no construction requirement would be imposed on a disaggregatee. Comment is solicited on these proposals.

11. The Commission next tentatively concludes that a disaggregatee obtaining spectrum from a Phase I nationwide licensee should be required to meet the same two-, four-, six-, and 10-year construction requirements as the original licensee. The disaggregatee would be required to meet the same two-, four-, six-, and 10-year requirements as the original licensee for the spectrum it obtains. The Commission seeks comment on this tentative conclusion.

12. Because the construction requirements for Phase I nationwide licensees differ so markedly from those pertaining to Phase II nationwide licensees or licensees in other services such as broadband PCS or GWCS, it does not appear, as a practical matter, to be possible to have similar construction options for Phase I nationwide partitionees. Given the difficulties created by these construction requirements, the Commission seeks comment on whether partitioning of Phase I nationwide licenses should be permitted. If such partitioning is allowed, the Commission seeks comment on what construction requirements could be imposed on the original licensee and any partitionees. In light of the unique construction requirements imposed on Phase I nationwide licensees, the Commission also seeks comment on what type of construction requirements should be imposed on Phase I licensees and their partitionees and disaggregatees if a Phase I nationwide license is both partitioned and disaggregated.

13. Regarding the license term, the Commission seeks comment as to whether its 220 MHz rules should provide that parties obtaining partitioned 220 MHz licenses or disaggregated spectrum hold their license for the remainder of the original licensee's five- or 10-year license term. In addition, the Commission seeks comment as to whether 220 MHz partitionees and disaggregatees should be afforded the same renewal expectancy as other 220 MHz licensees. The Commission tentatively concludes that limiting the license term of the partitionee or disaggregatee is necessary to ensure that there is maximum incentive for parties to pursue available spectrum as quickly as practicable.

14. The Commission's competitive bidding rules for the covered Phase II 220 MHz service include provisions for installment payments and bidding credits for small businesses and very small businesses. The Commission has also adopted rules to prevent unjust enrichment by such entities that seek to transfer licenses obtained through use of one of these special benefits. The Commission tentatively concludes that the Phase II 220 MHz service partitionees and disaggregatees that would qualify as small businesses or very small businesses should be permitted to pay their pro rata share of the remaining government obligation through installment payments. The Commission seeks comment on this tentative conclusion. The Commission also invites comment as to the exact mechanisms for apportioning the remaining government obligation between the parties and whether there are any unique circumstances that would make devising such a scheme for the Phase II 220 MHz service more difficult than for broadband PCS. Since Phase II 220 MHz service areas are allotted on a geographic basis, in a manner similar to broadband PCS, the Commission proposes using population as the objective measure to calculate the relative value of the partitioned area and amount of spectrum disaggregated as the objective measure for disaggregation, and seeks comment on this proposal.

15. The Commission invites comment on whether to apply unjust enrichment rules to small or very small business Phase II 220 MHz licensees that partition or disaggregate to non-small businesses. Commenters should address how to calculate unjust enrichment payments for designated entity Phase II 220 MHz service licensees paying through installment payments and those that were awarded bidding credits that partition or disaggregate to non-small businesses. The Commission asks that commenters also address how it should calculate unjust enrichment payments in situations where a very small business partitions or disaggregates to a small business that qualifies for a lower bidding credit. Commenters should also address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area and amount of spectrum disaggregated as the objective measures. The Commission proposes using methods similar to those adopted for broadband PCS for calculating the amount of the unjust enrichment payments that must be paid in such circumstances, and seeks comment on this proposal.

16. Section 90.709(d) of the Commission's rules currently forbids partial assignment of Phase I 220 MHz licenses. However, since there are existing partial assignment rules for commercial mobile radio stations in part 90, the Commission proposes utilizing partial assignment procedures, similar to those adopted for broadband PCS, to review 220 MHz partitioning and disaggregation transactions. Partial assignment applications would be placed on public notice and subject to petitions to deny. The parties would be required to submit an FCC Form 490, an FCC Form 600 and, if necessary, an FCC Form 430, together as one package under cover of the FCC Form 490. The Commission invites comment on whether any additional procedures are necessary for reviewing these applications. We also seek comment on how licensing issues should be addressed for non-commercial mobile radio stations in the 220 MHz service with respect to partial assignments.

Administrative Matters

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 15, 1997, and reply comments on or before April 30, 1997. 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, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

18. 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 rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

19. 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. 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 this *Fifth Notice of Proposed Rulemaking*, but they must have a separate and distinct heading

designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Fifth 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. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–8013 Filed 4–2–97; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Thursday
April 3, 1997

Part III

Department of Education

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training; Applications for New Awards for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.029G]

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: The purpose of Training Personnel for the Education of Individuals with Disabilities Program—Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

Eligible Applicants: Eligible applicants are institutions of higher education, and appropriate nonprofit agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 318.

In some instances, the description of the absolute priority identified below differs from applicable regulatory provisions in 34 CFR 318. These changes, as well as any supplementary information provided under the priority that is not found in the regulations, represent interpretative guidance and are provided for purposes of clarification. These interpretations do not substantively change the regulations.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Grants for Preservice Personnel Training (84.029G).

This priority supports projects designed to provide preservice preparation (leading toward a degree, certification, endorsement, or licensure) of personnel who serve infants, toddlers, children and youth with disabilities. Projects must address either:

(1) The development of new programs to establish expanded capacity for quality preservice training; or

(2) The improvement of existing programs designed to increase the capacity and quality of preservice training.

In addition, projects must address one or more of the following training components:

(1) *Preparation of Personnel for Careers in Special Education.* This component supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training may occur at one or more of the following levels; baccalaureate, master's, or specialist. Under this component, ''personnel'' includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists.

(2) *Preparation of Related Services Personnel.* This component supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists, occupational therapists, school psychologists, counselors (including rehabilitation counselors), interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel. For purposes of this component, the Department considers the term ''interpreters'' to be limited to interpreters for the deaf.

(i) Projects to train personnel identified as special education personnel under training component (1) are not appropriate for purposes of this component, even if those personnel may be considered related services personnel in other settings (e.g., speech language pathologists).

(ii) This component is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special focus in pediatric or juvenile psychiatric OT; support those students whose career goal is OT in the school; or provide for practica and internships in school settings.

(3) *Training Early Intervention and Preschool Personnel.* This component supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

Invitational priority: Within this absolute priority, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Preservice personnel preparation projects that prepare special educators to work collaboratively with regular educators to meet the needs of children with disabilities in inclusive settings.

Applications Available: April 24, 1997.

Deadline for Transmittal of Applications: June 6, 1997.

Deadline for Intergovernmental Review: August 5, 1997.

Estimated Number of Awards: 40.

Project Period: Up to 36 months.

Available funds: In fiscal year 1997, approximately $8,200,000 will be available to support this competition.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget for any single budget period of 12 months that exceeds: (1) $160,000 for applications addressing a single component; (2) $320,000 for applications addressing two components; and (3) $480,000 for applications addressing all three components. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. For applications that address a single component, the applicant must limit the Part III—Application Narrative, to no more than 40 double-spaced 8½″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). For applications that address two components, the applicant must limit the Part III—Application Narrative, to no more than 75 double-spaced 8½″ x

11″ pages (on one side only) with one inch margins (top, bottom, and sides). For applications that address three components, the applicant must limit the Part III—Application Narrative, to no more that 105 double-spaced 8½″ by 11″ pages (on one side only) with one inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Note: The Department of Education is not bound by any estimates in this notice.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, this application notice restates existing priorities in 34 CFR 318. In addition, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(A), that rulemaking requirements do not apply to the changes to applicable regulatory provisions contained in this notice. These changes reflect the Secretary's interpretation of existing regulations and are provided solely for purposes of clarification.

FOR INFORMATION OR APPLICATIONS CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–9860. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. braille, large print, audiotape, or computer diskette) by contacting the Department as listed above.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at Gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1431.

Dated: March 27, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–8477 Filed 4–2–97; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
April 3, 1997

Part IV

Department of Transportation

Federal Aviation Administration

Fuel Tank Ignition Prevention Measures; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fuel Tank Ignition Prevention Measures

AGENCY: Federal Aviation Administration, DOT.

NOTICE: Notice of request for comment on National Transportation Safety Board recommendations.

SUMMARY: This notice solicits public comment on the feasibility of implementing four recommendations proposed by the National Transportation Safety Board (NTSB) that are intended to reduce the likelihood of airplane fuel tank ignition. The NTSB recommendations resulted from an accident on a Boeing Model 747 operated by Trans World Airways (TWA) that occurred after taking off from Kennedy International Airport in New York, on July 17, 1996. The cause of the accident has not been determined. However, evidence suggests that explosion of fuel vapors within the center wing fuel tank occurred due to a yet to be determined ignition source. The FAA is not currently considering or proposing any regulatory action. The purpose of this notice is to gather technical information needed to formally respond to the NTSB recommendations.

DATES: Comments must be received on or before August 1, 1997.

ADDRESSES: Comments on this notice may be mailed to: Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, ANM–100 (Attn: Mike Dostert, ANM–112), 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, FAA, Airframe and Propulsion Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2132.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in evaluation of the NTSB recommendations by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the recommendations contained in this notice are invited. Substantive comments should be accompanied by cost estimates. All comments received on or before the closing date for comments will be considered by the FAA before preparing a formal response to the NTSB recommendations.

Background

On July 17, 1996, a Boeing Model 747 operated by Trans World Airways was involved in an accident after taking off from Kennedy International Airport in New York. Although no specific cause for the accident has been determined, evidence suggests that the center wing fuel tank exploded due to a yet to be determined ignition source. The accident investigation has focused on a missile, bomb, or mechanical failure as the possible source of ignition of fuel vapors within the tank. On December 13, 1996, the NTSB issued four recommendations to the FAA requesting, in part, that the FAA require the development and implementation of design or operational changes that will preclude the operation of transport category airplanes with explosive fuel-air mixtures in the fuel tanks. The following is a summary of the four recommendations that are published in their entirety later within this notice.

The first recommendation would require development of an airplane design modification, such as nitrogen-inerting systems, and the addition of insulation between heat-generating equipment and fuel tanks. (A–96–174)

The second recommendation would require modifications in operational procedures to reduce the potential for explosive fuel-air mixtures in the fuel tanks of transport category aircraft. In the Model 747, consideration should be given to refueling the center wing fuel tank (CWT) before flight, whenever possible, from cooler ground fuel tanks; proper monitoring and management of the CWT fuel temperature; and maintaining an appropriate minimum fuel quantity in the CWT. (A–96–175)

The third recommendation would require that the Model 747 Flight Handbooks of TWA and other operators of Model 747s, and other aircraft in which fuel tank temperature cannot be determined by flightcrews, be immediately revised to reflect the increases in CWT fuel temperatures found by flight tests, including operational procedures to reduce the potential for exceeding CWT temperature limitations. (A–96–176)

The fourth recommendation would require modification of the CWT of Model 747 airplanes and other airplanes on which the fuel tanks are located near heat sources, to incorporate temperature probes and cockpit fuel tank temperature displays to permit determination of the fuel tank temperatures. (A–96–177)

The flammability temperature range of jet engine fuel vapors varies with the type of jet fuel, the ambient pressure in the tank, and the amount of dissolved oxygen that may evolve from the fuel due to vibration and sloshing that occurs within the tank. At sea level pressures and with no sloshing of vibration present, Jet A fuel, the most common commercial jet fuel in the United States has flammability characteristics that tend to make the fuel-air mixture too ''lean'' to ignite at temperatures below approximately 100°F and too ''rich'' to ignite at temperatures above 175°F. This range of flammability (100°F to 175°F) is reduced to cooler temperatures as the airplane gains altitude due to the corresponding reduction of pressure. For example, at an altitude of 30,000 ft. the flammability temperature range is approximately 60°F to 120°F. The flammability region of Jet B (JP–4), another fuel approved for use on most commercial transport category airplanes but primarily used for military jets, is in the temperature range of 15°F to 75°F at sea level, and -20°F to 35°F at 30,000 ft. Therefore, Jet B fuel characteristics result in flammable fuel vapors being present within airplane fuel tanks for a much larger portion of the flight. Most commercial transports are approved for operation at altitudes in the range of 30,000 to 45,000 feet. The FAA has always assumed that airplanes could be operated for some portion of flights with flammable fuel vapors in their fuel tank ullage (the vapor space above the level of the fuel in the tank). Commercial transport operated in the United States, and in most overseas locales, use Jet A fuel, which minimizes exposure to operation in the flammability region.

The FAA philosophy regarding flammable fuel vapors is that the best way to ensure airplane safety is to preclude ignition sources within fuel tanks. This philosophy includes application of fail safe design requirements to fuel tank components (lightning design requirements, fuel tank wiring, fuel tank temporary limits, etc.), which would preclude ignition sources from being present in fuel tanks even when component failures occur. Implementation of the NTSB recommendations would require a significant change in airplane design and/or operational practices currently in use. These changes could have major effects on passengers and the aviation community.

The effectiveness and feasibility of the proposals need to be fully evaluated. Past studies of nitrogen inerting have shown that few benefits are provided by nitrogen inerting of fuel tanks and that

the cost of these systems is prohibitive. However, since these studies were conducted, advances in technology for separating nitrogen from air and instances of tank ignition may now make it possible to show that inerting of fuel tanks is cost beneficial. The FAA needs accurate information regarding the NTSB proposals in order to prepare a formal response to these recommendations. This notice requests information regarding the NTSB proposals.

History

Since the introduction of turbine powered transport category airplanes, the FAA and aviation industry have evaluated numerous techniques and systems for reducing the severity or occurrence of airplane fires and explosions. The evaluations have focused primarily on post crash situations because reviews of service history showed existing design standards provided adequate protection from fuel tank ignition from causes other than post crash fires. The following methods have been evaluated for reducing the post-crash fire/explosion hazard: (1) Crash-Resistant Fuel Tanks and Breakaway, (2) Self-Closing Fittings, (3) Engine Ignition Suppression System, (4) Fuel Tank Nitrogen Inerting System, (5) Fuel Tank Foam Filler Explosion Suppression System, (6) Fuel Tank Chemical Agent Explosion Suppression System, (7) Anti-Misting Kerosene (AMK), (8) Fuel Tank Vent Flame Arrestor, (9) Surge Tank Chemical Agent Explosion Suppression System, (10) Design to Assure Fuel Tank-to-Engine Shutoff Valve Activation, (11) Fire-Resistant Fuel Tank Access Panels, and (11) Revised Location of Fuel Tank and Engines.

All of these techniques and systems, with the exception of mandating the location of fuel tanks and engines, have been or are currently being considered by the FAA. Initial consideration with respect to crash-resistant fuel tanks, self-closing breakaway fittings, and engine ignition suppression was reflected to Advance Notice of Proposed Rulemaking (ANPRM) No. 64–12, which was issued in 1964 to solicit the views of all interested persons on the practicability, and possible regulations for these various techniques. The FAA concluded, after consideration of comments submitted in response to Notice No. 64–12, the technical information available at that time did not provide a sufficient basis on which to develop precise regulatory standards.

The FAA subsequently extended its fuel system fire safety program to include consideration of means to prevent fires and explosion within the fuel tank and the tank vapor and vent spaces. Based on information developed by FAA-sponsored government-industry conferences on fuel system fire safety in 1967 and 1970, and an FAA-industry advisory committee established in 1968, the FAA concluded that there are three systems capable of preventing fuel tank and vent system fires and explosions arising from ignition within the fuel system. These are fuel tank nitrogen inerting, foam filler, and chemical agent explosion suppression systems.

In 1969, the FAA initiated research into the feasibility of nitrogen inerting of fuel tanks of transport category airplanes based on systems under development by the military. The systems were intended to reduce the likelihood of a fuel tank explosion due to a fuel tank penetration by hostile enemy fire. The FAA interest in these systems focused on the potential for reducing the likelihood of fuel tank explosion due to post crash ground fire. The FAA contracted with the Parker Hannifin Company for designing and manufacturing the inerting system, and for installation in the DC–9 aircraft under subcontract to Lockheed Aircraft Services Company. The system consisted of storage bottles, pressure regulating hardware, and the installation of valves to maintain a constant positive pressure and the desired concentration of nitrogen in the fuel tanks. The combined system weight was 643 pounds. Results of the testing showed that the system provided adequate inerting of the fuel tanks. However, the penalty in airplane performance due to increased weight and maintenance costs was very high and the costs of such a system were shown to outweigh the benefits at that time.

Since these studies were conducted, new military nitrogen inerting designs have been developed and are installed in all Air Force C–5 and C–17 military transport category airplanes, the F–22 fighter and the V–22 tiltrotor. Foam filler explosion suppression systems are installed in a variety of military airplanes. Chemical agent explosion suppression systems are installed in the surge tanks of several civil transport category airplanes. These systems are intended to provide protection against fuel tank ignition from external sources, hostile enemy fire in the case of the military aircraft, and lightning in the case of the chemical agent explosion suppression systems installed on civil transports.

In 1971, NTSB Recommendation A–71–59 requested action to require ''fuel system fire safety devices which will be effective in prevention and control of both inflight and post crash fuel system fires and explosions.'' This recommendation resulted from an accident in 1971 in New Haven, Connecticut, where 27 of 28 passengers survived the initial ground impact but died due to post crash fire/explosion. In 1972, the Aviation Consumer Action Project petitioned for rulemaking requesting action to require nitrogen fuel tank inerting systems on all transport category airplanes. Based on these requests, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 74–16, which proposed fuel tank inerting in transport category airplanes. The majority of comments received opposed this proposal because it was argued that the explosion prevention systems would have little or no effect in reducing the fire and explosion hazards of impact-survivable accidents when a fuel tank is ruptured. Comments received and subsequent cost benefit analysis showed that fuel tank explosions had occurred due to post crash fire ignition of fuel tanks that remained intact and the ignition of the fuel tank was caused by propagation of fire through the fuel tank vent system. However, no clear benefits could be shown for the use of an inerting system in the prevention of ignition of fuel tanks. In addition, with technology available at that time, nitrogen inerting was not considered feasible because: (1) inerting is not effective in the majority of accidents because fuel tank rupture occurs and suppression of the fire would not occur due to ignition from sources outside the tank; and (2) in accidents where intact fuel tank explosions occurred, it was determined that installation of flame arrestors in the vent lines would eliminate the ignition source and offer a lower cost means of reducing the likelihood of post crash explosion. In view of these comments, the FAA concluded that a public hearing should be held to obtain information needed to determine whether a requirement should be developed to reduce the fire and explosion hazards to both inflight and impact-survivable accidents.

In 1978, the FAA established a Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee to recommend ways to improve survivability in the post-crash environment. The SAFER committee reviewed service history at that time and evaluated numerous potential methods of reducing the incidents of post crash fire and fuel tank explosions. The committee concluded that nitrogen inerting provided little or no benefit and was very costly. The Aerospace

Industries Association estimated that total installation and operational costs through 1996 would be 19 billion dollars.

The FAA research and development testing showed that, during simulated ground fire conditions, a fuel tank explosion would not occur from an under-wing fire as long as a small volume of fuel remained within the fuel tank. Therefore, only minimal benefits could be shown. Two other methods for reducing post crash fires; incorporation of flame arrestors in fuel tank vents and incorporation of a method for shutting down fuel to the engines using both the normal and emergency shutdown means, were recommended by the SAFER Committee. In addition, initial testing of Anti Misting Kerosene showed promising potential for reducing post crash fires. Therefore, NPRM 74–16 was withdrawn because other methods for reducing post crash fires were determined to be more practical and effective.

Fuel Tank Ignition Experience

During the SAFER Committee's evaluation of the methods of reducing post crash fires, the service history of fuel tank explosions was prepared. A list of civilian transport category airplane accidents was compiled that included fuel tank explosions resulting from post crash ground fires. In addition, during evaluation of the benefits of nitrogen inerting systems as proposed in NPRM 74–16, a list of fuel tank explosions that occurred during normal operations was prepared. Experience on military aircraft was not included in the SAFER committee review. Evaluation of data available at that time indicated that three accidents resulted from fuel tank explosion inflight where benefits of nitrogen inerting could be claimed. In two of these cases, design modifications were made to eliminate the source of ignition. The remaining case resulted from an uncontrolled engine fire, and improvement in engine fuel shutoff features was incorporated to address this issue. Therefore little or no benefit could be shown for requiring nitrogen inerting.

However, in the almost 20 years since the SAFER Committee recommendations were issued, additional incidents of fuel tank ignition have occurred. The FAA has compiled an updated list of incidents of fuel tank ignition that includes three inflight incidents evaluated by the SAFER Committee, other related events from that time period, recent events, and also military experience. A review of the data shows that fuel tank ignition and explosion events have occurred in all portions of airplane operations and maintenance. The majority of the events have occurred in tanks loaded with JP–4 fuel, a fuel type that produces flammable vapors at lower temperatures and a consequent increase in exposure to ignition for typical airplane operations. The cause of many of the military accidents can be traced to a combination of using JP–4 fuel and maintenance or design practices that differ from that of commercial airplanes. It should be noted that the military has phased out use of JP–4 fuel within the United States and adopted JP–8, a fuel similar to Jet A–1, as a replacement fuel. However, the significant number of military fuel tank explosion events in relation to the number of total operating hours indicates that use of more volatile fuels increases the likelihood of fuel tank ignition.

The following list includes incidents where a specific cause was identified and improved design standards have prevented reoccurrence of incidents due to these causes. The list should be reviewed carefully when using the data to derive benefits from implementing the proposed NTSB safety recommendations.

(a) COMMERCIAL FUEL TANK EXPLOSION/IGNITION EXPERIENCE

Model	Operator/location	Year	Fatal	Hull loss	Fuel type	Inerting benefit	Phase of operation	Description/Cause
B707	OSO	1959	4	Yes	UNK	Yes	Flight	
B707	Elkton	1963	81	Yes	JP–4	Yes	Flight	Lightning, In flight explosion.
B707	San Francisco ..	1965	0	Yes	Jet A	Possible	Flight	#4 Engine fire heated wing upper surface above 900F—Partially full fuel tank exploded resulting in loss of 21 ft. of wing. Landed safely.
B727	Southern Air Transport-Taiwan.	1964	1	No	Jet A	No	Ground maintenance.	While purging center tank for entry, static discharge from CO_2 Firex Nozzle to center tank access door caused wing tank explosion.
B727	Minneapolis	1968	0	No	Jet A	Yes	Ground refueling	Electrostatic Charge—Ground refueling system found as source of charging—minor damage to wing structure. Group equipment and airplane refueling system design standards have eliminated reoccurrence.
B727	Minneapolis	1971	0	No	Jet A	Yes	Ground refueling	See Above.
DC–8	Toronto Canada	1970 July	106	Yes	JP–4	Yes	Flight	Spolier deployed. Possible fuel tank explosion during go-around following ground impact during attempted landing.
DC–8	Travis AFB	1974	1	Yes	JP–4	No	Ground	World Airways DC–8 inboard main tank, exploded and burned at Travis AFB during maintenance. Open fuel cell, mechanic forced circuit breaker in.
DC–9	Air Canada	1982	0	Yes	Jet A–1	Possible	Ground maintenance.	During maintenance center wing fuel tank exploded. Dry running of pumps suspected cause.

(a) COMMERCIAL FUEL TANK EXPLOSION/IGNITION EXPERIENCE—Continued

Model	Operator/location	Year	Fatal	Hull loss	Fuel type	Inerting benefit	Phase of operation	Description/Cause
Beechjet 400 ..	Jackson Miss	1989 June	0	No	JP–4/ Jet A	Yes	Ground Refueling.	During refueling of auxiliary tank ignition occurred. Tank remained intact but fuel leakage occurred. Electrostatic Charge discharge from polyurethane foam source of Ignition.
B727	Avionca	1989	107	Yes	Jet A	Possible	Climb	Bomb located over center wing fuel tank. Inerting benefit unknown.
B737	Philippine Airlines.	1990	8	Yes	Jet A	Yes	Taxi	Not determined—Empty Center Wing Fuel tank explosion.
B747	TWA 800	1996 July	230	Yes	Jet A	Yes	Climb	Bomb, Missile, Mechanical Failure?—Empty center wing fuel tank explosion.

(B) MILITARY NON-COMBAT FUEL TANK EXPLOSION/IGNITION EXPERIENCE

Model	Operator/location	Year	Fatal	Hull loss	Fuel type	Inerting benefit	Phase of operation	Description/Cause
B52	Loring AFB Maine.	1970 July	0	Yes	JP–4	Yes	Maintenance	Most likely ignition source traced to arcing or overheat of fuel pump shaft or fuel quantity probe.
B707	USAF Spain	1971 June	Yes	Yes	JP4	Yes	Decent 17K	Inflight explosion of #1 Main Tank. USAF determined chafing of boost pump wires located in conduits as possible ignition source.
B52H	Minot ND AFB ..	1975 Nov	0	Yes	JP–4	Yes	Maintenance Prior to Refueling.	Body tank exploded after midnight while on ramp. No specific evidence but suspected fuel pump locket rotor ignition source.
B747	Iranian Fuel Tanker.	1976	7	Yes	JP–4/ Jet A	Yes	Decent 8K ft	Lightning—wing tank.
KC135Q	Plattsburg AFB NY.	1980 Feb	.....	Yes	JP–4	Yes	Refueling	Aft body tank, faulty fuel probe found as problem.
B52G	Robins AFB Georgia.	1980 Aug	Yes	Yes	JP–4	Yes	Maintenance on ramp.	While transferring fuel from body tanks to wing tanks the empty mid body tank exploded. Investigation showed electrical arcing occurred in the mid body boost pump due to mis positioned phase lead wire inside the pump.
KC135A	Near Chicago ...	1982 March	Yes	Yes	JP–4	Yes	12K descent	Forward body tank exploded, initial cause listed as VHF antenna.
B52G	Grand Forks AFB ND.	1983 Jan	.....	Yes	JP–4	Yes	Maintenance on ramp.	While troubleshooting a fuel transfer malfunction center wing tank exploded due to an electrical fault associated with the EMI filter on a valve.
KC135A	Altus AFB Okl ...	1987 Feb	Yes	Yes	JP–4	Yes	Landing roll out	During landing roll out an explosion and fire occurred following copilot transmission on UHF radio. The UHF wire run near the right aft wing root in the fuselage was melted due to an electrical fault. Fuel vapors in the area of the aft body tank were ignited.
B52H	Swayer AFB Mich.	1988 Dec	Yes	Yes	JP–4	Yes	During touch and go landing.	At 20 feet AGL the empty aft body tank exploded. Pump num operating in the aft body tank was cause. Evidence of arcing a overheat was found.

(B) MILITARY NON-COMBAT FUEL TANK EXPLOSION/IGNITION EXPERIENCE—Continued

Model	Operator/location	Year	Fatal	Hull loss	Fuel type	Inerting benefit	Phase of operation	Description/Cause
KC135A	Loring AFB Maine.	1989 Sept	Yes	Yes	JP–4	Yes	Parked following flight.	During system shutdown explosion in the aft fuselage tank occurred. Source of ignition was believed to be a hydraulically driven fuel pump mounted inside the aft body fuel tank.
KC135A	Loring AFB Maine.	1989 Oct	Yes	Yes	JP–4	Yes	In flight local pattern.	Explosion in the aft body fuel tank caused hull loss. Aft body f hydraulically driven pump implicated as source of ignition.
KC135R	Mitchell Field Milwaukee.	1993 Dec	Yes	Yes	JP–4	Yes	Ground maintenance.	During maintenance center wing tank exploded. Center wing fuel tank fuel pump implicated as source of ignition.

National Transportation Safety Board Recommendations: The following text is from NTSB letter to the FAA dated December 13, 1996, that transmitted Recommendations A–96–174 through –177.

On July 17, 1996, about 20:31 eastern daylight time, a Boeing 747–131, N93119, operated as Trans World Airlines Flight 800 (TWA800), crashed into the Atlantic Ocean, about 8 miles south of East Moriches, New York, after taking off from John F. Kennedy International Airport (JFK), Jamaica, New York. All 230 people aboard the airplane were killed. The airplane, which was operated under Title 14 Code of Federal Regulations (CFR) Part 121, was bound for Charles De Gaulle International Airport (CDG), Paris, France. The flight data recorder (FDR) and cockpit voice recorder (CVR) ended simultaneously, about 13 minutes after takeoff. Evidence indicates that as the airplane was climbing near 13,800 feet mean sea level (msl), an in-flight explosion occurred in the center wing fuel tank (CWT). (The flight engineer from the previous flight remembered having left about 300 pounds, or about 50 gallons, of fuel in the approximately 13,000 gallon capacity tank. The recovered fuel gauge indicated slightly more than 600 pounds (about 100 gallons) of fuel remaining in the CWT.) The CWT was nearly empty.

A substantial portion of the airplane wreckage has been recovered from the ocean floor. Among the debris found along the first part of the wreckage path were CWT parts from spanwise section. The cockpit of the airplane and pieces of the forward fuselage were found in a second debris field that was more than a mile from the beginning of the wreckage path. Fragmented wing and aft fuselage parts were recovered from a third debris field farther along the wreckage path.

Portions of the airplane have been reconstructed, including the CWT, the passenger cabin above the CWT, and the air conditioning packs and associated ducting beneath the CWT. The reconstruction thus far shows outward deformation of the CWT walls and deformation of the internal components of the tank that are consistent with an explosion originating within the tank. Airplane parts (includes portions of the fuselage structure from above, air conditioning packs and ducting from below, wing structure from both sides, all tires from behind, and numerous components that included the large fiberglass water and cargo fire extinguisher containers from forward of the CWT) from in and around the CWT recovered and identified to date contain no evidence of bomb or missile damage. The investigation into what might have provided the source of ignition of the fuel-air mixture (including a bomb or missile) in the CWT is continuing.

Since 1985, the Board has investigated or assisted in the investigation of two other fuel tank explosions involving commercial transport category airplanes. The most recent accident involved a Philippine Airlines Model 737–300 at Nimoy Aquino International Airport, Manila, Philippines, on May 11, 1990. In the accident, the CWT ullage (In a fuel tank, the ullage is the vapor-laden space above the level of the fuel in the tank.) fuel-air vapors exploded as the airplane was being pushed back from a terminal gate, resulting in 8 fatalities and 30 injuries. The ambient temperature at the time of the accident was about 95°F, and the airplane had been parked in the sun. Although damage to wiring and a defective fuel quantity sensor were identified as possible sources of ignition, a definitive ignition source was never confirmed.

The Board also assisted in the investigation of the crash of Avianca Flight 203, a Model 727, on November 27, 1989. The airplane had departed Bogota, Colombia, about 5 minutes before the crash. Examination of the wreckage revealed that a small bomb placed under a passenger seat, about the CWT, had exploded. The bomb explosion did not compromise the structural integrity of the airplane; however, the explosion punctured the CWT and ignited the fuel-air vapors in the ullage, resulting in destruction of the airplane.

Earlier, the Board conducted a special investigation of the May 9, 1976, explosion and in-flight separation of the left wing of an Iranian Air Force Model 747–131, as it approached Madrid, Spain, following a flight from Iran. Witnesses reported seeing a lightning strike to the left wing, followed by fire, explosion, and separation of the wing. The wreckage revealed evidence of an explosion that originated near a fuel valve installation in the left outboard main fuel tank. The Board's report (NTSB–AAR–78–12. The Board did not determine the probable cause of this foreign accident because it had no statutory authority to do so. Several hypotheses addressing the sequence of events and possible causes of the accident were presented in the Board's report.) noted that almost all of the electrical current of a lightning strike would have been conducted through the aluminum structure around the ullage. While the report did not identify a specific point of ignition, it noted that static discharges could produce sufficient electrical energy to ignite the fuel-air mixture, but that energy levels

required to produce a spark will not necessarily damage metal or leave marks at the point of ignition.

Fuel tank explosions require an energy source sufficient for ignition and temperatures between the lower explosive (flammability) limit (LEL) (Marks' Standard Handbook for Mechanical Engineers, Eighth Edition, states, ''The lower and upper limits of flammability indicate the percentage of combustible gas in air below which and above which flame will not propagate. When a flame is initiated in mixtures having compositions within these limits, it will propagate and therefore the mixtures are flammable.'' Marks' states further, ''The autoignition temperature of an air-fuel mixture is the lowest temperature at which chemical reaction proceeds at a rate sufficient to result eventually (long time lag) in inflammation.'' In the TWA800 CWT, the LEL was about 115°F, and the autoignition temperature was about 440°F.) and upper explosive limit (UEL), which will result in a combustible mixture of fuel and air. Current FAA regulations require protection against the ignition of fuel vapor by lightning, components hot enough to create an autoignition, and parts or systems failures that could become sources of ignition. Specifically: (1) Fuel system lightning protection. The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by (a) direct lightning strikes to areas having a high probability of stroke attachment; (b) swept lightning strikes to areas where swept strokes are highly probable; and (c) corona and streamering at fuel vent outlets. (§ 25.954), and (2) Fuel Tank Temperature. (a) The highest temperature allowing a safe margin below the lowest expected autoignition temperature of the fuel in the fuel tanks must be determined. (b) Not at any place inside any fuel tank where fuel ignition is possible may exceed the temperature determined under paragraph (a) of this section. This must be shown under all probable operating, failure, and malfunction conditions of any component whose operation, failure, or malfunction could increase the temperature inside the tank. (§ 25.981)

However, a 1990, Society of Automotive Engineers technical paper comments, ''. . . if the ignition source is sufficiently strong (such as in combat threats), it can raise the fluid temperature locally and thus ignite a fuel that is below its flash point temperature. This is particularly true with a fuel mist where small droplets require little energy to heat up.'' (Society of Automotive Engineers (SAE) Technical Paper Series 901949, Flammability of Aircraft Fuels, by N. Albert Moussa, Blaze Tech Corp., Winchester, Massachusetts, as presented at the Aerospace Technology Conference and Exposition, Long Beach, California, on October 1–4, 1990.) Elevated, possibly extremely high local temperatures would have been associated with the lightning strike of the Iranian Model 747 in 1976.

Despite the current aircraft certification regulations, airlines, at times, operate transport category turbojet airplanes under environmental conditions and operational circumstances that allow the temperature in a fuel tank ullage to exceed the LEL, thereby creating a potentially explosive fuel-air mixture. For example, on August 26, 1996, Boeing conducted flight tests with an instrumented Model 747 airplane that carried about the same small amount of fuel in the center wing tank as that carried aboard TWA800. All three air conditioning packs were operated on the ground for about 2 hours to generate heat beneath the CWT. The airplane was then climbed to an altitude of 18,000 feet msl. The temperature of the fuel in the center tank of the test airplane was measured at one location, and the air temperature within the tank was measured at four locations. In this test, the fuel-air mixture in the CWT ullage was stabilized at a temperature below the LEL on the ground. However, as the airplane climbed, the atmospheric pressure reducing the LEL temperature and allowing an explosive fuel-air mixture to exist in the tank ullage.

Fuel tank temperatures may also become elevated, allowing explosive fuel-air mixtures to exist in the ullage, when airplanes are on the ground between flights at many airports worldwide during warm weather months. When the temperature of a combustible fuel-air mixture exceeds the LEL, a single ignition source exposed to the ullage could cause an explosion and loss of the airplane. This situation is inconsistent with the basic tenet of transport aircraft design—that no single-point failure should prevent continued safe flight. (FAA Advisory Circular (AC) 25.1309–1A, System Design and Analysis, paragraph 5.a.1 states, ''In any system or subsystem, the failure of any single element, component, or connection during any one flight (brake release through ground deceleration to stop) should be assumed, regardless of its improbability. Such single failures should not prevent continued safe flight and landing, or significantly reduce the capability of the airplane or the ability of the crew to cope with the resulting failure conditions.'')

Without oxygen in the fuel-air mixture, the fuel tank ullage could not ignite, regardless of temperature or ignition considerations. The military has prevented fuel tank ignition in some aircraft through the creation of a nitrogen-enriched atmosphere (nitrogen-inerting) in fuel tank ullage, there by creating an oxygen-deficient fuel-air mixture that will not ignite. Although this technology could be applied to civil aircraft, there are no transport category airplanes of which the Board is aware that currently incorporate nitrogen-inerting systems to reduce the potential for fuel tank fires and explosions.

Nitrogen-inerting has been accomplished several ways: (1) By adding nitrogen to fuel tank(s) from a ground source before flight; (2) By charging onboard supplies of compressed or liquefied nitrogen in flight; or (3) By the use of on-board inert gas generation systems that separate air into nitrogen and oxygen. Such systems in current-generation military aircraft incorporate lightweight, permeable plastic membrane systems that produce high nitrogen flow rates and require only ''on-condition'' maintenance. Nitrogen-inerting using a ground source of nitrogen might prevent explosions such as those that occurred to the TWA800 and Avianca airplanes, but may not prevent an explosion after the fuel tanks have been emptied during flight through fuel consumption, or when ullage is exposed to warmer air as an airplane descends—situations that existed in the Iranian Air Force Model 747 accident. Nitrogen-inerting fuel tank ullage has been used for more than 25 years in military airplanes and could be used to protect commercial air transportation. However, the Board recognizes that development and installation of such systems are expensive and may be impractical because of system weight and maintenance requirements in some airplanes.

Therefore, the Board has considered other modifications of the airplane that would reduce the potential for aircraft fuel tank explosions. A reduction in the potential for fuel tank explosions could be attained by reducing the heat transfer to fuel tanks from sources such as hot air ducts and air conditioning packs (Airplanes other than the Model 747 also have heat-producing equipment in the vicinity of fuel tanks. For example, the A–320 and other Airbus Industries commercial transport category airplanes are similar to those from Boeing in that the air conditioning packs and ducts are beneath the CWT.) that are now located

under or near fuel tanks in some transport category airplanes. This may be achieved by installing additional insulation between such heat sources and fuel tanks that must be collocated with heat-generating equipment such as hot air ducting and air conditioning packs.

Because the Board believes that the FAA should require the development and implementation of design or operational changes that will preclude the operation of transport category airplanes with explosive fuel-air mixtures in the fuel tanks, significant consideration should be given to the development of airplane design modifications, such as nitrogen-inerting systems and the addition of insulation between heat-generating equipment and the fuel tanks. Appropriate modifications should apply to newly certificated airplanes, and where feasible, to existing airplanes.

The Board recognizes that such design modifications take time to implement and believes that in the interim, operational changes are needed to reduce the likelihood of the development of explosive mixtures in fuel tanks. Two ways to reduce the potential of an explosive fuel-air mixture could be by refueling the CWT to a minimum level from cooler ground fuel tanks or by carrying additional fuel. Therefore, by monitoring fuel quantities and temperatures (when so-equipped), by controlling the use of air conditioning packs and other heat-generating devices or systems on the ground, and by managing fuel distribution among various tanks to keep all fuel tank temperatures in safe operating ranges and a to-be-determined minimum fuel quantity in the CWT, flightcrews could reduce the potential for fuel tank operations in the Model 747. The Board believes that pending implementation of design modifications, the FAA should require modifications in operational procedures to reduce the potential for explosive fuel-air mixtures in the fuel tanks of transport category aircraft. In the Model 747, consideration should be given to refueling the CWT before flight whenever possible from cooler ground fuel tanks, proper monitoring and managing of the CWT temperature, and maintaining an appropriate minimum fuel quantity in the CWT.

The Board has also found that the Trans World Airlines 747 Flight Handbook used by crewmembers understates the extent to which the air conditioning packs can elevate the temperature of the Model 747 CWT. The handbook notes that pack operation may elevate the temperature of the CWT by an additional 10 to 20°F. However, in the August 26, 1996, Model 747 flight tests with three air conditioning packs in operation the temperature of the center tank fuel increased by approximately 40°F. A 40°F temperature increase in the CWT of TWA800 would have raised the temperature of the ullage above the LEL of its fuel-air mixture. The handbook also states, ''warm fuel . . . may cause pump cavitation and low pressure warning lights may come on steady or flashing.'' The Board is concerned that the flight handbooks of other operators of the Model 747 may have similar deficiencies, Therefore, the Board believes that the FAA should require that the Model 747 Flight Handbooks of TWA and other operators of Model 747s and other aircraft in which fuel tank temperature cannot be determined by flightcrews be immediately revised to reflect the increases in CWT temperatures found by flight tests, including operational procedures to reduce the potential for exceeding CWT temperature limitations.

Although the TWA Model 747 Flight handbook (and the Boeing Airplane Flight Manual) instruct flightcrews not to exceed fuel temperatures of ''54.5C (130F), except JP–4 which is 43C (110F),'' the only fuel tank temperature indication displayed for flightcrews is that of the outboard main tank in the left wing. The designs of the Model 747 and some other airplanes currently provide no means to measure the temperature of the fuel or ullage of fuel tanks that are located near heat sources. The Board believes that flightcrews need to monitor the temperature of fuel tanks that are located near heat sources, including the CWT in Model 747s. Therefore, the Board believes that the FAA should require modification of the CWT of Model 747 airplanes and the fuel tanks of other airplanes that are located near heat sources to incorporate temperature probes and cockpit fuel tank temperature displays to permit determination of the fuel tank temperatures.

Therefore, the Board recommends that the FAA:

(1) Require the development of and implementation of design or operational changes that will preclude the operation of transport category airplanes with explosive fuel-air mixtures in the fuel tanks:

(a) Significant consideration should be given to the development of airplane design modification, such as nitrogen-inserting systems and the addition of insulation between heat-generating equipment and fuel tanks. Appropriate modifications should apply to newly certificated airplanes and where feasible, to existing airplanes. (A–96–174)

(b) Pending implementation of design modifications, require modifications in operational procedures to reduce the potential for explosive fuel-air mixtures in the fuel tanks of transport category aircraft. In the Model 747, consideration should be given to refueling the CWT before flight whenever possible from cooler ground fuel tanks, proper monitoring and management of the CWT fuel temperature, and maintaining an appropriate minimum fuel quantity in the CWT. (Urgent) (A–96–175)

(2) Require that the Model 747 Flight Handbooks of TWA and other operators of Model 747s and other aircraft in which fuel tank temperature cannot be determined by flightcrews be immediately revised to reflect the increases in CWT fuel temperatures found by flight tests, including operational procedures to reduce the potential for exceeding CWT temperature limitations. (A–96–176)

(3) Require modification of the CWT of Model 747 airplanes and the fuel tanks of other airplanes that are located near heat sources to incorporate temperature probes and cockpit fuel tank temperature displays to permit determination of the fuel tank temperatures. (A–96–177)

Chairman Hall, Vice Chairman Francis, and Members Hammerschmidt, Goglia, and Black concurred in these recommendations.

FAA Discussion of NTSB Recommendations: The discussion that follows provides additional information and clarification of the NTSB recommendations.

As part of the discussion providing the background for the recommendations, the NTSB letter cites § 25.954, Fuel system lightning protection, and § 25.981, Fuel tank temperature, of 14 CFR part 25. The letter then states, ''Despite the current aircraft certification regulations, airlines, at times, operate under environmental conditions and operational circumstances that allow the temperature in a fuel tank ullage to exceed the LEL (lower explosive limit), thereby creating a potentially explosive fuel-air mixture. When the temperature of a combustible fuel-air mixture exceeds the LEL, a single ignition source exposed to the ullage could cause an explosion and loss of the airplane. This situation is inconsistent with the basic tenet of transport aircraft design—that no single-point failure should prevent continued safe flight.'' A footnote is then made referring to FAA Advisory Circular (AC) 25.1309–1A.

These statements in the NTSB letter appear to indicate a belief that the airworthiness standards of part 25 do not allow operation of airplanes with flammable vapors in the fuel tank ullage. In fact, the FAA has never attempted to preclude the operation of transport category airplanes with flammable fuel-air mixtures in the fuel tanks. Section 25.981 requires that the temperature of fuel in a tank on transport category airplanes be below the lowest expected auto ignition temperature of the fuel; not below the lower explosive limit. The auto ignition temperature is the temperature at which spontaneous ignition of the fuel will take place, which, for aviation turbine fuels, is in the range of 440°F to 490°F. Section 25.961 requires that the fuel system (e.g. pumps, valves etc.,) operate satisfactorily in hot weather. No regulation or policy currently in place is intended to prevent the operation of transport category airplanes with a flammable fuel-air mixture in the fuel tanks.

Based on the flammability characteristics of the various fuels approved for use on transport category airplanes, it has always been assumed by the FAA that airplanes may operate during some significant portion of the flight with flammable mixtures in their fuel tank ullage. The FAA has considered that design features which are intended to preclude the presence of an ignition source within the fuel tanks would provide an acceptable level of safety.

The NTSB statements also appear to indicate that the FAA has knowingly approved transport airplane fuel systems which have the potential for single failures to create an ignition source in the fuel tanks. In fact, the FAA has not knowingly approved any such fuel systems. At the time of its certification, the Model 747 fuel system design was found to comply with 14 CFR 25.901(b)(2), which stated, ''The components of the installation must be constructed, arranged, and installed so as to ensure their continued safe operation between normal inspections and overhauls.'' It was also found to comply with § 25.1309(b), which stated, ''The equipment, systems, and installations whose functioning is required by this subpart (F) must be designed to prevent hazards to the airplane if they malfunction or fail.'' While the current versions of §§ 25.901(c) and 25.1309(b) (and AC 25.1309–1A) did not exist at the time of application for the Model 747 type certificate and were therefore not part of the Model 747 certification basis, the FAA did apply §§ 25.901(b) and 25.1309(b), as they existed at that time, in a manner that was intended to require a fuel system which was fail-safe (i.e., single failures cannot be catastrophic) with respect to the creation of ignition sources inside the fuel tanks. On the Model 747, the approval of the installation of mechanical and electrical components inside of the fuel tanks was based on a system safety analysis and component testing that showed: (1) mechanical components were fail safe, and (2) electrical devices would not create arcs of sufficient energy to ignite a fuel-air mixture in the event of a single failure or a probable combination of failures.

The FAA approved the Model 747 fuel system, as well as many other transport airplane models, on this basis. The operational situation and the fuel tank temperature and loading conditions that existed in the center wing tank of the TWA airplane in the hours leading up to the accident were in no way unique. During warm and hot weather, most commercial transport category airplanes operate with flammable vapor within center wing, auxiliary, and main fuel tanks. Model 747 airplanes operating on many routes are regularly operated without mission fuel in the center wing tank. One to three air conditioning packs are normally operated on the airplane once the flightcrew is on board, depending on outside air temperature and passenger load, and extended delays in warm or hot weather have occurred many times since the Model 747 was certificated in 1970. The obvious difference on the day of the accident was that an ignition source of some sort made contact with the flammable mixture in the center wing tank.

The FAA has examined the service history of the Model 747 and other transport category airplane models and has performed a preliminary analysis of the history of fuel tank explosions on civil transport category airplanes and on military transport category airplanes which are based on a civil airplane type. While there were a significant number of fuel tank fires and explosions that occurred during the 1960's and 1970's on several airplane types, in most cases the fire or explosion was found to be related to maintenance errors or improper modification of fuel pumps which provided an ignition source. Some of the events were apparently caused by lightning strikes, including the 1976 Imperial Iranian Air Force 747 accident in Spain. In almost every case, the ignition source was identified and actions were taken to prevent similar occurrences. Because of the lessons learned from these events, the transport airplane industry has significantly improved its capability to provide airplanes that are fail-safe with respect to ignition sources in fuel tanks and which are able to maintain those fail-safe characteristics over the life of individual airplanes.

The FAA recognizes, however, that the Philippine Airlines 737 accident in 1990 and the TWA Flight 800 accident are inconsistent with this perceived trend toward a very low rate of tank explosions. While no probable cause has yet been identified in either of these accidents, the presence of an ignition source originating with the accident airplanes has not been ruled out. In addition, it is clear that fuel tanks of all current designs are also vulnerable to ignition from bombs or missiles. Therefore the FAA has initiated evaluation of possible methods of reducing or eliminating the potential of fuel tank ignition. However, such evaluation requires analyses of the potential benefits of such design changes in terms of accident prevention, analyses of the additional costs to the industry and risks to an airplane caused by any additional systems.

Request for Information

Before initiating any action regarding these recommendations the FAA must determine the feasibility and the effectiveness of any proposed methods of reducing the potential of an explosive fuel-air mixture within airplane fuel tanks. The FAA therefore requests comments in that regard from the public, including the aviation industry, airplane manufacturers (both domestic and foreign), and any other interested persons. This information may include technical and economic data and information, arguments pro or con concerning technical feasibility, and any other information deemed pertinent.

The modern commercial transport category airplane requires maximum safety; however, new protective features must be justified by an increased level of safety with minimum added complexity, weight, and operational constraints. Estimates of probable costs and benefits derived from implementing the NTSB recommendations are important.

The following questions are intended to solicit comments regarding the NTSB recommendations.

Specific Questions

NTSB Recommendations 96–174 and –175 focus on controlling fuel temperatures within fuel tanks as a short term method of reducing the potential of an explosive fuel-air mixture within fuel tanks. Nitrogen

inerting is proposed as a longer term methodology of reducing the potential of an explosive fuel-air mixture. These proposals are applicable to transport category airplanes. Recommendations number A–96–176 and –177 propose revisions to airplane flight manuals to include limitations on fuel temperatures and incorporation of fuel temperature indication systems to determine fuel tank temperatures, respectively. These two proposals are applicable to all airplanes. Therefore, comments to the questions below relating to Recommendations A–96–176 and –177 should include consideration of the appropriateness to transport category airplanes (which would include airplanes designed for business travel as well as airline service) and non-transport category airplanes. The latter would include airplanes intended for general aviation use as well as commuter airline service. Questions regarding each of these proposals are provided below. The FAA is particularly interested in comments to the specific questions in the following areas:

Controlling Fuel Temperatures

Initial evaluation indicates that if the NTSB proposal to modify airplane operational procedures to limit fuel temperatures was implemented, the use of more volatile fuels such as Jet B would likely be unacceptable. The use of fuels produced in countries outside the United States that are more volatile would also likely be unacceptable under certain conditions. In addition, the flammability characteristics of Jet A fuel vapors are such that fuel temperatures would be limited throughout the flight. For example, at an altitude of 30,000 ft. the maximum fuel temperature would be limited to approximately 60°F and at an altitude of 40,000 ft. it would be limited to approximately 50°F. When the effects of fuel shoshing and vibration are considered the allowable temperature would be reduced by approximately 10°F to 50 and 40°F respectively. The need to limit maximum fuel temperatures to this value is due to the change in the flammability temperature range with ambient pressure as discussed earlier in this notice. The fuel temperature limit established for each airplane type would vary due to differing cruise altitudes and fuel heating differences between airplane types. Therefore, for the purposes of cost estimates requested in this notice, a maximum fuel temperature limit in the range of 50–50°F is proposed. Within some fuel tanks, such as the center wing tank on many airplane types, fuel cools very slowly because very little of the fuel tank surface is exposed to ambient air, and the lower tank surfaces are heated by the air conditioning packs. Installation of insulation to reduce heating of the fuel, carrying reserve fuel within the center tank and/or transferring cooler fuel during flight, are proposed by the NTSB as possible means to maintain fuel temperatures below the proposed limit value.

Refueling Fuel Tanks From Cooler Ground Sources

While ''cool'' fuel may be available at some airports, a survey conducted in the 1970's of fuel temperatures from ground sources at major worldwide airports indicated that average fuel temperatures were in the range of 60–65°F. Fuel temperatures will increase in tanks adjacent to heat sources and on warmer days following refueling; therefore, cooling of fuel at many airports would likely be required to maintain fuel temperatures below the proposed maximum limit, which would vary with approved maximum altitude limits of each airplane model. The FAA is requesting additional information/opinions on the following:

(1) What is the maximum fuel temperature within a fuel tank that prior to flight would preclude a flammable mixture of fuel within the fuel tank during the subsequent flight?

(2) In consideration of the fuel properties noted above, is control of fuel temperatures a practical and effective way to reduce the likelihood of fuel tank explosions?

(3) Is more recent fuel temperature data available for fuel from ground sources at major airports worldwide?

(4) Is it technically feasible and operationally practical to cool fuel prior to loading into fuel tanks?

(5) Is equipment currently available for cooling of fuel prior to or during the airplane loading process.

Limiting Environmental Control System (ECS) Pack Operation

The NTSB also suggests controlling the use of ECS packs to reduce fuel heating within the center wing tank. The recommendation would likely require an alternate source of cool air for passenger comfort during ground operations.

(1) Would it be practical to limit ECS pack operation while on ground and inflight to reduce heat input to the center wing fuel tank?

(2) Is it practical to assume that external air conditioning is available at all international airports?

(3) If other sources of air conditioning were required, what would be the added recurring (including labor to monitor fuel temperatures and cabin temperatures) and non-recurring costs?

Carrying Additional Fuel

(1) Assuming that an airplane was dispatched with cooler fuel and fuel tanks were insulated from heat sources, what would be the minimum fuel level that would be required to maintain fuel temperatures below that where an explosive fuel-air mixture forms in the tank?

(2) Would fuel transfer from other fuel tanks with cooler fuel be a practical means of reducing the amount of fuel carried within the tank to maintain temperatures below that where an explosive fuel-air mixture forms in the tank?

Request for Cost Information for Limiting Fuel Temperatures

The NTSB recommendations focus on limiting fuel temperatures primarily on Model 747 airplanes. Many other airplane types, such as the Boeing Model 737, 757, 767, 777, and Airbus A320, A330, A340, have features such as hydraulic heat exchangers within wing fuel tanks or ECS packs located below the center wing fuel tank that may result in fuel tank heating.

(1) Regarding airplane type, what should be the applicability of the proposed recommendations?

(2) What would be the costs associated with:

(a) Eliminating the use of more volatile fuels such as Jet B, and JP–4?

(b) Tankering fuel within otherwise empty fuel tanks for the purpose of maintaining fuel temperatures below the flammability limits?

(c) Installing a fuel temperature indication system within each airplane fuel tank to monitor fuel temperatures?

(d) Cooling fuel during the fueling of airplanes when fuel temperatures from the airport fueling hydrant are above the limit of 40–50°F?

(e) Insulating fuel tanks from heat sources?

(f) Transferring from other fuel tanks with cooler fuel, while on ground and inflight?

(3) What are the operational considerations of such procedures?

(4) Are there additional near term possibilities to reduce the potential of an explosive fuel-air mixture within fuel tanks? For any possible methods, the above questions should be answered.

Nitrogen Inerting

Information available from military airplanes indicates that with currently available technology, On Board Inert Gas Generating Systems (OBIGGS),

possibly supplemented for ground conditions with ground based nitrogen sources, would be an effective means of inerting fuel tanks.

Results of the FAA test and other military tests would indicate that an effective inerting system would require a constant supply of nitrogen to the fuel tank. In 1993, McDonnell Douglas installed an inerting system on the C–17 military cargo airplane to reduce fuel tank ignition from penetration by unfriendly weapons fire. The system utilizes an on-board inerting system that separates nitrogen enriched air (NEA) from compressed air supplied by the engines. Each fuel tank is continuously supplied with NEA. The NEA is compressed to 3,000 psi and stored in 4 tanks to provide protection for on-ground use. Although a more modest system may be possible for transport category airplanes, the feasibility of using the C–17 system is questionable for commercial transport category airplanes. Total system weight is 2,146 pounds (including 328 lbs. of stored NEA). Additionally, the system design and hardware costs, increased fuel burn to provide compressed air to the system, and increased maintenance costs would have to be factored into an assessment of the feasibility of installing such a system on transport category airplanes.

Although the added weight and cost of the C–17 system may be prohibitive for commercial transport airplane operations, it may be possible to achieve the desired level of safety with a more modest inerting system. Based on review of transport airplane operations, the need for on-board storage of nitrogen can be eliminated if the system is designed for typical altitude changes and dissolved oxygen in the fuel is removed during the refueling process. Therefore, for the purposes of this notice, the FAA is assuming the portions of the airplane operating envelope to include only normal climb and decent rates and that scrubbing of oxygen from the fuel be completed during the refueling process while the airplane is on the ground. Possible sources of nitrogen for the scrubbing process may be on ground storage systems or from the OBIGGS installed on the airplane.

(1) What design and safety criteria should be developed and used to define a nitrogen inerting system providing protection for the scenario described by the NTSB recommendations?

(a) Would a system optimized for normal airplane climb and decent rates provide a desired level of safety enhancement?

(b) Is it appropriate to allow dispatch of an airplane with the inerting system inoperative under minimum equipment list requirements?

(c) Would the OBIGGS or ground based sources be the most cost effective source of nitrogen for scrubbing of the fuel? What would be the costs associated with two sources of nitrogen for fuel scrubbing?

(2) Incorporation of nitrogen inerting systems could result in negative impacts on other airplane systems, and could introduce additional safety concerns.

(a) What, if any, are the potential safety concerns regarding implementation of nitrogen inerting systems (e.g., overpressurization of airplane fuel tanks, and maintenance of personnel entering previously inerted tanks without appropriate breathing apparatus)?

(b) What, if any, negative impact could introduction of nitrogen inerting have on airplane systems?

(3) What would be the cost of incorporating a nitrogen inerting system utilizing OBIGGS sized to inert the tanks while on the ground and during normal climb and decent conditions:

(a) Cost of the hardware?

(b) Weight of the system?

(c) Cost of maintenance of the system?

(d) Added fuel consumption to supply bleed air to the inert gas separation system?

(e) Cost of modifications to airplane fuel/vent system?

(f) Cost of lost revenue due to increased weight of airplane with inerting system?

(g) Cost of reduced dispatch reliability?

(h) Cost of developing inerting systems consistent with commercial standards of reliability?

(4) If nitrogen inerting were implemented to reduce the potential for fuel tank ignition, additional benefits may result. Possible benefits include reduction of water within fuel tanks, the allowance of the use of more volatile fuels, and any oxygen generated by the OBIGGS system might be used to replace or supplement passenger oxygen systems.

(a) Would the reduction in water within fuel tanks result in less corrosion and any quantifiable reduction in airplane maintenance?

(b) Would the reduction in water within fuel tanks allow reduced intervals for sumping of fuel tanks and an associated reduction in labor costs?

(c) Would the continued use of more volatile fuels provide a benefit, particularly for engine starting in colder climates?

(d) Could oxygen generated by the OBIGGS system be used to replace or supplement passenger oxygen systems and provide a quantifiable benefit in weight and costs?

(e) Several accidents have been associated with oxygen bottles used for the passenger oxygen system. If on-board storage of oxygen could be reduced or eliminated by the OBIGGS, what, if any, safety benefits would result due to reduced potential for oxygen fed fires?

(5) What other methods, other than nitrogen inerting, will provide the desired level of safety enhancement and what costs are associated with these methods.

Applicability

The recommendations by the NTSB refer to transport category airplanes, aircraft, or airplanes, and appear to use the terms with intent. Thus, the desired applicability of each of the NTSB recommendations is different. These terms have specific definitions that are recognized throughout the aviation industry and the FAA regulations. The more generic term is aircraft. Part 1 of Title 14 of the Code of Federal Regulations defines aircraft as ''a device that is used or intended to be used for flight in the air.'' Airplane is a subset of aircraft and means ''an engine-driven fixed wing aircraft heavier than air, that is supported in flight by the dynamic reaction of air against its wings.'' A transport category airplane is an airplane that is certificated in accordance with the airworthiness standards of Part 25. The term ''airplane'' also includes non-transport category airplanes such as those intended for general aviation on commuter airline service.

When commenting on the technical feasibility and economic implications of the NTSB recommendations, the FAA is requesting that specific attention be given to the intended scope of those recommendations.

(1) What might be technically feasible for a transport category airplane may not be feasible for all aircraft. What is technically feasible for the range of products identified, and is there a range where the recommendations seem inappropriate?

(2) Transport category airplanes include those designed for business travel as well as those used for airline service. The FAA is interested in specific comments as to the feasibility of applying some of the concepts envisioned by the NTSB to that class of airplanes.

(3) It is also recognized that some airplanes and other aircraft have reciprocating engines that use a different and more volatile fuel than that used by turbine engines. What

unique situations does this present relative to the NTSB recommendations?

(4) The NTSB recommendations also distinguish in some cases between what might be done for new designs and what might be done for existing airplanes. The FAA is interested in specific comments as to the technical feasibility and economic impacts of applying the concepts in the NTSB recommendations separately to newly certificated aircraft, new production aircraft at some time in the future, or existing aircraft in service.

Conclusion

This notice seeks information from interested persons, including manufacturers and users of transport category airplanes and components, the general public, and foreign airworthiness authorities in determining the feasibility of NTSB recommendations to limit airplane operation with explosive fuel vapors within fuel tanks.

Issued in Renton, Washington, on March 28, 1997.

Darrell M. Pederson,

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

[FR Doc. 97–8495 Filed 3–31–97; 12:57 am]

BILLING CODE 4910–13–M

Federal Register

Thursday
April 3, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guideline on Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0112]

International Conference on Harmonisation; Draft Guideline on Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled ''Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals.'' The draft guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline identifies a standard set of genotoxicity tests to be conducted for pharmaceutical registration, and recommends the extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. The draft guideline complements the ICH guideline ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals.''

DATES: Written comments by June 2, 1997.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2123.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In September 1996, the ICH Steering Committee agreed that a draft guideline entitled ''Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals'' should be made available for public comment. The draft guideline is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Safety Expert Working Group.

Genotoxicity tests are in vitro and in vivo tests designed to detect compounds that induce genetic damage directly or indirectly by various mechanisms. Compounds that are positive in tests that detect such damage have the potential to be human carcinogens and/or mutagens, i.e., may induce cancer and/or heritable defects. The draft guideline addresses two areas of genotoxicity testing for pharmaceuticals: (1) Identification of a standard set of tests to be conducted for registration, and (2) the extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. The draft guideline is intended to be used together with the ICH guideline entitled ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals'' (61 FR 18198, April 24, 1996) as ICH guidance principles for testing pharmaceuticals for potential genotoxicity.

Although not required, FDA has in the past provided a 75- or 90-day comment period for draft ICH guidelines. However, the comment period for this guideline has been shortened to 60 days so that comments may be received by FDA in time to be reviewed and then discussed at a July 1997 ICH meeting involving this guideline.

This guideline represents the agency's current thinking on a recommended standard battery for genotoxicity testing of a pharmaceutical. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before June 2, 1997, submit to the Dockets Management Branch (address above) written comments on the draft guideline. 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. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guideline is available via Internet by using the World Wide Web (WWW). To connect to the CDER home page, type ''http://www.fda.gov/cder'' and go to the ''Regulatory Guidance'' section.

The text of the draft guideline follows:

Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals

1. Introduction

Two fundamental areas in which harmonization of genotoxicity testing for pharmaceuticals is considered necessary are the scope of this guideline: (I) Identification of a standard set of tests to be conducted for registration. (II) The extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. Further issues that were considered necessary for harmonization can be found in the ICH guideline ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals,'' (61 FR 18198, April 24, 1996). *The two ICH guidelines on genotoxicity complement each other and therefore should be used together as ICH guidance principles for testing of a pharmaceutical for potential genotoxicity.*

2. General Purpose of Genotoxicity Testing

Genotoxicity tests can be defined as in vitro and in vivo tests designed to detect compounds which induce genetic damage directly or indirectly by various mechanisms. These tests should enable a hazard identification with respect to damage to DNA and its fixation. Fixation of damage to DNA in the form of gene mutations, larger scale chromosomal damage, recombination, and numerical chromosome changes is generally considered to be essential for heritable effects and in the multistep process of malignancy, a complex process in which genetic changes may play only a part. Compounds which are positive in tests that detect such kinds of damage have the potential to be human carcinogens and/or mutagens, i.e., may induce cancer and/or heritable defects. Because the relationship between exposure to particular chemicals and carcinogenesis is established for man, while a similar relationship has been difficult to prove for heritable diseases, genotoxicity tests have been used mainly for the prediction of carcinogenicity. In addition, the outcome of such tests may be valuable for the interpretation of carcinogenicity studies. Nevertheless, the suspicion that a compound may induce heritable effects is considered to be just as serious as the suspicion that a compound may induce cancer.

3. The Standard Test Battery for Genotoxicity

Registration of pharmaceuticals requires a comprehensive assessment of their genotoxic potential. It is clear that no single test is capable of detecting all relevant genotoxic agents. Therefore, the usual approach would be to carry out a battery of in vitro and in vivo tests for genotoxicity. Such tests are complementary rather than representing different levels of hierarchy.

The general features of a standard test battery can be outlined as follows:

(i) It is appropriate to assess genotoxicity initially in a bacterial reverse mutation test. This test has been shown to detect relevant genetic changes and the majority of genotoxic rodent carcinogens.

(ii) DNA damage considered to be relevant for mammalian cells and not adequately measured in bacteria should be evaluated in mammalian cells. Several mammalian cell systems are in use: Systems which detect gross chromosomal damage (in vitro tests for chromosomal damage), a system which detects gene mutations and clastogenic effects (mouse lymphoma tk assay), and systems which detect primarily gene mutations (see Notes 1 and 2).

There has been a debate whether in vitro tests for chromosomal damage and the mouse lymphoma tk assay are equivalent for detection of clastogens. Several studies have shown that most of the differences reported are due to differences in the test protocols employed. The scientific information given in Notes 3 and 4 demonstrate that with appropriate test protocols (see section 5) the various in vitro tests for chromosomal damage and the mouse lymphoma tk assay yield results with a high level of congruence. Therefore these systems may be treated as equally sensitive and considered interchangeable for regulatory purposes if these test protocols are used. Consequently, for regulatory purposes, a negative result in an in vitro test with cytogenetic evaluation of chromosomal damage or in a mouse lymphoma tk assay gives additional assurance to the other parts of the standard battery that the compound tested does not induce genetic damage. In any event, the mammalian cells used for genotoxicity evaluation in vitro should be carefully selected taking the specific particulars of the test cells, the test protocol, and the test compound into account.

(iii) An in vivo test for genetic damage should usually be a part of the test battery to provide a test model in which additional relevant factors (absorption, distribution, metabolism, excretion) that may influence the genotoxic activity of a compound are included. As a result, in vivo tests permit the detection of some additional genotoxic agents (see Note 5). An in vivo test for chromosomal damage in rodent hematopoietic cells fulfills this need. This in vivo test for chromosomal damage in rodents could be either an analysis of chromosomal aberrations in bone marrow cells or an analysis of micronuclei in bone marrow or peripheral blood erythrocytes.

The following standard test battery may be deduced from the considerations mentioned above:

(i) A test for gene mutation in bacteria.
(ii) An in vitro test with cytogenetic evaluation of chromosomal damage with mammalian cells or an in vitro mouse lymphoma tk assay.
(iii) An in vivo test for chromosomal damage using rodent hematopoietic cells.

For compounds giving negative results, the completion of this 3-test battery, performed and evaluated in accordance with current recommendations, will usually provide a sufficient level of safety to demonstrate the absence of genotoxic activity. Compounds giving positive results in the standard test battery may, depending on their therapeutic use, need to be tested more extensively (see ICH ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals'' (60 FR 18198, April 24, 1996)).

The suggested standard set of tests does not imply that other genotoxicity tests are generally considered inadequate or inappropriate (e.g., tests for measurement of DNA adducts, DNA strand breaks, DNA repair or recombination). Such tests serve as options in addition to the standard battery for further investigation of genotoxicity test results obtained in the standard battery. Only under extreme conditions in which one or more tests comprising the standard battery cannot be employed for technical reasons, alternative validated tests can serve as a substitute. For this to occur, sufficient scientific justification should be provided to support the argument that a given standard battery test is not appropriate.

The standard battery does not include an independent test designed specifically to test for numerical chromosome changes, e.g., aneuploidy and polyploidy. However, information on this type of damage should be derived from the cytogenetic evaluation of chromosomal damage in vitro and in vivo.

4. Modifications of the 3-Test Battery

The following sections give situations where the standard 3-test battery may need modification:

4.1 Limitations to the use of bacterial test organisms

There are circumstances where the performance of the bacterial reverse mutation test does not provide appropriate or sufficient information for the assessment of genotoxicity. This may be the case for compounds that are excessively toxic to bacteria (e.g., some antibiotics) and compounds thought or known to interfere with the mammalian cell replication system (e.g., topoisomerase-inhibitors, nucleoside-analogues, or inhibitors of DNA metabolism). For these cases, usually two in vitro mammalian cell tests should be performed using two different cell types and two different endpoints (gene mutation (see Note 1) and chromosomal damage). Nevertheless it is still important to perform the bacterial reverse mutation test, either a full test or a limited (range-finding) test (see section 5).

4.2 Compounds bearing structural alerts for genotoxic activity

Structurally alerting compounds (see Note 6) are usually detectable in the standard 3-test battery. However, compounds bearing structural alerts that have given negative results in the standard 3-test battery using induced rat liver S9 for metabolic activation as standard in the in vitro tests and using mouse erythropoietic cells as standard test cells for the in vivo test may need limited additional testing. The choice of additional test(s) or protocol modification(s) depend on the chemical nature, the known reactivity, and metabolism data on the structurally alerting compound under question (see Note 7).

4.3 New/unique chemical structures/classes

On relatively rare occasions, a completely novel compound in a unique structural or functional (i.e., potentially DNA-reactive) chemical class will be introduced as a pharmaceutical. It may not be easy to categorize such compounds, e.g., with respect to alerting structures, metabolism requirements, or interaction with cell

replication. In order to gain knowledge on the genotoxic potential of such compounds it may be necessary to test them more comprehensively than in the standard 3-test battery, e.g., in a further in vitro test with mammalian cells.

4.4 Genotoxicity testing of pharmaceuticals using solely in vitro tests

There are compounds for which conventional in vivo tests do not provide additional useful information. These include compounds that are not systemically absorbed and therefore are not available for the target tissues in in vivo genotoxicity tests (i.e., bone marrow or liver). Examples of such compounds are some radioimaging agents, aluminum-based antacids, and some dermally applied pharmaceuticals. In these cases, a test battery composed solely of in vitro test models is acceptable which should consist of a bacterial gene mutation assay, a gene mutation assay with mammalian cells (see Note 1), *and* a test for chromosomal damage with mammalian cells.

4.5 Considerations for additional genotoxicity testing in relation to the carcinogenicity bioassay

Additional genotoxicity testing in appropriate models may be conducted for compounds that were negative in the standard 3-test battery but which have shown effects in carcinogenicity bioassay(s) with no clear evidence for a nongenotoxic mechanism. To help understand the mechanism of action, additional testing can include modified conditions for metabolic activation in in vitro tests or can include in vivo tests measuring genotoxic damage in target organs of tumor induction (e.g., liver UDS test, 32P-postlabeling, mutation induction in transgenes).

5. Standard Procedures for In Vitro Tests in the Standard Battery

Reproducibility of experimental results is an essential component of research involving novel methods or unexpected findings; however, the routine testing of chemicals with standard, widely used genotoxicity tests need not always be completely replicated. These tests are sufficiently well characterized and have sufficient internal controls that repetition can usually be avoided if protocols with built-in confirmatory elements such as outlined below are used.

Complete repetition of gene mutation tests is usually not necessary if the protocol includes a range-finding test that supplies sufficient data to provide reassurance that the reported result is the correct one. For example, in bacterial mutagenicity tests, preliminary range-finding tests performed on all bacterial strains, with and without metabolic activation, with appropriate positive and negative controls, and with quantification of mutants, may be considered sufficient replication of a subsequent complete test. Similarly, a range-finding test may also be a satisfactory substitute for a complete repeat of a test in gene mutation tests with mammalian cells other than the mouse lymphoma tk assay if the range-finding test is performed with and without metabolic activation, with appropriate positive and negative controls, and with quantification of mutants (see Note 8). For both bacterial and mammalian cell gene mutation tests, the results of the range-finding test should guide the selection of concentrations to be used in the definitive mutagenicity test.

For the cytogenetic evaluation of chromosomal damage in vitro, the test protocol includes the conduct of tests with and without metabolic activation, with appropriate positive and negative controls where the exposure to the test articles is 3 to 6 hours and a sampling time of approximately 1.5 normal cell cycles from the beginning of the treatment. A continuous treatment without metabolic activation up to the sampling time of approximately 1.5 cell cycles is needed in case of a negative result for the short treatment period without metabolic activation. If severe cell cycle delay is noted, a prolonged treatment or sampling time is needed. Negative results in the presence of a metabolic activation system may need confirmation on a case-by-case basis (see Note 9). In any case, information on the ploidy status should be obtained by recording the incidence of polyploid cells as a percentage of the number of metaphase cells.

For the mouse lymphoma tk assay, the test protocol includes the conduct of tests with and without metabolic activation, with appropriate positive and negative controls, where the exposure to the test articles is 3 to 4 hours. A continuous treatment without metabolic activation for 24 hours is advisable in case of a negative result for the short treatment without metabolic activation (see Note 4). Negative results in the presence of a metabolic activation system may need confirmation on a case-by-case basis (see Note 9). In any case, the conduct of a mouse lymphoma tk assay involves colony sizing for positive controls, solvent controls, and at least one positive test compound dose (should any exist), including the culture that gave the greatest mutant frequency.

Following such testing, further confirmatory testing in the case of clearly negative or positive test results is not usually needed.

Ideally, it should be possible to define test results as clearly negative or clearly positive. But test results sometimes do not fit into the criteria for a positive or negative call and therefore have to be defined as ''equivocal.'' In these circumstances, the application of statistical methods can aid in data interpretation. Since the use of statistical methods is not always satisfying for some of the standard genotoxicity tests, adequate biological interpretation is of critical importance. The criteria for declaration of a test result as positive or negative must in part be based on the experience and standards of the laboratory carrying out the test. Equivocality then, for example, encompasses test results which lack a dose-related increase of the effect in an appropriate dose range and/or test results which exceed the concurrent negative control values but may lie within historical negative control data.

Further testing is usually indicated in the case of results that have to be called equivocal even if the results are obtained with protocols such as outlined above.

6. Notes

(1) Test systems seen currently as appropriate for the assessment of mammalian cell *gene* mutation include the L5178Y $tk^{+/-} \rightarrow tk^{-/-}$ mouse lymphoma assay (mouse lymphoma tk assay), the HPRT-tests with CHO-cells, V79-cells, or L5178Y cells, or the GPT-(XPRT) test with AS52 cells, and the human lymphoblastoid TK6 test.

(2) The molecular dissection of mutants induced at the *tk* locus shows a broad range of genetic events including point mutations, deletions, translocations, recombinations, etc. (e.g., Applegate et al., 1990). Small colony mutants have been shown to predominantly lack the *tkb* allele as a consequence of structural or numerical alterations or recombinational events (Blazak et al., 1989; El-Tarras et al., 1995). There is some evidence that other loci, such as *hprt* or *gpt* are also sensitive to large deletion events (Glatt, 1994; Kinashi et al., 1995). However, due to the X-chromosomal origin of the *hprt* gene which is probably flanked by essential genes, large scale chromosomal damage (e.g., deletion) or numerical alterations often do not give rise to mutant colonies, thus limiting the sensitivity of this test. Therefore, the mouse lymphoma tk assay has advantages in comparison to other gene mutation assays and it may be recommended to conduct the mouse lymphoma tk assay as the gene mutation test. A positive result in the mouse lymphoma tk assay may constitute a case for further investigation of the type and/or mechanism of genetic damage involved.

(3) With respect to the cytogenetic evaluation of chromosomal damage, it is not uncommon for the systems currently in use, i.e., several systems with permanent mammalian cells in culture and human lymphocytes either isolated or in whole blood, to give different results for the same test compound. However, a recently conducted multilaboratory comparison of in vitro tests with cytogenetic evaluation of chromosomal damage gave conclusive evidence that the differences observed are most often due to protocol differences (Galloway et al., 1996).

For the great majority of presumptive genotoxic compounds that were negative in a bacterial reverse mutation assay, the data on chromosomal damage in vitro and mouse lymphoma tk results are in agreement. A recently conducted mouse lymphoma tk collaborative study reinforced this view. Under cooperation of the Japanese Ministry of Health and Welfare and the Japanese Pharmaceutical Manufacturers Association, a collaborative study on the mouse lymphoma tk assay (MLA) was conducted by 45 Japanese and 7 other laboratories in order to clarify how well the MLA can detect in vitro clastogens and polyploidy (aneuploidy) inducers and how well the in vitro tests with cytogenetic evaluation of chromosomal damage can detect compounds that were thought to act exclusively in the MLA. On the basis of published data, 40 compounds were selected, which were negative in bacterial reverse mutation assays, but positive either in in vitro tests with cytogenetic evaluation of chromosomal damage (30 compounds) or in the MLA (9

compounds). These compounds were examined by the microwell method using L5178Y tk$^{+/-}$ 3.7.2C cells or were reexamined in CHL/IU cells for induction of chromosomal aberrations. Various aspects of this study are currently in the process of publication (Matsuoka et al., 1996; Sofuni et al., 1996).

The table below gives the results of this major attempt to compare the results of in vitro tests with cytogenetic evaluation of chromosomal damage in different cells (human lymphocytes, CHO, V79 and CHL cells) and the mouse lymphoma tk assay:

		chromosome damage (CA) mainly structural	chromosome damage (CA) mainly polyploidy	chromosome damage (CA)
		positive	positive	negative
mouse lymphoma tk assay	positive	21[1]	5[1]	2
	inconcl./equiv.	3	2	1
	negative	2	1	3

[1] 7 compounds (colchicine, 2′-deoxycoformycin, dideoxycytidine, phenacetin, p-tert butylphenol, theophylline, thiabendazole) yielded clearly positive results in the MLA when the cells were treated in the absence of S–9 mix for 24 hours instead of 4 hours.

Of 34 CA (carcinogen) positive chemicals, 3 (9 percent) were negative in the MLA. These results suggest that while the MLA may detect most clastogens and polyploidy inducers, there may be some it cannot detect (bromodichloromethane, isophorone, tetrachloroethane). Tetrachloroethane induced polyploidy only, whereas bromodichloromethane and isophorone were only weakly clastogenic.

Reinvestigation of 9 of 10 mouse lymphoma unique positive carcinogens that were reported by the NTP (National Toxicology Program) (Zeiger et al., 1990) showed that only 3 were negative in CHL/IU cells using the comprehensive protocol as outlined in section 5. The same nine compounds were reexamined in the present MLA study and two of the three CA-negative compounds were positive (trichloroethylene and cinnamylanthranilate). These data indicate that the number of MLA unique positive compounds may be quite limited, i.e., at the moment, in the absence of reinvestigation of other NTP reported mouse lymphoma tk uniquely positive compounds, only trichloroethylene and cinnamylanthranilate are known.

Comparison with published data and data in regulatory files show that many MLA and CA positive compounds were negative in the HPRT assay in which large-scale DNA rearrangements could not be detected.

Only a few more clastogenic compounds giving negative results in the usual mouse lymphoma tk assay with 3 to 4 hours of treatment can be found in the published literature (Garriott et al., 1995). In conclusion, it is perceived that, from the aspect of safety testing for pharmaceuticals, the mouse lymphoma tk assay is an acceptable alternative for the direct analysis of chromosomal damage in vitro. Colony sizing gives only limited information on the type of damage induced in mutant colonies in the mouse lymphoma tk assay (see Note 2). Therefore, a positive result in a mouse lymphoma tk assay may need to be investigated further to examine the type of genetic damage that was induced.

(4) Recent results from a number of different compounds give evidence that the ability of the mouse lymphoma tk assay to detect some clastogens/aneuploidy inducers is enhanced when the treatment protocol includes a 24 hour treatment regimen in the absence of an exogenous metabolic activation system. Compounds such as colchicine, vincristine, diethylstilbestrol, caffeine, 2′-deoxycoformycin, dideoxycytidine, thiabendazole, theophylline, phenacetin, p-tert butylphenol, and azidothymidine gave negative or only weakly positive results in a standard mouse lymphoma tk assay with 3 or 4 hours of treatment (absence of S–9 mix) but were tested clearly positive with 24 hours of exposure to the test substance. (Azidothymidine and caffeine are the compounds which were tested in the agar version of the mouse lymphoma tk assay whereas the data on 24 hours of treatment on the other compounds are generated with the microwell method.)

(5) There are a small but significant number of genotoxic carcinogens that are reliably detected by the bone marrow tests for chromosomal damage that have yielded negative/weak/conflicting results in the pairs of in vitro tests outlined in the standard battery options, e.g., bacterial reverse mutation plus one of a selection of possible tests with cytogenetic evaluation of chromosomal damage or bacterial mutation plus the mouse lymphoma tk assay. Carcinogens such as procarbazine, hydroquinone, urethane, and benzene fall into this category.

(6) Certain structurally alerting molecular entities are recognized as being causally related to the carcinogenic and/or mutagenic potential of chemicals (Ashby and Tennant, 1988; Ashby and Tennant, 1991; Ashby and Paton, 1993). Examples of structural alerts include alkylating electrophilic centers, unstable epoxides, aromatic amines, azo-structures, N-nitroso-groups, aromatic nitro-groups.

(7) For some classes of compounds with specific structural alerts, it is established that specific protocol modifications/additional tests are necessary for optimum detection of genotoxicity (e.g., molecules containing an azo-group, glycosides, compounds such as nitroimidazoles requiring nitroreduction for activation, compounds such as phenacetin requiring another rodent S9 for metabolic activation). Such modifications could form the additional testing needed when the chosen 3-test battery yields negative results for a structurally alerting test compound.

(8) The dose range-finding study should: (i) Give information on the shape of the toxicity dose-response curve if the test compound exhibits toxicity; (ii) include highly toxic concentrations; (iii) include quantification of mutants in the cytotoxic range. Even if a compound is not toxic, mutants should nevertheless be quantified.

(9) A repetition of a test using the identical source and concentration of the metabolic activation system is usually not necessary. However, a modification of the metabolic activation system may be indicated for certain chemical classes where knowledge is available on specific requirements of metabolism. This would usually involve the use of an external metabolizing system which is known to be competent for the metabolism/activation of the class of compound under test.

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Dated: March 29, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–8554 Filed 4–2–97; 8:45 am]

BILLING CODE 4160–01–F

Federal Register

Thursday
April 3, 1997

Part VI

The President

Proclamation 6980—Cancer Control Month, 1997

Proclamation 6981—National Child Abuse Prevention Month, 1997

Federal Register
Vol. 62, No. 64
Thurday, April 3, 1997

Presidential Documents

Title 3—

The President

Proclamation 6980 of April 1, 1997

Cancer Control Month, 1997

By the President of the United States of America

A Proclamation

In observing Cancer Control Month, we reaffirm our national commitment to fighting this deadly disease. Since the signing of the National Cancer Act in 1971, we as a Nation have made significant strides in combating many forms of cancer. In November 1996, the National Cancer Institute (NCI) announced that the cancer death rate in the United States fell by nearly 3 percent between 1991 and 1995, the first sustained decline since national record-keeping began in the 1930s. The declines in lung, colorectal, and prostate cancer deaths in men, and breast and gynecologic cancer deaths in women, reflect the progress we have made in prevention, early detection, and treatment. However, we recognize how much work must still be done to control and eliminate this disease.

Perhaps one of the most promising achievements of cancer research this past year is in our increased understanding of cancer genetics. We have learned that cancer is a disease of altered genes and altered gene function. Researchers are making great progress in identifying genes whose dysfunction leads to cancer. Our research into the relationship between genetics and cancer also is helping us to better understand the basis for many other diseases and will strengthen our ability to intervene against them. If we are to continue this remarkable progress, we must keep scientific research as a fundamental priority.

Research has already taught us that smoking directly causes lung cancer and markedly increases a person's risk of developing cancers of the pancreas, esophagus, uterus, cervix, mouth, throat, and bladder. We know that many of the deaths from these cancers are preventable. Over the last several years, positive trends have emerged: Business, industry, and all levels of government have established smoke-free policies, and per-capita cigarette consumption has declined by 37 percent over the past two decades.

Reasons for deep concern remain, however. More than 3,000 teenagers become regular smokers each day in the United States. We must do all we can to help our children understand the consequences of smoking, and we must set a good example ourselves by not smoking. Last year, in an important step forward, the Food and Drug Administration (FDA) proposed restrictions on the advertising, marketing, and sales of cigarettes to minors. In February of this year, I was proud to announce that the first part of those rules went into effect.

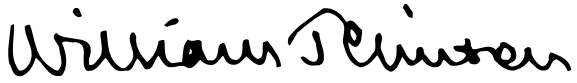
We are also learning more about the relationship between diet and cancer risk, and we are gaining insight into the role of dietary supplements in reducing certain types of cancer. We know that by improving our diet—reducing fat and increasing the amount of fiber—we reduce our risk of cancer. The NCI, in collaboration with the food industry, sponsors the national 5-A-Day Program, which encourages Americans to eat five servings of fruit and vegetables each day.

We are taking other important steps, as well. Federal agencies are working together to ensure that potentially active drugs move quickly from discovery to clinical use. To reduce the number of cancer deaths and new cases, and to help cancer patients survive longer and live better lives, several Federal agencies are working with State and local health departments to develop and implement national plans for breast and cervical cancer screening and to promote cancer prevention. I was pleased to announce last week that my Administration is launching a major public education campaign to make sure that every woman and every health care professional in America is aware of the NCI's new recommendations that women between the ages of 40 and 49 should get a mammography examination for breast cancer every one or two years. The Medicare budget that I just submitted to the Congress will cover the expense of these annual exams, and we are urging State Medicaid directors to cover annual mammograms as well, with the assurance that the Federal Government will pay its matching share if they do so.

As we commemorate this special month, I ask health care professionals, private industry, community groups, insurance companies, and all other interested organizations and individual citizens to unite to publicly reaffirm our Nation's continuing commitment to controlling cancer. In 1938, the Congress of the United States passed a joint resolution requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 1997, as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



[FR Doc. 97–8735
Filed 4–2–97; 8:45 am]
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Presidential Documents

Proclamation 6981 of April 1, 1997

National Child Abuse Prevention Month, 1997

By the President of the United States of America

A Proclamation

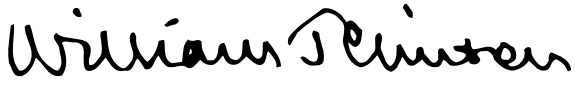
We live in a Nation blessed with liberty and prosperity. Yet, many of our children still suffer the horrors of child abuse and neglect, knowing no happiness, and sometimes even losing their lives. And, it is a problem that grows worse. Last year, the U.S. Department of Health and Human Services reported that an estimated 3 million American children were abused or neglected, twice as many as 5 years earlier. Almost half a million of our children were seriously injured because of this mistreatment, quadruple the number from the previous report. Tragically, more than 1,100 abused children died last year—an incomprehensible 80 percent of them at the hands of their own parents. We must not let this senseless suffering continue.

My Administration is continuing its efforts to make our children safer. Already, we have developed new family-based prevention services to work with families at risk, and we have said to those who would prey on our children in public housing that one conviction for drug dealing or a violent crime will result in expulsion from public housing. We are working to establish a national registry for sexual predators, and we have preserved the Federal investment in child protective services so States have the resources to help children in danger. We have taken guns off the street by banning 19 deadly assault weapons, and we are putting 100,000 more police officers on the streets to patrol our neighborhoods. And my Administration has developed a plan that aims, by the year 2002, to double the number of children placed in adoption or permanent placements from the public foster care system.

During this month of April, we pause to recognize and praise the work of those parents and other caretakers who see that the physical, mental, emotional, educational, and medical needs of our children are adequately met. I commend the efforts of the dedicated and compassionate men and women who assist families in crisis and enable these families to prevent child abuse. Without the commitment, knowledge, and skill of these men and women, many more children would find themselves the victims of abuse and the lives of many children who are abused and neglected would never improve. With their involvement, the lives of our most vulnerable children are immeasurably enriched. This month reminds us that every child is entitled to live his or her life to its fullest, free from fear and want. As Thomas Jefferson stated so eloquently, ''The Giver of life gave it for happiness and not for wretchedness.'' We hold our children's future in trust. Let us not fail them.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 1997 as National Child Abuse Prevention Month. I call upon all Americans to observe this month by demonstrating our respect and gratitude for those who devotedly and unselfishly work to keep children safe, by learning how we can help keep children from harm's way, and by taking responsible actions to protect our precious children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



[FR Doc. 97–8736
Filed 4–1–97; 8:45 am]
Billing code 3195–01–P

Federal Register

Thursday
April 3, 1997

Part VII

The President

Proclamation 6982—To Implement an Agreement To Eliminate Tariffs on Certain Pharmaceuticals and Chemical Intermediates

Federal Register
Vol. 62, No. 64
Thursday, April 3, 1997

Presidential Documents

Title 3—

The President

Proclamation 6982 of April 1, 1997

To Implement an Agreement To Eliminate Tariffs on Certain Pharmaceuticals and Chemical Intermediates

By the President of the United States of America

A Proclamation

1. On December 13, 1996, members of the World Trade Organization (WTO), including the United States and 16 other major trading countries, announced in the WTO Singapore Ministerial Declaration an agreement to eliminate tariffs on certain pharmaceuticals and chemical intermediates that were the subject of reciprocal duty elimination negotiations during the Uruguay Round of multilateral trade negotiations (''Uruguay Round''). In addition, it was agreed that the agreement on pharmaceutical products reached at the conclusion of the Uruguay Round and consequently Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade (1994) (''Schedule XX'') erroneously included 25 products.

2. (a) Section 111(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3521(b)) authorizes the President to proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX for products that were the subject of reciprocal duty elimination negotiations during the Uruguay Round if the United States agrees to such action in a multilateral negotiation under the auspices of the WTO and after compliance with the consultation and layover requirements of section 115 of the URAA (19 U.S.C. 3524). Section 111(b) also authorizes the President to proclaim such modifications as are necessary to correct technical errors in Schedule XX or to make other rectifications to the Schedule.

(b) Section 111(a) of the URAA (19 U.S.C. 3521(a)) authorizes the President to proclaim such additional duties as the President determines to be necessary or appropriate to carry out Schedule XX.

3. Section 604 of the Trade Act of 1974 (1974 Act), as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

4. (a) Pursuant to section 111(b) of the URAA, I have determined that modifications to Schedule XX are necessary and that Schedule XX should be modified accordingly. In addition, I have determined to modify the HTS to implement the multilateral agreement on pharmaceuticals negotiated under the auspices of the WTO.

(b) Pursuant to section 111(a) of the URAA, I have determined that it is necessary or appropriate to modify the HTS to increase tariffs on products that were included erroneously in the pharmaceuticals agreement reached at the end of the Uruguay Round.

(c) On January 29, 1997, pursuant to section 115 of the URAA, the United States Trade Representative (USTR) submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (''the Committees'') that set forth the proposed tariff eliminations and corrections in existing tariff treatment, together with

the advice received from the appropriate private sector advisory committee and the U.S. International Trade Commission regarding such actions. During the 60-day period thereafter, the USTR consulted with the Committees on the proposed tariff eliminations and corrections.

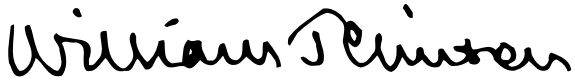
NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 111(a) and (b) of the URAA and section 604 of the 1974 Act, do hereby proclaim that:

(1) In order to implement the multilateral agreement negotiated under the auspices of the WTO to eliminate tariffs on certain pharmaceutical products and chemical intermediates, and to correct errors, Schedule XX and the pharmaceutical appendix to the HTS are modified as set forth in the Annex to this proclamation.

(2) The modifications to the HTS set forth in this proclamation shall be effective as provided in the Annex to this proclamation.

(3) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



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Annex

Modifications to the Harmonized Tariff Schedule of the United States ("HTS")

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 1, 1997.

Section A. For subheading 2833.29.50, the Rates of Duty 1 Special subcolumn is modified by inserting, in alphabetical order, the symbol "K," in the parentheses following the "Free" rate of duty in such subcolumn.

Section B. The Pharmaceutical Appendix ("the Appendix") to the Harmonized Tariff Schedule of the United States ("HTS") is modified as provided in this section.

(1). Table 1 of the Appendix is modified by--

(a). changing the CAS number for the following product:

Product	New Number	Old Number
CICLESONIDE	141845-82-1	126544-47-6

(b). deleting the following products and their CAS numbers:

Product	CAS Number	Product	CAS Number
BENZYL ALCOHOL	100-51-6	NORFLURANE	811-97-2
CALCIUM CARBIMIDE	156-62-7	PEGOTERATE	25038-59-9
CARBOMER	54182-57-9	PIMAGEDINE	79-17-4
CARMELLOSE	9000-11-7	POLICAPRAM	25038-54-4
CHOLINE CHLORIDE	67-48-1	POLITEF	9002-84-0
DIMETICONE	9006-65-9	PYROXYLIN	9004-70-0
GLUTAMIC ACID	56-86-0	THIODIGLYCOL	111-48-8
GLYCINE	56-40-6	THREONINE	72-19-5
HYPROMELLOSE	9004-65-3	TRICHLOROETHYLENE	79-01-6
LINDANE	58-89-9	TRYPTOPHAN	73-22-3
LYSINE	56-87-1	TYLOXAPOL	25301-02-4
MACROGOL	25322-68-3	ZINC ACETATE, BASIC	82279-57-0
MACROGOL ESTER			

(c). deleting the chemical name in column A and inserting the chemical name in column B in lieu thereof:

Column A	Column B
ADITOPRIME	ADITOPRIM
BROMOCYCLEN	BROMOCICLEN
CARBAZOCHROME SODIUM SULPHONATE	CARBAZOCHROME SODIUM SULFONATE
CORTICOTROPIN-ZINC HYDROXIDE	CORTICOTROPIN ZINC HYDROXIDE
ETAMIPHYLLIN	ETAMIPHYLLINE
FLOCALCITRIOL	FALECALCITRIOL
FOMEPIZOL	FOMEPIZOLE
FROPENEM	FAROPENEM
GLIPENTIDE	GLISENTIDE
ISEPAMICINE	ISEPAMICIN
POLYVIDONE	POVIDONE
SARMOXILLIN	SARMOXICILLIN

(d). adding the following new INNs, in alphabetical order, along with their CAS numbers:

Product	CAS Number	Product	CAS number
ABCIXIMAB	143653-53-6	APTIGANEL	137159-92-3
ABITESARTAN	137882-98-5	ARTEFLENE	123407-36-3
ACITAZANOLAST	114607-46-4	ATEXAKIN ALFA	143631-61-2
ADATANSERIN	127266-56-2	ATIBEPRONE	153420-96-3
ADEFOVIR	106941-25-7	ATORVASTATIN	134523-00-5
ADELMIDROL	1675-66-7	AZALANSTAT	143393-27-5
AFELIMOMAB	156227-98-4	AZIMILIDE	149908-53-2
AFOVIRSEN	151356-08-0	BALAZIPONE	137109-71-8
AGLEPRISTONE	124478-60-0	BALOFLOXACIN	127294-70-6
ALMAGODRATE		CASIFUNGIN	127785-64-2
ALNESPIRONE	138298-79-0	BATIMASTAT	130370-60-4
ALNIDITAN	152317-89-0	BERUPIPAM	150490-85-0
ANAKINRA	143090-92-0	BERVASTATIN	132017-01-7
ANASTROZOLE	120511-73-1	BESIPIRDINE	119257-34-0
ANTITHROMBIN III, HUMAN	9000-94-6	BETASIZOFIRAN	39464-87-4
APAXIFYLLINE	151581-23-6	BICALUTAMIDE	90357-06-5

Annex (continued)
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Section B. (con.).

(1). (con.)--
(d). (con.):

Product	CAS Number	Product	CAS number
BISNAFIDE	144849-63-8	IPIDACRINE	62732-44-9
BIVALIRUDIN	128270-60-0	IRALUKAST	151581-24-7
BOSENTAN	147536-97-8	IRBESARTAN	138402-11-6
CANDESARTAN	139481-59-7	ITAMELINE	121750-57-0
CANDOCURONIUM IODIDE	54278-85-2	LAFLUNIMUS	147076-36-6
CAPECITABINE	154361-50-9	LAFUTIDINE	118288-08-7
CAPROMAB	151763-64-3	LAMIFIBAN	144412-49-7
CARTASTEINE	149079-51-6	LANPERISONE	116287-14-0
CEFLUPRENAM	116853-25-9	LANPROSTON	105674-77-9
CEFOSELIS	122841-10-5	LAURCETIUM BROMIDE	1794-75-8
CERTOPARIN SODIUM		LEDISMASE	149394-67-2
CIDOFOVIR	113852-37-2	LENAPENEM	149951-16-6
CILMOSTIM	148637-05-2	LENERCEPT	156679-34-4
CINALUKAST	128312-51-6	LEPIRUDIN	138068-37-8
CIPAMFYLLINE	132210-43-6	LETROZOLE	112809-51-5
CISATRACURIUM BESILATE	96946-42-8	LEVORMELOXIFENE	78994-23-7
COLESTILAN	95522-45-5	LEVOSEMOTIADIL	116476-16-5
CROMOGLICATE LISETIL	110816-79-0	LEXACALCITOL	131875-08-6
CROSPOVIDONE	9003-39-8	LEXIPAFANT	139133-26-9
DACLIXIMAB	152923-56-3	LIREQUINIL	143943-73-1
DAPABUTAN	6582-31-6	LISOFYLLINE	100324-81-0
DARIFENACIN	133099-04-4	LOBUCAVIR	127759-89-1
DARSIDOMINE	137500-42-6	LOVIRIDE	147362-57-0
DELAVIRDINE	136817-59-9	LUBELUZOLE	144665-07-6
DELEQUAMINE	119905-05-4	LUTROPIN ALFA	152923-57-4
DENOTIVIR	51287-57-1	MANGAFODIPIR	155319-91-8
DESIRUDIN	120993-53-5	MAPINASTINE	140945-32-0
DETUMOMAB	145832-33-3	MAZAPERTINE	134208-17-6
DEXECADOTRIL	112573-72-5	MIBEFRADIL	
DEXKETOPROFEN	22161-81-5	116644-53-2	
DEXPEMEDOLAC	114030-44-3	MINOLTEPARIN SODIUM	
DIMADECTIN	156131-91-8	MIPITROBAN	136122-46-8
DOMITROBAN	112966-96-8	MIRISETRON	135905-89-4
DORNASE ALFA	143831-71-4	MOBENAKIN	124146-64-1
EBALZOTAN	149494-37-1	MOFAROTENE	125533-88-2
EFEGATRAN	105806-65-3	MONTELUKAST	158966-92-8
EFLETIRIZINE	150756-35-7	MONTEPLASE	156616-23-8
ELISARTAN	158682-68-9	MOROCTOCOG ALFA	
ELOPIPRAZOLE	115464-77-2	MUPLESTIM	148641-02-5
EMIDELTIDE	62568-57-4	MUROMONAB-CD3	
ENLIMOMAB	142864-19-5	NACOLOMAB TAFENATOX	150631-27-9
EPOETIN EPSILON	154725-65-2	NADROPARIN CALCIUM	
EPOETIN OMEGA	148363-16-0	NAPITANE	148152-63-0
EPRINOMECTIN	123997-26-2	NAPSAGATRAN	154397-77-0
EPROSARTAN	133040-01-4	NATEPLASE	159445-63-3
EPTACOG ALFA (ACTIVATED)	102786-52-7	NEMORUBICIN	108852-90-0
ERBULOZOLE		NETIVUDINE	84558-93-0
ERSENTILIDE	125279-79-0	NICANARTINE	150443-71-3
EXAMORELIN	140703-51-1	NICOTREDOLE	29876-14-0
FENLEUTON	141579-54-6	NUPAFANT	139133-27-0
FIBRIN, BOVINE		OCINAPLON	96604-21-6
FIBRIN, HUMAN		OCTOCOG ALFA	139076-62-3
FODIPIR	118248-91-2	ODULIMOMAB	159445-64-4
FOLLITROPIN ALFA	9002-68-0	OLOPATADINE	113806-05-6
FOZIVUDINE TIDOXIL	141790-23-0	OLPADRONIC ACID	63132-39-8
FRADAFIBAN	148396-36-5	OLPRINONE	106730-54-5
FULADECTIN		ONTAZOLAST	147432-77-7
GADOVERSETAMIDE	131069-91-5	ORIENTIPARCIN	159445-62-2
GADOXETIC ACID	135326-11-3	OXECLOSPORIN	135548-15-1
GALDANSETRON	116684-92-5	PAMICOGREL	101001-34-7
GECLOSPORIN	74436-00-3	PANAMESINE	139225-22-2
GLENVASTATIN	122254-45-9	PARNAPARIN SODIUM	
GORALATIDE	120081-14-3	PAZINACLONE	103255-66-9
IBANDRONIC ACID	114084-78-5	PAZUFLOXACIN	127045-41-4
ICOMETASONE ENBUTATE	103466-73-5	PEGORGOTEIN	155773-57-2
IDRAMANTONE	20098-14-0	PENTOSAN POLYSULFATE SODIUM	
IFETROBAN	143443-90-7	PEROSPIRONE	150915-41-6
IGANIDIPINE	119687-33-1	PICLAMILAST	144035-83-6
ILEPCIMIDE	82857-82-7	PIMILPROST	139403-31-9
ILOMASTAT	142880-36-2	PLUSONERMIN	
ILONIDAP	135202-79-8	POBILUKAST	107023-41-6
IMIDAPRILAT	89371-44-8	POLIXETONIUM CHLORIDE	31512-74-0
IMIGLUCERASE	154248-97-2	POLYSORBATE 1	9017-37-2
IMITRODAST	114686-12-3	POLYSORBATE 8	9009-51-2
INCADRONIC ACID	124351-85-5	POLYSORBATE 20	9005-64-5
INOGATRAN	155415-08-0	POLYSORBATE 21	9005-64-5
INOLIMOMAB	152981-31-2	POLYSORBATE 40	9005-66-7
INSULIN LISPRO	133107-64-9	POLYSORBATE 60	9005-67-8
INTERFERON ALFA	9008-11-1	POLYSORBATE 61	9005-67-8
INTERFERON BETA	9008-11-1	POLYSORBATE 65	9005-71-4
INTERFERON GAMMA	9008-11-1	POLYSORBATE 80	9005-65-6
IOLOPRIDE (123 I)	113716-48-6	POLYSORBATE 81	9005-65-6
IPENOXAZONE	104454-71-9	POLYSORBATE 85	9005-70-3

Annex (continued)
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Section B. (con.).

(1). (con.)--
(d). (con.):

Product	CAS Number	Product	CAS number
POLYSORBATE 120	1543262-61-5	TAGORIZINE	118420-47-6
POMISARTAN	144702-17-0	TALSACLIDINE	147025-53-4
PREMAFLOXACIN	143383-65-7	TAMIBAROTENE	94497-51-5
PRILIXIMAB	147191-91-1	TASOSARTAN	145733-36-4
PROPAGERMANIUM		TAZAROTENE	118292-40-3
PRULIFLOXACIN	123447-62-1	TAZOFELONE	136433-51-7
QUIFLAPON	136668-42-3	TECHNETIUM (99M TC) FURIFOSMIN	142481-95-6
RACECADOTRIL	81110-73-8	TELINAVIR	143224-34-4
RAMATROBAN	116649-85-5	TELMISARTAN	144701-48-4
RAMOSETRON	132036-88-5	TEVERELIX	144743-92-0
RASAGILINE	136236-51-6	THYMALFASIN	62304-98-7
REGAVIRUMAB	153101-26-9	TINZAPARIN SODIUM	
REPAGERMANIUM		TIROFIBAN	144494-65-5
REVIPARIN SODIUM		TOBORINONE	143343-83-3
RICASETRON	117086-68-7	TOLAFENTRINE	139308-65-9
RIPISARTAN	148504-51-2	TRADECAMIDE	132787-19-0
ROCEPAFANT	132418-36-1	TROVAFLOXACIN	147059-72-1
ROFLEPONIDE	144459-70-1	TROVIRDINE	149488-17-5
RUFINAMIDE	106308-44-5	VEDAPROFEN	71109-09-6
RUZADOLANE	115762-17-9	VERSETAMIDE	129009-83-2
SALNACEDIN	87573-01-1	VORICONAZOLE	137234-62-9
SAMIXOGREL	133276-80-9	VOTUMUMAB	148189-70-2
SANFETRINEM	156769-21-0	XANOMELINE	131986-45-3
SAPRISARTAN	146623-69-0	ZAFIRLUKAST	107753-78-6
SEPRILOSE	133692-55-4	ZALEPLON	151319-34-5
SERATRODAST	112665-43-7	ZANAMIVIR	139110-80-8
SETIPAFANT	132418-35-0	ZANKIREN	138742-43-5
SPIROGLUMIDE	137795-35-8	ZIFROSILONE	132236-18-1
SPRODIAMIDE	138721-73-0	ZIPRASIDONE	146939-27-7
STACOFYLLINE	98833-92-2	ZOLASARTAN	145781-32-4
SULFADIAZINE SODIUM	547-32-0	ZOLEDRONIC ACID	118072-93-8
SULODEXIDE	57821-29-1	ZUCAPSAICIN	25775-90-0
SUSALIMOD	149556-49-0		

(2). Table 2 of the Appendix is modified by adding the following chemical or INN derivative names in alphabetical order:

ACETURATE
N-ACETYLGLYCINATE
ACISTRATE
ACOXIL
AMSONATE
BENZATHINE
BEZOMIL
BUCICLATE
BUNAPSILATE
BUTEPRATE
BUTYL ESTER
CARBESILATE
P-CHLOROBENZENESULFONATE
P-CHLOROBENZENESULPHONATE
CICLOTATE
CIPIONATE
CLOSILATE
CLOSYLATE
CROBEFATE
CROMACATE
CROMESILATE
CYCLOPENTANEPROPIONATE
CYCLOTATE
CYPIONATE
DAPROPATE
DEANIL
DECIL
DIBUDINATE
DIBUNATE
DIETHANOLAMINE
DIGOLIL
N,N-DIMETHYL-B-ALANINE
DIOLAMINE
DOCOSIL
DOFOSFATE
EDAMINE
EDISYLATE
EPOLAMINE
ERBUMINE
ETABONATE
ETHANOLAMINE
ETHYLENEDIAMINE
FARNESIL
FENDIZOATE
FOSTEDATE
HIBENZATE
HYBENZATE
HYCLATE
o-(4-HYDROXYBENZOYL)BENZOATE
ISOCAPROATE
LAURIL
LAURILSULFATE
LAURYLSULPHATE
MEGALLATE
METEMBONATE
4-METHYLBICYCLO[2.2.2]OCT-2-ENE-1-CARBOXYLATE
MOFETIL
OCTIL
OLAMINE
OXOGLURATE
PENDETIDE
PIVOXETIL
PROXETIL
1-PYRROLIDINEETHANOL
SODIUM LAURIL SULFATE
SODIUM LAURIL SULPHATE
SODIUM LAURYL SULFATE
SODIUM LAURYL SULPHATE
STEAGLATE
TENOATE
TEPROSILATE
TETRADECYL HYDROGEN PHOSPHATE
TOFESILATE
TRICLOFENATE
TRIETHANOLAMINE
TRIFLUTATE
TROLAMINE
TROMETAMOL
TROMETHAMINE
TROXUNDATE
XINOFOATE

Annex (continued)
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Section B. (con.).

(3). Table 3 of the Appendix is modified by deleting the products and CAS numbers in such table and inserting the following products and CAS numbers in lieu thereof:

Product Name	CAS Number
2-Acetamido-2-deoxy-ß-D-glucopyranose	7512-17-6
2-[(2-Acetamido-6-oxo-6,9-dihydro-1H-purin-9-yl)methoxy]ethyl acetate	75128-73-3
2-(Acetoxymethyl)-4-(2-amino-6-chloropurin-9-yl)butyl acetate	97845-60-8
2-(Acetoxymethyl)-4-(benzyloxy)butyl acetate	131266-10-9
2-(Acetoxymethyl)-4-iodobutyl acetate	127047-77-2
3-Acetoxymethyl-7-[(R)-2-formyloxy-2-phenylacetamido]-3-cephem-4-carboxylic acid	87932-78-3
(3S,4R)-4-Acetoxy-3-[(R)-1-(tert-butyldimethylsilyloxy)ethyl]azetidin-2-one	76855-69-1
2-Acetylbenzo[b]thiophene	22720-75-8
α-Acetyl-γ-butyrolactone	517-23-7
Acetyldigoxin	5511-98-8
3'-Acetyl-4'-hydroxybutyranilide	40188-45-2
3'-Acetyl-2'-hydroxy-4-(4-phenylbutoxy)benzanilide	136450-06-1
N-(9-Acetyl-6-oxo-6,9-dihydro-1H-purin-2-yl)acetamide	3056-33-5
2-Acetylphenothiazine	6631-94-3
4-(4-Acetylpiperazin-4-yl)phenol	67914-60-7
N-Acetylsulfanilyl chloride	121-60-8
(2S)-1-(3-Acetylthio-2-methyl-1-oxopropyl)-L-proline	64838-55-7
D-(-)-3-Acetylthio-2-methylpropionic acid	76497-39-7
D-(-)-3-acetylthio-2-methylpropionyl chloride	74345-73-6
N-[(R)-2-(((R)-2-[(2-Adamantyloxycarbonyl)amino]-3-(1H-indol-3-yl)-2-methyl-1-oxopropyl)amino)-1-phenylethyl]succinamic acid--1-deoxy-1-methylamino-D-glucitol (1:1)	130404-91-0
Adenosine	58-61-7
3-[(S)-3-(L-Alanylamino)pyrrolidin-1-yl]-1-cyclopropyl-6-fluoro-4-oxo-1,4-dihydro-1,8-naphthyridine-3-carboxylic acid hydrochloride	122536-48-5
L-Alanyl-L-proline	13485-59-1
4-Aminobenzyl-N-methylmethanesulfonamide hydrochloride	88918-84-7
(S)-4-(4-Aminobenzyl)oxazolidin-2-one	152305-23-2
4-Aminobutyric acid	56-12-2
7-Aminocephalosporanic acid	957-68-6
4-Amino-6-chlorobenzene-1,3-disulfonamide	121-30-2
4-Amino-6-chlorobenzene-1,3-di(sulfonyl chloride)	671-89-6
4-Amino-2-chloro-6,7-dimethoxyquinazoline	23680-84-4
2-Amino-5-chloro-2'-fluorobenzophenone	784-38-3
4-Amino-5-chloro-N-(1-[3-(4-fluorophenoxy)propyl]-3-methoxy-4-piperidyl)-2-methoxybenzamide	104860-73-3
4-Amino-5-chloro-2-methoxybenzoic acid	7206-70-4
2-Amino-2'-chloro-5-nitrobenzophenone	2011-66-7
2-Amino-6-chloropurine	10310-21-1
(S)-5-Amino-2-(dibenzylamino)-1,6-diphenylhex-4-en-3-one	156732-13-7
trans-6-Amino-2,2-dimethyl-1,3-dioxepan-5-ol	79944-37-9
5-[(2-Aminoethyl)amino]-2-(2-diethylaminoethyl)-2H-[1]benzothiopyrano[4,3,2-cd]indazol-8-ol	119221-49-7
3-(2-Aminoethyl)-N-methylindol-5-ylmethanesulfonamide	88919-22-6
5-(2-Aminoethylthiomethyl)furfuryldimethylamine	66356-53-4
4-(2-Aminoethylthiomethyl)-1,3-thiazol-2-ylmethyl(dimethyl)amine, in the form of a solution in toluene	
6-Amino-5-formamido-1,3-dimethyluracil	7597-60-6
3'-Amino-2'-hydroxyacetophenone hydrochloride	90005-55-3
(2S)-2-Amino-3-hydroxy-N-pentylpropionamide--oxalic acid (1:1)	153758-31-7
(1S,2R)-1-Aminoindan-2-ol	126456-43-7
(4-Amino-3-iodophenyl)-N-methylmethanesulfonamide	151140-66-8
7-Amino-3-methoxymethyl-3-cephem-4-carboxylic acid	24701-69-7
7-Amino-3-methyl-3-cephem-4-carboxylic acid	22252-43-3
(1R,2R)-2-Amino-1-(4-methylsulfonylphenyl)propane-1,3-diol	51458-28-7
(1R,2R)-2-Amino-1-(4-methylsulfonylphenyl)propane-1,3-diol hydrochloride	56724-21-1
7-Amino-3-(1-methyltetrazol-5-ylthiomethyl)-3-cephem-4-carboxylic acid	24209-38-9
7-Amino-3-[(5-methyl-1,3,4-thiadiazol-2-yl)thiomethyl]-3-cephem-4-carboxylic acid	30246-33-4
2-(2-Amino-5-nitro-6-oxo-1,6-dihydropyrimidin-4-yl)-3-(3-thienyl)propiononitrile	115787-67-2
2-[(2-Amino-6-oxo-1,6-dihydro-9H-purin-9-yl)methoxy]ethyl N-(benzyloxycarbonyl)-L-valinate	124832-31-1
2-[4-(2-Amino-4-oxo-4,5-dihydrothiazol-5-ylmethyl)phenoxymethyl]-2,5,7,8-tetramethylchroman-6-yl acetate	171485-87-3
7-[(R)-Amino(phenyl)acetamido]-3-methyl-3-cephem-4-carboxylic acid dimethylformamide (2:1)	39754-02-4
5-[(R)-(2-Aminopropyl)]-2-methoxybenzenesulfonamide	112101-81-2
6-Aminopenicillanic acid	551-16-6
3-Aminopyrazole-4-carboxamide hemisulfate	27511-79-1
7-Amino-3-[1-(sulfomethyl)-1H-tetrazol-5-ylthiomethyl]-3-cephem-4-carboxylic acid, sodium salt	71420-85-4
(Z)-2-(2-Aminothiazol-4-yl)-2-methoxyiminoacetic acid	65872-41-5
(Z)-2-(2-Amino-1,3-thiazol-4-yl)-2-methoxyiminoacetyl chloride hydrochloride	119154-86-8
2-Amino-7-thenyl-1,7-dihydro-4H-pyrrolo[2,3-d]pyrimidin-4-one hydrochloride	117829-20-6
5-Amino-2,4,6-triiodoisophthaloyl dichloride	37441-29-5
7-Amino-3-[(Z)-prop-1-enyl]-3-cephem-4-carboxylic acid	106447-44-3
Ammonium (3R,5R)-7-[(1S,2S,6R,8S,8aR)-8-(2,2-dimethylbutyryloxy)-1,2,6,7,8a-hexahydro-2,6-dimethyl-1-naphthyl]-3,5-dihydroxyheptanoate	139893-43-9
Ammonium (3R,5R)-7-((1S,2S,6R,8S,8aR)-1,2,6,7,8,8a-hexahydro-2,6-dimethyl-8-[(2S)-2-methylbutyryloxy]-1-naphthyl)-3,5-dihydroxyheptanoate	77550-67-5
Ammonium (Z)-2-methoxyimino-2-(2-furyl)acetate	97148-39-5
Arginine L-glutamate (INNM)	4320-30-3
L-Asparagine hydrate	5794-13-8
3'-Azido-3'-deoxy-5'-O-tritylthymidine	29706-84-1
Benzhydryl 3-hydroxy-7-(phenylacetamido)cepham-4-carboxylate	**51762-51-7**
1-Benzhydrylpiperazine	841-77-0
1-(1,2-Benzisothiazol-3-yl)piperazine hydrochloride	87691-88-1
5-[(Benzofuran-2-ylcarbonyl)amino]indole-2-carboxylic acid	110314-42-6

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
S-(Benzothiazol-2-yl) (Z)-2-(2-aminothiazol-4-yl)-2-methoxyiminothioacetate	80756-85-0
(R)-2-(3-Benzoylphenyl)propionic acid	56105-81-8
(RS)-2-(3-Benzoylphenyl)propionic acid	22161-86-0
Benzyl L-alaninate--p-toluenesulfonic acid (1:1)	42854-62-6
Benzyl (1S,2S)-3-[(3S,4aS,8aS)-3-tert-butylcarbamoylperhydro-2-isoquinolyl]-2-hydroxy-1-(phenylthiomethyl)propylcarbamate	159878-04-3
Benzyl (1R,2S)-3-chloro-2-hydroxy-1-(phenylthiomethyl)propylcarbamate	159878-02-1
Benzyl hydroxy(4-phenylbutyl)phosphinoylacetate	87460-09-1
1-Benzyl-4-(methoxymethyl)-N-phenyl-4-piperidylamine	61380-02-7
Benzyl(methyl)amine	103-67-3
meso-N-Benzyl-3-nitrocyclopropane-1,2-dicarboximide	151860-15-0
(4S,5S)-5-Benzyl-2-oxo-1,3-oxazolidin-4-ylmethyl 4-nitrobenzenesulfonate	
N-(Benzyloxycarbonyl)-S-phenyl-L-cysteine	159453-24-4
(S)-3-Benzyloxycarbonyl-1,2,3,4-tetrahydroisoquinolinium p-toluenesulfonate	77497-97-3
N-(Benzyloxycarbonyl)-L-valine	1149-26-4
N-Benzyloxycarbonyl-DL-valine	3588-63-4
2-[(1-Benzyl-4-piperidyl)methylene]-5,6-dimethoxyindan-1-one	120014-07-5
(RS)-2-[(1-Benzyl-4-piperidyl)methyl]-5,6-dimethoxyindan-1-one	142057-79-2
Benzyl(2-pyridyl)amine	6935-27-9
2-[Benzyl(tert-butyl)amino]-1-(α,4-dihydroxy-m-tolyl)ethanol	24085-03-8
(2R,4S)-2-Benzyl-5-[2-(tert-butylcarbamoyl)-4-(3-pyridylmethyl)piperazin-1-yl]-4-hydroxy-N-[(1S,2R)-2-hydroxyindan-1-yl]valeramide	150378-17-9
(2R,4S)-2-Benzyl-5-[2-(tert-butylcarbamoyl)-4-(3-pyridylmethyl)piperazin-1-yl]-4-hydroxy-N-[(1S,2R)-2-hydroxyindan-1-yl]valeramide sulfate	157810-81-6
Benzyl(tert-butyl)(4-hydroxy-3-hydroxymethyl-4-oxophenethyl)ammonium chloride	24085-08-3
1,3-Bis(4-nitrophenyl)urea--4,6-dimethylpyrimidin-2-ol (1:1)	330-95-0
5,5-Bis(4-pyridylmethyl)-5H-cyclopenta[2,1-b:3,4-b']dipyridine hydrate	139781-09-2
4-Bromo-2,2-diphenylbutyric acid	37742-98-6
6-Bromo-2-naphthyl methyl ether	5111-65-9
4-(4-Bromophenyl)piperidin-4-ol	57988-58-6
6-Bromo-2-pyridyl p-tolyl ketone	87848-95-1
(2S,3S)-3-(tert-butoxycarbonylamino)-2-hydroxy-4-phenylbutyric acid	116661-86-0
7-((S)-3-[(S)-2-(tert-Butoxycarbonylamino)-1-oxopropylamino]pyrrolidin-1-yl)-1-cyclopropyl-6-fluoro-4-oxo-1,4-dihydro-1,8-naphthyridine-3-carboxylic acid	122536-91-8
7-[3-(tert-butoxycarbonylamino)pyrrolidin-1-yl]-8-chloro-1-cyclopropyl-6-fluoro-4-oxo-1,4-dihydroquinoline-3-carboxylic acid	105956-96-5
(3S)-1-(tert-butoxycarbonyl)-3-(tert-butylcarbamoyl)piperazine	150323-35-6
tert-Butyl [(1S,3S,4S)-4-amino-1-benzyl-3-hydroxy-5-phenylpentyl]carbamate	144163-85-9
tert-Butyl [(1S,2S)-1-benzyl-2,3-dihydroxypropyl]carbamate	149451-80-9
4'-tert-Butyl-4-chlorobutyrophenone	43076-61-5
2-Butyl-5-chloro-1H-imidazole-4-carbaldehyde	83857-96-9
2-Butyl-4-chloro-1-[2'-(2-trityl-2H-tetrazol-5-yl)biphenyl-4-ylmethyl]-1H-imidazol-5-ylmethanol	133909-99-6
N-tert-Butyl 3-cyanoandrosta-3,5-diene-17-carboxamide	151338-11-3
tert-Butyl [(4R,6R)-6-(cyanomethyl)-2,2-dimethyl-1,3-dioxolan-4-yl]acetate	125971-94-0
(3S,4aS,8aR)-N-tert-Butyldecahydroisoquinoline-3-carboxamide	136465-81-1
(5-[(Z)-3,5-Di(tert-butyl)-4-hydroxybenzylidene]-4-oxo-4,5-dihydrothiazol-2-yl)ammonium methanesulfonate	139340-56-0
2-sec-Butyl-4-(4-[4-(4-hydroxyphenyl)piperazin-1-yl]phenyl)-2H-1,2,4-triazol-3(4H)-one	106461-41-0
tert-Butyl meso-3-azabicyclo[3.1.0]hex-6-ylcarbamate	134575-17-0
(3S,4R)-3-[(R)-1-(tert-Butyldimethylsilyloxy)ethyl]-4-[(1R,3S)-3-methoxy-2-oxocyclohexyl]azetidin-2-one	135297-22-2
(3S,4aS,8aS)-N-(tert-Butyl)-2-[(2S,3S)-2-hydroxy-3-(3-hydroxy-2-methylbenzamido)-4-(phenylthio)butyl]perhydroisoquinoline-3-carboxamide	159989-64-7
(3S,4aS,8aS)-N-(tert-Butyl)-2-[(2S,3S)-2-hydroxy-3-(3-hydroxy-2-methylbenzamido)-4-(phenylthio)butyl]perhydroisoquinoline-3-carboxamide--methanesulfonic acid (1:1)	159989-65-8
N-(tert-Butyl)-3-methylpyridine-2-carboxamide	32998-95-1
1-(4-tert-Butylphenyl)-4-[4-(α-hydroxybenzhydryl)piperidino]butan-1-one	43076-30-8
tert-Butyl [(RS)-pyrrolidin-3-yl]carbamate	140629-77-2
tert-Butyl ((S)-1-methyl-2-oxo-2-[(S)-pyrrolidin-3-ylamino]ethyl)carbamate	122536-66-7
tert-Butyl ((S)-α-[(S)-oxiranyl]phenethyl)carbamate	98737-29-2
(S)-N-tert-Butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide	149182-72-9
tert-Butyl triphenylphosphoranylideneacetate	35000-38-5
Calcium bis(4-O-(β-D-galactopyranosyl)-D-gluconate)--calcium bromide (1:1)	33659-28-8
Calcium bis(4-O-(β-D-galactopyranosyl)-D-gluconate) dihydrate	110638-68-1
Calcium gluconate lactate	11116-97-5
2-Carbamoyloxypropyltrimethylammonium chloride	590-63-6
1-Carboxy-1-methylethoxyammonium chloride	89766-91-6
Carbenoxolone, dicholine salt (INNM)	74203-92-2
1-[2-(4-Carboxyphenoxy)ethyl]piperidinium chloride	84449-80-9
4-Carboxy-4-phenylpiperidinium p-toluenesulfonate	83949-32-0
Casanthranol	8024-48-4
(Z)-2-[2-(Chloroacetamido)thiazol-4-yl]-2-(methoxyimino)acetic acid	64486-18-6
1-(4-Chlorobenzenesulfonyl)urea	22663-37-2
1-Chloro-4,4-bis(4-fluorophenyl)butane	3312-04-7
(R)-α-(Chlorocarbonyl)benzyl formate	29169-64-0
2-Chloro-N-[2-(2-chlorobenzoyl)-4-nitrophenyl]acetamide	
1-Chloro-2-(chlorodiphenylmethyl)benzene	42074-68-0
7-Chloro-1-cyclopropyl-6-fluoro-4-oxo-1,4-dihydro-1,8-naphthyridine-3-carboxylic acid	100361-18-0
7-Chloro-1-cyclopropyl-6-fluoro-4-oxo-1,4-dihydroquinoline-3-carboxylic acid	86393-33-1
2-Chlorodibenz[b,f][1,4]oxazepin-11(10H)-one	3158-91-6
2-Chloro-4,5-difluorobenzoic acid	110877-64-0
8-Chloro-6,11-dihydro-11-(1-methyl-4-piperidylidene)-5H-benzo[5,6]cyclohepta[1,2-b]pyridine	38092-89-6
2-Chloro-9-(3-dimethylaminopropyl)-9H-thioxanthen-9-ol	4295-65-2

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
21-Chloro-9-ß,11-ß-epoxy-17-hydroxy-16-α-methylpregna-1,4-diene-3,20-dione	83881-08-7
(2-Chloroethyl)diisopropylamine hydrochloride	4261-68-1
7-Chloro-1-ethyl-6-fluoro-1,4-dihydro-4-oxoquinoline-3-carboxylic acid	68077-26-9
3-(2-Chloroethyl)-2-methyl-4H-pyrido[1,2-a]pyrimidin-4-one	41078-70-0
3-(2-Chloroethyl)quinazoline-2,4(1H,3H)-dione	5081-87-8
3-(2-Chloroethyl)-6,7,8,9-tetrahydro-2-methyl-4H-pyrido[1,2-a]pyrimidin-4-one hydrochloride	93076-03-0
4-Chloro-4'-fluorobutyrophenone	3874-54-2
7-Chloro-6-fluoro-1-(4-fluorophenyl)-1,4-dihydro-4-oxoquinoline-3-carboxylic acid	98105-79-4
[7-Chloro-5-(2-fluorophenyl)-2,3-dihydro-1H-1,4-benzodiazepin-2-yl]methylamine	59467-64-0
[7-Chloro-5-(2-fluorophenyl)-2,3-dihydro-1H-1,4-benzodiazepin-2-ylmethyl]ammonium bis(maleate)	59469-29-3
8-Chloro-6-(2-fluorophenyl)-1-methyl-3a,4-dihydro-3H-imidazo[1,5-a][1,4]benzodiazepine	59467-69-5
8-Chloro-6-(2-fluorophenyl)-1-methyl-4H-imidazo[1,5-a][1,4]benzodiazepine-3-carboxylic acid	59468-44-9
3-(2-Chloro-6-fluorophenyl)-5-methylisoxazole-4-carbonyl chloride	69399-79-7
7-Chloro-5-(2-fluorophenyl)-3-methyl-2-(nitromethylene)-2,3-dihydro-1H-1,4-benzodiazepine 4-oxide	59469-63-5
7-Chloro-5-(2-fluorophenyl)-2-(nitromethylene)-2,3-dihydro-1H-1,4-benzodiazepine	59467-63-9
(-)-α-(Chloroformyl)benzylammonium chloride	39878-87-0
3-Chloroformyl-o-tolyl acetate	167678-46-8
5-Chloro-2-[3-(hydroxymethyl)-5-methyl-4H-1,2,4-triazol-4-yl]benzophenone	38150-27-5
5-Chloroindolin-2-one	17630-75-0
4-Chloro-1'-(4-methoxyphenyl)benzohydrazide	16390-07-1
5-Chloro-1-methyl-4-nitroimidazole	4897-25-0
7-Chloro-2-methylquinoline	4965-33-7
5-Chloro-2-(3-methyl-4H-1,2,4-triazol-4-yl)benzophenone	36916-19-5
2-Chloronicotinic acid	2942-59-8
Chlorophenesin Carbamate (INNM)	886-74-8
2-Chlorophenothiazine	92-39-7
1-(3-Chlorophenyl)-4-(3-chloropropyl)piperazine hydrochloride	52605-52-4
trans-4-(p-Chlorophenyl)cyclohexanecarboxylic acid	49708-81-8
3-[2-(3-Chlorophenyl)ethyl]pyridine-2-carbonitrile	31255-57-9
3-[2-(3-Chlorophenyl)ethyl]-2-pyridyl 1-methyl-4-piperidyl ketone hydrochloride	107256-31-5
3-(2-Chlorophenyl)-5-methylisoxazole-4-carbonyl chloride	25629-50-9
1-(2-Chlorophenyl)piperazine hydrochloride	41202-32-8
1-(3-Chlorophenyl)piperazine hydrochloride	13078-15-4
4-(4-Chlorophenyl)piperidine-2,6-dione	84803-46-3
4-(4-Chlorophenyl)piperidin-4-ol	39512-49-7
5-Chloro-1-(4-piperidyl)-1H-benzimidazol-2(3H)-one	53786-28-0
1-(3-Chloropropyl)-2,6-dimethylpiperidinium chloride	83556-85-8
3-Chloropropyl 2,5-xylyl ether	31264-51-4
2-Chloro-3-pyridylamine	6298-19-7
3-[(E)-2-(7-Chloro-2-quinolyl)vinyl]benzaldehyde	120578-03-2
3-(4-Chloro-1,2,5-thiadiazol-3-yl)pyridine	131986-28-2
4-Chloro-α,α,α-trifluoro-3-nitrotoluene	121-17-5
ω-Conotoxin M VIIA	107452-89-1
(Z)-[Cyano(2,3-dichlorophenyl)methylene]carbazamidine	94213-23-7
1-(4-[(2-Cyanoethyl)thiomethyl]thiazol-2-yl)guanidine	76823-93-3
2-Cyano-3-morpholinoacrylamide	25229-97-4
L-N-(1-Cyano-1-vanillylethyl)acetamide	14818-98-5
(Z)-(2-Cyanovinyl)trimethylammonium p-toluenesulfonate	58311-73-2
2-Cyclohexa-1,4-dienylglycine	20763-30-8
1-([(Cyclohexyloxy)carbonyl]oxy)ethyl 1-(1-hydroxyethyl)-5-methoxy-2-oxo-1,2,5,6,7,8,8a,8b-octahydroazeto[2,1-a]isoindole-4-carboxylate	141646-08-4
trans-4-Cyclohexyl-2-proline hydrochloride	90657-55-9
1-Cyclopropyl-6,7-difluoro-1,4-dihydro-4-oxoquinoline-3-carboxylic acid	93107-30-3
1-Cyclopropyl-6,7-difluoro-8-methoxy-4-oxo-1,4-dihydroquinoline-3-carboxylic acid	112811-72-0
4-[2-(Cyclopropylmethoxy)ethyl]phenol	63659-16-5
Cytosine	71-30-7
Danaparoid sodium	83513-48-8
10-Deacetylbaccatin III	32981-86-5
4'-Demethylepipodophyllotoxin	6559-91-7
2-Deoxy-D-erythropentose	533-67-5
1-Deoxy-1-(octylamino)-D-glucitol	23323-37-7
Deoxyribonuclease	9003-98-9
Dexibuprofen lysine (INNM)	113403-10-4
5H-Dibenz[b,f]azepine	256-96-2
5H-Dibenzo[a,d]cyclohepten-5-one	2222-33-5
4-(5H-Dibenzo[a,d]cyclohepten-5-yl)piperidine	101904-56-7
3-(5H-Dibenzo[a,d]cyclohepten-5-ylpropyl)dimethylammonium chloride	1614-57-9
2-(2-[4-(Dibenzo[b,f][1,4]thiazepin-11-yl)piperazin-1-yl]ethoxy)ethanol	111974-69-7
Dibenzoyl-L-tartaric acid	2743-38-6
N,N'-Dibenzylethylenediammonium di(acetate)	122-75-8
5-(N,N-Dibenzylglycyl)salicylamide	30566-92-8
(3aS,6aR)-1,3-Dibenzyl-2,3,3a,4,6,6a-hexahydro-1H-furo[3,4-d]imidazole-2,4-dione	28092-62-8
α,4-Dibromo-2-fluorotoluene	76283-09-5
2,6-Dichloro-5-fluoronicotinic acid	82671-06-5
1,3-Dichloro-6,7,8,9,10,12-hexahydroazepino[2,1-b]quinazoline hydrochloride	149062-75-9
2',5-Dichloro-2-[3-(hydroxymethyl)-5-methyl-4H-1,2,4-triazol-4-yl]benzophenone	54196-62-2
(4R,5R)-2-(Dichloromethyl)-4,5-dihydro-5-(4-mesylphenyl)oxazol-4-ylmethanol	126813-11-4
2-(Dichloromethyl)-4,5-dihydro-5-(4-mesylphenyl)oxazol-4-ylmethanol	126429-09-2
2',5-Dichloro-2-(3-methyl-4H-1,2,4-triazol-4-yl)benzophenone	54196-61-1
4-(3,4-Dichlorophenyl)-3,4-dihydronaphthalen-1(2H)-one	79836-44-5
1-(2,4-Dichlorophenyl)-2-imidazol-1-ylethanol	24155-42-8
2-(2,4-Dichlorophenyl)-2-(1H-imidazol-1-ylmethyl)-1,3-dioxolan-4-ylmethanol	84682-23-5

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
1-(2,6-Dichlorophenyl)indolin-2-one	15362-40-0
3-(2,6-Dichlorophenyl)-5-methylisoxazole-4-carbonyl chloride	4462-55-9
1-(2,3-Dichlorophenyl)piperazine hydrochloride	41202-77-1
trans-(±)-4-(3,4-Dichlorophenyl)-1,2,3,4-tetrahydro-1-naphthyl(methyl)ammonium chloride	79617-99-5
cis-2-(2,4-Dichlorophenyl)-2-(1H-1,2,4-triazol-1-ylmethyl)-1,3-dioxolan-4-ylmethanol	67914-85-6
α,3-Dichlorotoluene	620-20-2
2′,3′-Dideoxyadenosine	4097-22-7
Dienestrol di(acetate) (INNM)	84-19-5
Diethyl ethoxymethylenemalonate	87-13-8
3,3-Diethyl-5-(hydroxymethyl)pyridine-2,4(1H,3H)-dione	20096-03-1
Diethylstilbestrol dibutyrate (INNM)	74664-03-2
Diethylstilbestrol dipropionate (INNM)	130-80-3
(Z)-3-(2-[4-(2,4-Difluoro-α-hydroxyiminobenzyl)piperidino]ethyl)-6,7,8,9-tetrahydro-2-methyl-4H-pyrido[1,2-a]pyrimidin-4-one	132961-05-8
1-(4,4′-Difluorobenzhydryl)piperazine	27469-60-9
6-α,9-Difluoro-11-β,17-α-dihydroxy-16-α-methyl-3-oxoandrosta-1,4-diene-17-β-carboxylic acid	28416-82-2
2-(2,4-Difluorophenyl)-1,3-bis(1H-1,2,4-triazol-1-yl)propan-2-ol	123631-92-5
1-(2,4-Difluorophenyl)-6,7-difluoro-1,4-dihydro-4-oxoquinoline-3-carboxylic acid	103995-01-3
(E)-(+)-2-(2,4-Difluorophenyl)-1-(3-[4-(2,2,3,3-tetrafluoropropoxy)styryl]-1H-1,2,4-triazol-1-yl)-3-(1H-1,2,4-triazol-1-yl)propan-2-ol	141113-28-2
(R)-2-(2,4-Difluorophenyl)-3-(1H-1,2,4-triazol-1-yl)propane-1,2-diol	141113-41-9
2,4′-Difluoro-2-(1H-1,2,4-triazol-1-yl)acetophenone hydrochloride	86386-75-6
1-(2,3-Dihydro-1,4-benzodioxin-2-ylcarbonyl)piperazine hydrochloride	70918-74-0
10,11-Dihydro-5H-dibenz[b,f]azepine	494-19-9
10,11-Dihydro-5H-dibenzo[a,d]cycloheptен-5-one	1210-35-1
3-(9,10-Dihydro-9,10-ethanoanthracen-9-yl)acrylaldehyde	38849-09-1
N-(5-[(1,4-Dihydro-2-methyl-4-oxoquinazolin-6-ylmethyl)methylamino]-2-thenoyl)-L-glutamic acid	112887-68-0
N-(5,6-Dihydro-6-methyl-2-sulfamoyl-4H-thieno[2,3-b]thiopyran-4-yl)acetamide 7,7-dioxide	120298-38-6
(4S,6S)-5,6-Dihydro-6-methyl-4H-thieno[2,3-b]thiopyran-4-ol 7,7-dioxide	147086-81-5
5,6-Dihydro-4-oxo-4H-thieno[2,3-b]thiine-2-sulfonamide	105951-31-3
5,6-Dihydro-4-oxo-4H-thieno[2,3-b]thiine-2-sulfonamide 7,7-dioxide	105951-35-7
{(1R,3R,5S)-3,5-Dihydroxy-2-[(E)-(3S)-3-hydroxyoct-1-enyl]cyclopentyl}acetic acid	56188-04-6
1,1-Diisopropoxycyclohexane	1132-95-2
Diisopropyl phosphorofluoridate	55-91-4
5,6-Dimethoxyindan-1-one	2107-69-9
1,1-Dimethoxy-2-(2-methoxyethoxy)ethane	94158-44-8
3,4-Dimethoxy-β-methylphenethylamine	55174-61-3
(R)-6,7-Dimethoxy-2-methyl-1-(3,4,5-trimethoxybenzyl)-1,2,3,4-tetrahydroisoquinoline --dibenzoyl-L-tartaric acid (1:1)	104832-01-1
α,α-Dimethoxy-2-nitrotoluene	20627-73-0
3,4-Dimethoxyphenethylamine	120-20-7
5,6-Dimethoxypyrimidin-4-ylamine	5018-45-1
6,7-Dimethoxyquinazoline-2,4(1H,3H)-dione	28888-44-0
4′-[2-(Dimethylamino)ethoxy]-2-phenylbutyrophenone	68047-07-4
(S)-4-{[3-(2-Dimethylaminoethyl)-1H-indol-5-yl]methyl}oxazolidin-2-one	139264-17-8
(2S,3R)-4-Dimethylamino-3-methyl-1,2-diphenylbutan-2-ol	38345-66-3
3-Dimethylaminomethyl-1,2,3,4-tetrahydro-9-methylcarbazol-4-one	132659-89-3
2-(Dimethylaminothio)acetamide hydrochloride	27366-72-9
Dimethyl cyanocarbonimidodithioate	10191-60-3
2,2-Dimethylcyclopropanecarboxamide	75885-58-4
(3aR,4bS,4R,4aS,5aS)-4-(5,5-Dimethyl-1,3-dioxolan-2-yl)hexahydrocyclopropa[3,4]cyclopenta[1,2-b]furan-2(3H)-one	39521-49-8
(S)-N,-N-Dimethyl-[3-(2-thienyl)-3-(1-naphthyloxy)propyl]amine--phosphoric acid (1:1)	161005-84-1
Dimethyl(2-[5-(1H-1,2,4-triazol-1-ylmethyl)indol-3-yl]ethyl)amine	144034-80-0
1-[5-(4,5-Diphenylimidazol-2-ylthio)pentyl]-1-heptyl-3-(2,4-difluorophenyl)urea	130804-35-2
1,2-Diphenyl-4-(2-phenylthioethyl)pyrazolidine-3,5-dione	3736-92-3
2,2-Diphenyl-4-piperidinovaleronitrile	5424-11-3
3,3-Diphenyltetrahydrofuran-2-ylidene(dimethyl)ammonium bromide	37743-18-3
Disodium 2,5-dihydro-5-thiooxo-1H-tetrazol-1-ylmethanesulfonate	66242-82-8
(S)-1,4-Dithia-7-azaspiro[4.4]nonane-8-carboxylic acid	124492-04-2
Enoxolone dihydrogen phosphate (INNM)	18416-35-8
9-β,11-β-Epoxy-17,21-dihydroxy-16-α-methylpregna-1,4-diene-3,20-dione	24916-90-3
9-β,11-β-Epoxy-17-α,21-dihydroxy-16-β-methylenepregna-1,4-diene-3,20-dione	981-34-0
2,3-Epoxypropyl 4-(2-methoxyethyl)phenyl ether	56718-70-8
Ethchlorvynol carbamate (INNM)	74283-25-3
(S,S)-N-(1-Ethoxycarbonyl-3-phenylpropyl)alanine	82717-96-2
2-Ethoxy-5-fluoropyrimidin-4(1H)-one	56177-80-1
Ethyl N-(2-[(acetylthio)methyl]-3-(o-tolyl)-1-oxopropyl)-L-methionate	136511-43-8
Ethyl 4-(2-amino-4-chloroanilino)piperidine-1-carboxylate	53786-45-1
Ethyl (S)-3-(4-aminophenyl)-2-phthalimidopropionate hydrochloride	97338-03-9
Ethyl 2-(2-amino-1,3-thiazol-4-yl)-2-hydroxyiminoacetate	64485-82-1
Ethyl (S)-3-(4-[bis(2-chloroethyl)amino]phenyl)-2-phthalimidopropionate hydrochloride	94213-26-0
Ethyl 2-(2-chloro-4,5-difluorobenzoyl)-3-(2,4-difluoroanilino)acrylate	
Ethyl 7-chloro-1-(2,4-difluorophenyl)-6-fluoro-1,4-dihydro-4-oxonaphthyridine-3-carboxylate	100491-29-0
Ethyl 3-(2-chloro-4,5-difluorophenyl)-3-hydroxyacrylate	121873-00-5
Ethyl 4-(5-chloro-2,3-dihydro-2-oxo-1H-benzimidazol-2-yl)piperidine-1-carboxylate	53786-46-2
Ethyl (7-chloro-2,4-dioxo-1,2,3,4-tetrahydroquinazolin-1-yl)acetate	112733-45-6
Ethyl 7-chloro-2-oxoheptanoate	78834-75-0
Ethyl 7-chloro-2-oxoheptanoate, in the form of a solution in toluene	
Ethyl (1-cyanocyclohexyl)acetate	133481-10-4
Ethyl 2-cyano-3-ethoxyacrylate	94-05-3
Ethyl [3-(cyanomethyl)-4-oxo-3,4-dihydrophthalazin-1-yl]acetate	122665-86-5
Ethyl 1-cyclopropyl-6,7-difluoro-4-oxo-1,4-dihydroquinoline-3-carboxylate	98349-25-8

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
1-Ethyl-1,4-dihydro-4-oxo-1,3-dioxolo[4,5-g]cinnoline-3-carbonitrile	28657-79-6
1-Ethyl-1,2-dihydro-5H-tetrazol-5-one	69048-98-2
4-Ethyl-2,3-dioxopiperazine-1-carbonyl chloride	59703-00-3
Ethyl 1-ethyl-6,7,8-trifluoro-1,4-dihydro-4-oxoquinoline-3-carboxylate	100501-62-0
Ethyl 4-[1-(4-fluorobenzyl)-1H-benzimidazol-2-ylamino]piperidine-1-carboxylate	84501-68-8
Ethyl (2-formamido-1,3-thiazol-4-yl)glyoxylate	64987-03-7
(S)-4-Ethyl-4-hydroxy-7,8-dihydro-1H-pyrano[3,4-f]indolizine-3,6,10(4H)-trione	110351-94-5
Ethyl 2-(hydroxyimino)-2-[2-(tritylamino)thiazol-4-yl]acetate hydrochloride	66339-00-2
Ethyl 4-hydroxy-2-methyl-2H-1,2-benzothiazine-3-carboxylate 1,1-dioxide	24683-26-9
2-(7-Ethyl-1H-indol-3-yl)ethanol	41340-36-7
Ethyl DL-mandelate	4358-88-7
3-Ethyl 5-methyl (±)-4-(2-chlorophenyl)-1,4-dihydro-2-[2-(1,3-dioxoisoindolin-2-yl)ethoxymethyl]pyridine-3,5-dicarboxylate	103094-30-0
Ethyl 2-oxo-4-phenylbutyrate	64920-29-2
Ethyl 4-oxopiperidine-1-carboxylate	29976-53-2
Ethyl 2-oxopyrrolidin-2-ylacetate	61516-73-2
5-Ethyl-4-(2-phenoxyethyl)-4H-1,2,4-triazol-3(2H)-one	95885-13-5
1-Ethylpyrrolidin-2-ylmethylamine	26116-12-1
Ethyl (S)-2-[(S)-4-methyl-2,5-dioxo-1,3-oxazolidin-3-yl]-4-phenylbutyrate	84793-24-8
Ethyl tetrazole-5-carboxylate	55408-10-1
Ethyl 1H-tetrazole-5-carboxylate, sodium salt	96107-94-7
Ethyl (Z)-2-(2-aminothiazol-4-yl)-2-(methoxyimino)acetate	64485-88-7
Fibrinuclease, powder	
2-[α-(4-Fluorobenzoyl)benzyl]-4-methyl-3-oxovaleranilide	125971-96-2
4-(4-Fluorobenzoyl)pyridinium p-toluenesulfonate	
4-Fluorobenzyl-1H-benzimidazol-2-ylamine	83783-69-1
[1-(4-Fluorobenzyl)-1H-benzimidazol-2-yl](4-piperidyl)amine	75970-99-9
2-[(1S,2R)-6-Fluoro-2-hydroxy-1-isopropyl-1,2,3,4-tetrahydro-2-naphthyl]ethyl p-toluenesulfonate	104265-58-9
6-[3-Fluoro-5-(4-methoxytetrahydropyran-4-yl)phenoxymethyl]-1-methyl-2-quinolone	140841-32-3
α-(6-Fluoro-2-methylinden-3-yl)-p-tolyl methyl sulfide, in the form of a solution in toluene	
(Z)-5-Fluoro-2-methyl-1-(4-methylthiobenzylidene)-1H-inden-3-ylacetic acid	49627-27-2
cis-1-[3-(4-Fluorophenoxy)propyl]-3-methoxy-4-piperidylamine	104860-26-6
1-(1-[3-[2-(4-Fluorophenyl)-1,3-dioxolan-2-yl]propyl)-4-piperidyl)-2,3-dihydro-1H-benzimidazole-2-thione	94732-98-6
(4R,6R)-6-(2-[2-(4-Fluorophenyl)-5-isopropyl-3-phenyl-4-(phenylcarbamoyl)pyrrol-1-yl]ethyl)-4-hydroxytetrahydro-2H-pyran-2-one	125995-03-1
1-(4-Fluorophenyl)-4-oxocyclohexanecarbonitrile	56326-98-8
1-(4-Fluorophenyl)piperazine dihydrochloride	64090-19-3
(S)-3-Formamido-2-formyloxypropionic acid	125496-24-4
(2-Formamido-1,3-thiazol-4-yl)glyoxylic acid	64987-06-0
2-(2-Formamido-1,3-thiazol-4-yl)-2-methoxyiminoacetic acid	65872-43-7
4-Formyl-N-isopropylbenzamide	13255-50-0
(3aR,4R,5R,6aS)-4-Formyl-2-oxohexahydro-2H-cyclopenta[b]furan-5-yl benzoate	39746-01-5
3-Formylrifamycin	13292-22-3
1-(2-Furoyl)piperazine	40172-95-0
4-O-β-D-Galactopyranosyl-D-gluconic acid	96-82-2
(α-D-Glucopyranosylthio)gold	12192-57-3
5-Glyoxyloylsalicylamide hydrate	141862-47-7
2-Guanidinothiazol-4-ylmethyl carbamimidothioate dihydrochloride	88046-01-9
1,1,1,3,3,3-Hexafluoropropan-2-ol	920-66-1
1,6-Hexanediamine, polymer with 1,10-dibromodecane	162430-94-6
Hexestrol dibutyrate (INNM)	36557-18-3
Hexestrol dipropionate (INNM)	59386-02-6
3-(4-Hexyloxy-1,2,5-thiadiazol-3-yl)-1-methylpyridinium iodide	131988-19-7
(3S,4S)-3-Hexyl-4-[(R)-2-(hydroxytridecyl)]oxetan-2-one	104872-06-2
N-(4-Hydrazinobenzyl)methanesulfonamide hydrochloride	81880-96-8
α-Hydroxy-β,β-dimethyl-γ-butyrolactone	599-04-2
DL-α-Hydroxy-β,β-dimethyl-γ-butyrolactone	79-50-5
N-(2-Hydroxyethyl)lactamide	5422-34-4
(2S,3S)-3-hydroxy-2-(4-methoxyphenyl)-2,3-dihydro-1,5-benzothiazepin-4(5H)-one	42399-49-5
17-α-Hydroxy-16-α-methyl-3,20-dioxopregna-1,4-dien-21-yl acetate	24510-54-1
17-α-Hydroxy-16-β-methyl-3,20-dioxopregna-1,4-dien-21-yl acetate	24510-55-2
17-α-Hydroxy-16-β-methyl-3,20-dioxopregna-1,4,9(11)-trien-21-yl acetate	910-99-6
17-Hydroxy-16-α-methyl-3,20-dioxopregna-1,4,9(11)-trien-21-yl acetate	10106-41-9
2-Hydroxy-4-(methylthio)butyric acid	583-91-5
trans-4-Hydroxy-1-(4-nitrobenzyloxycarbonyl)-L-proline	96034-57-0
(3R,4S)-3-Hydroxy-4-phenylazetidin-2-one	132127-34-5
D-2-(4-Hydroxyphenyl)glycine	22818-40-2
11-α-Hydroxypregn-4-ene-3,20-dione	80-75-1
3-β-Hydroxy-5-α-spirostan-12-one	467-55-0
Indan-5-yl hydrogen phenylmalonate	27932-00-9
Intermediate concentrate obtained from a genetically-modified Escherichia coli fermentation medium, containing human granulocyte-macrophage colony-stimulating factor; for use in the manufacture of medicaments of HS No. 3002	
Intermediate concentrate obtained from a genetically-modified Escherichia coli fermentation medium, containing human interferon α-2b; for use in the manufacture of medicaments of HS No. 3002	
Intermediate concentrates obtained from a Micromonospora inyoensis fermentation medium used for the manufacture of the antibiotics sisomicin (INN) and netilmicin (INN)	
Intermediate concentrates obtained from a Micromonospora purpurea fermentation medium used for the manufacture of the antibiotics gentamicin sulfate (INNM) and isepamicin (INN)	
Iodomethyl penicillanate 1,1-dioxide	76247-39-7

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
2-Iodo-4-(1H-1,2,4-triazol-1-ylmethyl)aniline	160194-26-3
Isobutyl 3,4-epoxybutyrate	111006-10-1
1-Isopropenyl-1H-benzimidazol-2(3H)-one	52099-72-6
3-Isopropoxy-5-methoxy-N-(1H-tetrazol-5-yl)benzo[b]thiophene-2-carboxamide	104795-66-6
3-Isopropoxy-5-methoxy-N-(1H-tetrazol-5-yl)benzo[b]thiophene-2-carboxamide --1H-imidazole (1:1)	104795-67-7
3-Isopropoxy-5-methoxy-N-(1H-tetrazol-5-yl)benzo[b]thiophene-2-carboxamide, sodium salt	104795-68-8
Isopropyl 2,3-dihydro-1H-pyrrolizine-1-carboxylate	66635-71-0
4-(4-Isopropylpiperazin-1-yl)phenol	67914-97-0
Isopropyl[2-(piperazin-1-yl)-3-pyridyl]amine	147539-21-7
N-[2-Isopropylthiazol-4-ylmethyl(methyl)carbamoyl]-L-valine	154212-61-0
Lysozyme chloride	9001-63-2
L-lysyl-L-leucyl-L-leucyl-L-leucyl-L-leucyl-L-leucyl-L-lysyl-L-leucyl-L-leucyl-L-leucyl-L-leucyl-L-lysyl-L-leucyl-L-leucyl-L-leucyl-L-leucyl-L-leucyl-L-leucyl-L-lysyl-L-leucyl-L-leucyl-L-lysine	138531-07-4
Magnesium bis[(2,3-dihydro-1,5-dimethyl-3-oxo-2-phenyl-1H-pyrazol-4-yl)methylamino] methanesulfonate	6150-97-6
Magnesium bis(4-nitrobenzyl malonate) dihydrate	
7-[(D)-Mandelamido]cephalosporanic acid	51818-85-0
D-Mandelic acid	611-71-2
(1R,2S,5R)-Menthyl (2R,5S)-5-(4-amino-2-oxo-1,2-dihydropyrimidin-1-yl)-1,3-oxathiolane-2-carboxylate	147027-10-9
(1R,2S,5R)-Menthyl (2R,5R)-5-hydroxy-1,3-oxathiolane-2-carboxylate	147126-62-3
N-(2-Mercaptoethyl)propionamide	67305-72-0
5-Methanesulfonamidoindole-2-carboxylic acid	150975-95-4
(Z)-2-Methoxyimino-2-[2-(tritylamino)thiazol-4-yl]acetic acid	66215-71-2
5-Methoxybenzimidazole-2-thiol	37052-78-1
4-Methoxybenzyl 3-chloromethyl-7-(2-phenylacetamido)-3-cephem-4-carboxylate	104146-10-3
4-Methoxy-3,5-dimethyl-2-pyridylmethanol	86604-78-6
9-Methoxyfuro[3,2-g]chromen-7-one	298-81-7
6-Methoxy-2-(4-methoxyphenyl)benzo[b]thiophene	63675-74-1
N-[4-(Methoxymethyl)-4-piperidyl]-N-phenylpropionamide hydrochloride	84196-16-7
(9S,13S,14S)-3-Methoxymorphinan hydrochloride	1087-69-0
6-Methoxy-2-naphthaldehyde	3453-33-6
(RS)-2-(6-Methoxy-2-naphthyl)propionic acid	26159-31-9
1-[2-(4-Methoxyphenyl)ethyl]-4-piperidylamine dihydrochloride	108555-25-5
1-(2-Methoxyphenyl)piperazine	35386-24-4
1-(2-Methoxyphenyl)piperazine hydrochloride	5464-78-8
Methyl 4-acetamido-5-chloro-o-anisate	4093-31-6
Methyl 3-aminocrotonate	14205-39-1
Methyl 3-amino-5,6-dichloropyrazine-2-carboxylate	1458-18-0
Methyl (2R,3S)-3-benzamido-2-hydroxy-3-phenylpropionate	32981-85-4
2-(N-Methylbenzylamino)ethyl 3-aminobut-2-enoate	54527-73-0
4'-Methylbiphenyl-2-carbonitrile	114772-53-1
5-(4'-Methylbiphenyl-2-yl)-1-trityl-1H-tetrazole	124750-53-4
9-(3-Methylbut-2-enyloxy)-7H-furo[3,2-g]chromen-7-one	482-44-0
(1S)-2-Methyl-2,5-diazabicyclo[2.2.1]heptane dihydrobromide	125224-62-6
3-Methyl-2-(3,4-dimethoxyphenyl)butyronitrile	20850-49-1
3-[(3aS,4S,7aS)-7a-Methyl-1,5-dioxooctahydro-1H-inden-4-yl]propionic acid	1944-63-4
3,4-(Methylenedioxy)phenol	533-31-3
Methyl (2R,3S)-2,3-epoxy-3-(4-methoxyphenyl)propionate	105560-93-8
Methyl 5-glyoxyloylsalicylate hydrate	29754-58-3
Methyl hydrogen (2S,3R)-3-amino-2-[(S)-(1-hydroxyethyl)]glutarate	79814-47-4
Methyl (R)-3-hydroxybutyrate	3976-69-0
Methyl 7-[(3RS)-3-hydroxy-5-oxocyclopent-1-enyl]heptanoate	40098-26-8
4-Methylimidazole	822-36-6
Methyl 2-methoxy-5-methylsulfonylbenzoate	63484-12-8
Methyl 1-methylpyrrol-2-ylacetate	51856-79-2
Methyl(1-methylthio-2-nitrovinyl)amine	61832-41-5
5-Methyl-2-(2-nitroanilino)thiophene-3-carbonitrile	138564-59-7
Methyl 2-(3-nitrobenzylidene)-3-oxobutyrate	39562-17-9
2-Methyl-4-nitroimidazole	696-23-1
Methyl (4-nitrophenyl)-L-alaninate	81677-60-3
Methyl 3-oxo-4-aza-5-α-androst-1-ene-17-β-carboxylate	103335-41-7
Methyl 5-pentafluoroethyl-2-propylimidazole-4-carboxylate	150097-92-0
3-Methyl-7-(phenylacetamido)-3-cephem-4-carboxylic acid	27255-72-7
5-Methyl-3-phenylisoxazole-4-carbonyl chloride	16883-16-2
4-Methylpiperazin-1-ylamine	6928-85-4
5-(1-Methyl-4-piperidyl)-5H-dibenzo[a,d]cyclohepten-5-ol hydrochloride	4046-24-6
[(2-Methyl-1-propionyloxypropoxy)(4-phenylbutyl)phosphinoyl]acetic acid	123599-78-0
[(2-Methyl-1-propionyloxypropoxy)(4-phenylbutyl)phosphinoyl]acetic acid--cinchonidine (1:1)	123599-79-1
{(S)-[(R)-2-methyl-1-propionyloxypropoxy](4-phenylbutyl)phosphinoyl}acetic acid	128948-01-6
5-Methylpyrazine-2-carboxylic acid	5521-55-1
1-Methyl-1,2,5,6-tetrahydropyridine-3-carbaldehyde (E)-O-methyloxime hydrochloride	139886-04-7
1-Methyltetrazole-5-thiol	13183-79-4
5-Methyl-1,3,4-thiadiazole-2-thiol	29490-19-5
Methyl 1H-1,2,4-triazole-3-carboxylate	4928-88-5
2-Methyl-N-(α,α,α-trifluoro-m-tolyl)propionamide	1939-27-1
3-Methyl-2-(3,4,5-trimethoxyphenyl)butyronitrile	36622-33-0
4-Methylvalerophenone	645-13-6
4-Morpholin-2-ylpyrocatechol hydrochloride	13062-59-4
O-2-Naphthyl chlorothioformate	10506-37-3
4-Nitrobenzyl 7-amino-3-chloro-3-cephem-4-carboxylate	53994-83-5
4-Nitrobenzyl 3-methylene-7-(phenoxyacetamido)cepham-4-carboxylate 5-oxide	63427-57-6

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
4-Nitrobenzyl 6-(2-phenoxyacetamido)penicillanate 1-oxide	29707-62-8
p-Nitrobenzyl (2R,5R,6S)-6-[(R)-1-hydroxyethyl]-3,7-dioxo-1-azabicyclo[3.2.0]heptane-2-carboxylate	75363-99-4
3-(4-Nitrophenyl)-L-alanine	949-99-5
4-Nitrophenyl thiazol-5-ylmethyl carbonate hydrochloride	154212-59-6
1-(o-Tolyl)piperazine hydrochloride	70849-60-4
(E)-Oct-4-ene-1,8-dioic acid	48059-97-8
3-Oxo-4-aza-5-α-androstane-17-β-carboxylic acid	103335-55-3
3-Oxo-4-azaandrost-5-ene-17-β-carboxylic acid	103335-54-2
20-Oxopregna-5,16-dien-3-β-yl acetate	979-02-2
3-Oxopregn-4-ene-21,17-α-carbolactone	976-70-5
2-Oxo-5-vinylpyrrolidine-3-carboxamide	71107-19-2
Pentamethylene bis(3-[1-(3,4-dimethoxybenzyl)-6,7-dimethoxy-1,2,3,4-tetrahydro-2-isoquinolyl]propionate)--oxalic acid (1:2)	64228-78-0
Pentyl chloroformate	638-41-5
(7RS,9aRS)-Perhydropyrido[1,2-a]pyrazin-7-ylmethanol	145012-50-6
Phenmetrazine teoclate (INNM)	13931-75-4
Phenothiazin-2-ylamine	32338-15-1
2-(3-Phenoxyphenyl)propiononitrile	32852-95-2
4-(4-Phenylbutoxy)benzoic acid	30131-16-9
(1R,2S,3S,6R)-[(S)-1-Phenylethyl]-3,6-epoxytetrahydrophthalimide	
D-α-Phenylglycine	875-74-1
Phenyl hydrogen phenylmalonate	21601-78-5
1-Phenylpiperazinium chloride	2210-93-7
2-Phenyl-2-(2-piperidyl)acetic acid	19395-41-6
N-Phenyl-N-(4-piperidyl)propionamide	1609-66-1
2-Phenylpropane-1,3-diol	1570-95-2
4-(Piperazin-1-yl)-2,6-bis(pyrrolidin-1-yl)pyrimidine	111641-17-9
2-Piperazin-1-ylpyrimidine dihydrochloride	94021-22-4
1-(4-Piperidyl)-1H-benzimidazol-2(3H)-one	20662-53-7
1-Piperonylpiperazine	32231-06-4
Potassium clavulanate--microcrystalline cellulose (1:1)	
Potassium clavulanate--silicon dioxide (1:1)	
Potassium clavulanate--sucrose (1:1)	
Potassium 1-(1-hydroxyethyl)-5-methoxy-2-oxo-1,2,5,6,7,8,8a,8b-octahydroazeto[2,1-a]isoindole-4-carboxylate	141316-45-2
Potassium (R)-2-(4-hydroxyphenyl)-N-(3-methoxy-1-methyl-3-oxoprop-1-enyl)glycinate	69416-61-1
Potassium (R)-N-(3-methoxy-1-methyl-3-oxoprop-1-enyl)-2-phenylglycinate	34582-65-5
Purin-6(1H)-one	68-94-0
1-(2-Pyridyl)-3-(pyrrolidin-1-yl)-1-(p-tolyl)propan-1-ol	70708-28-0
Pyrrolidin-3-ylamine dihydrochloride	103831-11-4
N-(2-Quinolylcarbonyloxy)succinimide	136465-99-1
Quinuclidine	100-76-5
Quinuclidin-3-ol	1619-34-7
D-Ribose	50-69-1
Rifamycin O	14487-05-9
Sennoside A	81-27-6
Sennoside A, calcium salt	52730-36-6
Sennoside B	128-57-4
Sennoside B, calcium salt	52730-37-7
Sodium 4-chloro-1-hydroxybutane-1-sulfonate	54322-20-2
Sodium (R)-1-[(1-(3-[2-(7-chloro-2-quinolyl)vinyl]phenyl)-3-[2-(1-hydroxy-1-methylethyl)phenyl]propyl)thiomethyl]cyclopropylacetate	142522-81-4
Sodium 2-hydroxy-1-(4-hydroxy-3-methoxyphenyl)propane-2-sulfonate	83682-27-3
Sodium (R)-2-(4-hydroxyphenyl)-N-(3-methoxy-1-methyl-3-oxoprop-1-enyl)glycinate	26787-84-8
Sodium (R)-N-(3-methoxy-1-methyl-3-oxoprop-1-enyl)-2-phenylglycinate	13291-96-8
Sodium 4-[2-(5-methylpyrazine-2-carboxamido)ethyl]benzenesulfonamide	84522-34-9
N-(2-(4-Sulfamoyl)phenyl)ethyl-5-chloro-2-methoxybenzamide	16673-34-0
2,3,4,6-Tetra-O-acetyl-β-D-glucopyranosyl carbamimidothioate hydrobromide	40591-65-9
1,2,3,5-Tetraacetyl-β-D-ribofuranose	13035-61-5
1,4,7,10-Tetraazoniacyclododecane bis(sulfate)	112193-77-8
1,4,7,10-Tetraazacyclododecane-1,4,7-triacetic acid sulfate	
1,4,7,10-Tetraazacyclododecane-1,4,7-triyltriacetic acid	114873-37-9
4-(2,2,3,3-Tetrafluoropropoxy)cinnamonitrile	123632-23-5
1-(Tetrahydro-2-furoyl)piperazine	63074-07-7
1,2,3,4-Tetrahydro-2-isopropylaminomethyl-6-methyl-7-nitroquinoline methanesulfonate	22982-78-1
1,2,3,4-Tetrahydro-9-methylcarbazol-4-one	27387-31-1
1,2,3,4-Tetrahydro-9-methyl-3-(2-methyl-1H-imidazol-1-ylmethyl)carbazol-4-one	99614-02-5
(RS)-Tetrahydropapaverine hydrochloride	66820-84-6
Tetrahydro-2-methyl-3-thioxo-1,2,4-triazine-5,6-dione	58909-39-0
1-(1,2,3,6-Tetrahydro-4-pyridyl)-1H-benzimidazol-2(3H)-one	2147-83-3
3,7,11,15-Tetramethylhexadec-1-en-3-ol	505-32-8
1H-Tetrazol-1-ylacetic acid	21732-17-2
Thiazol-5-ylmethanol	38585-74-9
Thiazol-5-ylmethyl (1S,2S,4S)-1-benzyl-2-hydroxy-4-((2S)-2-[3-(2-isopropylthiazol-4-ylmethyl)-3-methylureido]-3-methylbutyramido)-5-phenylpentylcarbamate	155213-67-5
2-Thienylacetyl chloride	39098-97-0
3-Thienylmalonic acid	21080-92-2
Thiophene-2-carbonyl chloride	5271-67-0
1H-1,2,4-Triazole-3-carboxamide	3641-08-5
1H-1,2,4-Triazole-3-carboxylic acid	4928-87-4
1,2,4-Triazolo[4,3-a]pyridin-3(2H)-one	6969-71-7
2,2',4'-Trichloroacetophenone	4252-78-2
Triethyl 3-bromopropane-1,1,1-tricarboxylate	71170-82-6

Annex (continued)
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Section B. (con.).

(3). (con.):

Product Name	CAS Number
N'6-Trifluoroacetyl-L-lysyl-L-proline	103300-89-6
N'6-Trifluoroacetyl-L-lysyl-L-proline p-toluenesulfonate	105641-23-4
α',α',α'-Trifluoro-2,3-xylidine	54396-44-0
11-α,17,21-Trihydroxy-16-B-methylpregna-1,4-diene-3,20-dione	85700-75-0
3,4,5-Trimethoxyphenylacetonitrile	13338-63-1
2,3,5-Trimethylhydroquinone	700-13-0
5'-O-Tritylthymidine	55612-11-8
3'-O-mesyl-5'-O-Tritylthymidine	104218-44-2

[FR Doc. 97–8838 Filed 4–2–97; 1:54 pm]
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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 3, 1997

FEDERAL COMMUNICATIONS COMMISSION

Telecommunications Act of 1996; implementation:
- Common carrier services—
  - Inftrastructure sharing provisions; published 3-4-97

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; published 4-3-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 2-27-97
- Dornier; published 2-27-97

TREASURY DEPARTMENT

Thrift Supervision Office

Economic Growth and Regulatory Paperwork Reduction Act; implementation:
- Lending and investment authority expansion, qualified thrift lender (QTL) test amendment, etc.; published 4-3-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Exotic Newcastle Disease; disease status change—
  - Great Britain; comments due by 4-8-97; published 2-7-97

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

Small business innovation research grants program; administrative provisions; comments due by 4-10-97; published 3-11-97

AGRICULTURE DEPARTMENT

Food and Consumer Service

Child nutrition programs:
- Child and adult care food program—
  - Day care home reimbursements; targeting improvement; comments due by 4-7-97; published 1-7-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 4-7-97; published 3-19-97
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 4-8-97; published 2-7-97

Magnuson-Stevens Fishery Conservation and Management Act; implementation:
- Limited access permits; central title and lien registry; comments due by 4-7-97; published 3-6-97

DEFENSE DEPARTMENT

Acquisition regulations:
- Berry Amendment application to synthetic fabric and coated synthetic fabric and contracts and subcontracts for commercial items; comments due by 4-8-97; published 2-7-97

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):
- Authorization to construct, operate, or modify facilities used for exportation or importation of natural gas; comments due by 4-11-97; published 2-10-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans:
- Preparation, adoption, and submittal—
  - Sulfur oxide (sulfur dioxide) emissions reduction; comments due by 4-11-97; published 3-20-97

Air quality implementation plans; approval and promulgation; various States:
- Delaware; comments due by 4-11-97; published 3-12-97
- Illinois; comments due by 4-11-97; published 3-12-97
- Oregon; comments due by 4-7-97; published 3-7-97
- Pennsylvania; comments due by 4-10-97; published 3-11-97
- Virginia; comments due by 4-11-97; published 3-12-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Oregon; comments due by 4-7-97; published 3-7-97
- Virginia; comments due by 4-11-97; published 3-12-97
- Washington et al.; comments due by 4-7-97; published 3-7-97

Hazardous waste program authorizations:
- Nevada; comments due by 4-7-97; published 3-7-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Arkansas; comments due by 4-7-97; published 2-21-97
- Idaho; comments due by 4-7-97; published 2-21-97
- Illinois; comments due by 4-7-97; published 2-21-97
- Kentucky; comments due by 4-7-97; published 2-21-97
- Louisiana; comments due by 4-7-97; published 2-21-97
- Montana; comments due by 4-7-97; published 2-21-97
- North Dakota; comments due by 4-7-97; published 2-21-97
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- Utah; comments due by 4-7-97; published 2-21-97
- Washington; comments due by 4-7-97; published 2-21-97

FEDERAL EMERGENCY MANAGEMENT AGENCY

Disaster assistance:
- Robert T. Stafford Disaster Relief and Emergency Assistance Act—
  - Criminal and Civil penalties; comments due by 4-11-97; published 2-10-97

GOVERNMENT ETHICS OFFICE

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- Executive agency ethics training programs; comments due by 4-11-97; published 3-12-97

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Food and Drug Administration

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- Paper and paperboard components—
  - Perfluoroalkyl substituted phophate ester acids, ammonium salts; comments due by 4-7-97; published 3-7-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

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- National Institutes of Health clinical research loan repayment program for Individuals from disadvantaged backgrounds; comments due by 4-11-97; published 2-10-97

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 4-7-97; published 3-7-97

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- Reduction in force—
  - Retention service credit received based on job performance; comments due by 4-7-97; published 2-4-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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- British Aerospace; comments due by 4-9-97; published 2-28-97
- Construcciones Aeronauticas, S.A.; comments due by 4-10-97; published 3-3-97
- Eurocopter Deutschland GmbH; comments due by 4-7-97; published 2-4-97
- McDonnell Douglas; comments due by 4-7-97; published 2-26-97
- Mitsubishi; comments due by 4-7-97; published 2-26-97
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Income taxes:

Inflation-indexed debt instruments; cross-reference; comments due by 4-7-97; published 1-6-97

Obligation-shifting transactions, multiple-party; realized income and deductions; comments due by 4-8-97; published 12-27-96

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

S. 410/P.L. 105–8

To extend the effective date of the Investment Advisers Supervision Coordination Act. (Mar. 31, 1997; 111 Stat. 15)

Last List April 1, 1997