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Wednesday
May 14, 1997

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Reader Aids

Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 93
Wednesday, May 14, 1997

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Affiliation With Investment Companies; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** on March 12, 1997(62 FR 11317). That rule amended 13 CFR 121.103(b)(5) by incorporating changes made to the Small Business InvestmentAct of 1958 (SBIAct). It contained several minor errors which could be misleading if not corrected.

EFFECTIVE DATE: This corrective rule is effective retroactive to March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, AssistantAdministrator for Size Standards, 409 3rd Street, SW.,Washington, DC 20416, (202) 202–6618.

SUPPLEMENTARY INFORMATION: The final rule published at 62 FR 11317 onMarch 12, 1997 inadvertently contained minor typographical errors. First, the name of the SBIAct was incorrectly stated as the Small Business Investment Company Act of 1958.The correct name is the Small Business Investment Act of1958. The word ''an'' was incorrectly stated as ''(and''; ''(b)(5)(i)'' was incorrectly stated as ''(b)(5)(I)''. This rule corrects these erroneous references.

Therefore, in FR Doc. 97–5739, published in the **FederalRegister** issue of March 12, 1997, (62 FR 11317), on page 11318, in the second column, the § 121.103(b)(5) introductory text is corrected to read as follows:

* * * * *

(5) For financial, management or technical assistance under the Small Business Investment Act of 1958, as amended, an applicant is not affiliated with the investors listed in paragraphs (b)(5) (i) through (vi) of this section.

* * * * *

Dated: May 2, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–12555 Filed 5–13–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–12–AD; Amendment 39–10027; AD 96–26–52 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface; repetitive inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance; and repair of any discrepancy found. The actions specified by that AD are intended to prevent migration of this fuse pin, which, if not detected and corrected in a timely manner, could result in failure of the engine pylon and consequent separation of the engine from the wing. This amendment increases the intervals between inspections of the access doors and each midspar/spring beam fuse pin, and consequently decreases the frequency of inspections. This amendment is prompted by new data provided by the manufacturer indicating that the reported migration of the fuse pin was apparently the result of an incorrectly installed nut.

EFFECTIVE DATE: June 18, 1997.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Dow, Aerospace Engineer,Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 96–26–52, amendment 39–9868 (62 FR 302, January 3, 1997), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on February 12, 1997 (62 FR 6499). That action proposed to continue to require repetitive inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface, repetitive inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance, and repair of any discrepancy found. That action also proposed to increase the intervals between inspections of the access doors and each midspar/spring beam fuse pin, and consequently decrease the frequency of inspections.

Comments on the Proposal

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supports the proposal.

One commenter requests that the proposed frequency of repetitive inspections of the access doors to each midspar/spring beam fuse pin and each fuse pin be altered to 5,000 hours time-in-service, or 15 months, whichever occurs first; this interval is equivalent to the maintenance interval specified in the operator's Maintenance ReviewBoard (MRB) report. The commenter considers that adoption of the FAA's proposed interval of 1,000 landings or 18 months, whichever occurs first, would require certain operators to schedule special times for the accomplishment of this inspection.

The FAA concurs that the compliance times can be revised somewhat. The

FAA's intent was that inspections be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA recognizes that 5,000 hours time-in-service corresponds closely to the interval specified in the operators' MRB report. In light of this, the FAA has revised paragraphs (a)(1)(i), (a)(2)(i), and (a)(2)(ii) of the final rule to reflect a compliance time of ''intervals not to exceed 1,000 landings or 5,000 hours time-in-service, whichever occurs later, but not to exceed 18 months.'' The FAA does not consider that this revision of the compliance time will adversely affect safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 459 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish each cycle of required inspections, at an average rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,560 per inspection cycle, or $240 per airplane, per inspection cycle. (By increasing the intervals between inspections, this AD will result in inspections being conducted less frequently than is now required.)

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9868 (62 FR 302, January 3, 1997), and by adding a new airworthiness directive (AD), amendment 39–10027, to read as follows:

96–26–52 R1 BOEING: Amendment 39–10027. Docket 97-NM–12-AD. Revises AD 96–26–52, Amendment 39–9868.

Applicability: Model 747 series airplanes having line numbers 1 through 1046 inclusive; certificated in any category; that meet all of the following criteria:

- Equipped with Pratt & Whitney Model PW4000 series engines, or General Electric Model CF6–80C2 series engines, or Rolls Royce Model RB211 series engines;
- On which fuse pins having part numbers 310U2301–101, –116, –117, or –120 (''third generation'' fuse pins) are installed at the midspar/spring beam fittings of the engine pylon; and
- On which the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156 or Boeing Alert Service Bulletin 747–54A2157, as applicable, has not been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes 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 (c) 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 failure of the engine pylon and consequent separation of the engine from the wing, due to migration of the fuse pins installed at the midspar/spring beam fittings of the pylon, accomplish the following:

(a) Within 15 days after January 8, 1997 (the effective date of AD 96–26–52, amendment 39–9868), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a detailed visual inspection of the access doors to each midspar/spring beam fuse pin on each engine pylon to detect cracks on the external surface of the doors.

(i) If no cracking is detected during the inspection, repeat that inspection at intervals not to exceed 1,000 landings or 5,000 hours time-in-service, whichever occurs later, but not to exceed 18 months.

(ii) If any cracking is detected during the inspection, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 1,000 landings or 5,000 hours time-in-service, whichever occurs later, but not to exceed 18 months.

(2) Gain access through the aft fairing doors of each engine pylon to each midspar/spring beam fuse pin and its mating, self-locking nut, and perform a detailed visual inspection of each fuse pin to verify that at least one thread of the fuse pin protrudes beyond its mating, self-locking nut.

(i) If no discrepancy is detected during the inspection, repeat that inspection at intervals not to exceed 1,000 landings or 5,000 hours time-in-service, whichever occurs later, but not to exceed 18 months.

(ii) If the inspection reveals that at least one thread does not protrude beyond its mating, self-locking nut, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO. Thereafter, repeat the inspection at intervals not to exceed 1,000 landings or 5,000 hours time-in-service, whichever occurs later, but not to exceed 18 months.

(b) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, Revision 2, dated December 21, 1995, or earlier revisions (for airplanes equipped with General Electric Model CF6–80C2 series engines, or Pratt & Whitney PW4000 series engines); or Boeing

Alert Service Bulletin 747–54A2157, Revision 2, dated November 14, 1996, or earlier revisions (for airplanes with Rolls Royce Model RB211 series engines); as applicable; constitutes terminating action for the repetitive detailed visual inspections required by paragraphs (a)(1) and (a)(2) of this AD.

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

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

(d) 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 airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on June 18, 1997.

Issued in Renton, Washington, on May 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12682 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–12]

Removal of Class D and E2 Airspace; Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Class D and E2 surface area airspace at Lawrenceville, GA. The required weather observations and reporting criteria for Lawrenceville/Gwinnett County-Briscoe Field Airport are not being met. Therefore, the Class D and E2 surface area airspace for the airport must be revoked.

EFFECTIVE DATE: 0901 UTC, July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

Weather observations are taken by an automated weather observing system at the Lawrenceville/Gwinnett County-Briscoe Field Airport. However, the weather observations are not transmitted, as required for surface area airspace, to the ATC facilities having jurisdiction over the surface area. Therefore, the Class D and E2 airspace must be revoked. This rule will become effective on the date specified in the DATE section. Since this action removes the Class D and E2 surface area airspace, and as a result, eliminates the impact of Class D and E2 airspace on users of the airspace in the vicinity of the Lawrenceville/Gwinnett County-Briscoe Field Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class D and E2 airspace at Lawrenceville, GA.

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 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; EO 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 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.

* * * * *

ASO GA D Lawrenceville, GA [Removed]

* * * * *

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

* * * * *

ASO GA E2 Lawrenceville, GA [Removed]

* * * * *

Issued in College Park, Georgia, on May 2, 1997.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–12577 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers.

EFFECTIVE DATE: August 12, 1997.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule (''Rule'') was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556

[1] 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

(Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule the Commission will publish new ranges (but not more often that annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

[2] Reports for clothes washers are due March 1.

The annual submissions of data for clothes washers have been made and have been analyzed by the Commission. The Commission has found that a significant number of the upper and lower limits of the ranges have changed by more than 15%. Accordingly, the Commission is publishing new ranges of comparability for the clothes washer category. These ranges will supersede the current ranges for clothes washers, which were published on June 13, 1996. 61 FR 29939.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after August 12, 1997. In addition, as of this effective date, the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers must be based on the 1997 Representative Average Unit Costs of Energy for electricity (8.31 cents per kilowatt-hour) and natural gas (61.2 cents per therm) that were published by DOE on November 18, 1996, 61 FR 29939, and by the Commission on February 5, 1997, 62 FR 5316.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact.		
Top Loading	570	578
Front Loading	(*)	(*)
Standard.		
Top Loading	312	1306
Front Loading	241	278

(*) No data submitted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–12578 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1, appendix B). The following fee schedule for fiscal year 1997 reflects the average annual actual costs to the Commission of providing those services during fiscal years 1994, 1995 and 1996. Accordingly, the Commission will charge the following fees: Applications for contract market designation for a futures contract will be maintained at $8,300; contract market designation for an option contract will be reduced from $1,800 to $1,700; contract markets that simultaneously submit designation applications for a futures and an option on that futures contract will be reduced from a combined fee of $9,200 for both to $9,000 for both; and leverage commodity registration will be maintained at $4,500. In addition, the Commission is publishing the schedule of fees for registered futures association and exchange rule enforcement and financial reviews.

DATES: *Effective:* Contract Market Designation and Leverage Commodity Registration May 14, 1997.

Registered Futures Association and Exchange Rule Enforcement and Financial Reviews are due July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Gerald P. Smith, SpecialAssistant to the Executive Director, Office of the ExecutiveDirector, Commodity Futures Trading Commission, Three LafayetteCentre, 1155 21st Street, NW., Washington, DC 20581, telephone number 202–418–5160.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts these fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the fiscal year 1997 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

Background Information

I. Computation of Fees

The Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs (direct costs), and benefits and administrative costs (overhead costs).

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor that is made up of two components—benefits and general and administrative costs. Benefits, which include retirement, insurance and leave, are based on a government-wide standard established by the Office of Management and Budget in Circular A–76. General and administrative costs include the Commission's costs for space, equipment, utilities, etc. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for prior fiscal years were 95% in 1994, 92% in 1995 and 98% in 1996.

Once the total personnel costs for each fee item (contract market designation, rule enforcement review, etc.) have been determined for each year the overhead factor is applied and the costs for fiscal years 1994, 1995 and 1996 are averaged. This results in a calculation of the average annual cost over the three-year period.

II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three-year moving average of the actual costs expended and the number of contracts reviewed during that period of time. The fee charged was reviewed again in fiscal year 1985 and every year thereafter to determine the fee for the current year. In fiscal year 1985 the overwhelming majority of designation applications was for futures contracts as opposed to option contracts. Therefore, the proposed fee covered both futures and option designation applications. In fiscal 1992 the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract. It also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of the option contract designation application was even lower than the individual cost of reviewing the futures contract plus the option contract.

The Commission staff reviewed the actual costs of processing applications for contract market designation for a futures contract for fiscal years 1994, 1995 and 1996 and found that the average cost over the three year period was $8,368. The review of actual cost of processing applications for contract market designation for an option contract for fiscal years 1994, 1995 and 1996 revealed that the average costs over the same three year period was $1,795. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be maintained at $8,300 and the fee for applications for contract market designation as an option contract will be reduced to $1,700 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract will be reduced to $9,000.

On March 7, 1997, the Commission published final rules in the **Federal Register**, 62 FR 10434, which revised the procedures for review and approval of applications for Contract Market Designation. The effect of these rules on the assessment of fees for designation will be realized in future years.

III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in fiscal years 1994, 1995 or 1996. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR part 1, appendix B), the Commission calculates the rule enforcement and financial review fees based on its actual costs, as well as actual exchange trading volume. The formula for calculating the rule enforcement and financial review fee is 0.5a+0.5vt = current fee. In the formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across exchanges over the last three years and ''t'' equals the average annual cost for all exchanges.

To determine the fee, first the staff calculates actual costs for the last three fiscal years. The average annual costs for that time period for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY 1994–1996 average annual costs for review services
Chicago Board of Trade	$264,818.49
Chicago Mercantile Exchange	230,131.08
New York Mercantile/COMEX Exchange	216,924.81
Coffee, Sugar and Cocoa Exchange	91,248.09
New York Cotton/New York Futures Exchange	86,629.94
Kansas City Board of Trade	17,754.39

[1] See section 237 of the Futures Trading Act of 1982 (7 U.S.C. 16a) and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Exchange	FY 1994–1996 average annual costs for review services
Minneapolis Grain Exchange	29,728.52
Philadelphia Board of Trade	2,893.69
Total	940,159.01

Second, the staff calculates the trading volume for the past three fiscal years to determine the cumulative volume for each exchange and its percentage of total volume across all exchanges during that same period. The trading volume figures for that period are as follows:

Exchange	FY 1994–1996 cumulative volume (of contracts)	Percentage of total volume across all exchanges
Chicago Board of Trade	657,641,820	43.5642
Chicago Mercantile Exchange	561,261,279	37.1797
New York Mercantile/COMEX Exchange	228,952,651	15.1665
Coffee, Sugar and Cocoa Exchange	35,326,602	2.3401
New York Cotton/New York Futures Exchange	17,810,325	1.1798
Kansas City Board of Trade	5,665,084	0.3753
Minneapolis Grain Exchange	2,810,771	0.1862
Philadelphia Board of Trade	123,281	0.0082
Total	1,509,591,813	100.00

Finally, the staff calculates the current fees by applying the appropriate exchange data to the formula. The following is an example of how the rule enforcement and financial review fees for exchanges are calculated.

Example: The Minneapolis Grain Exchange (MGE) average annual cost is $29,728.52 and its percentage of total volume over the last three years is 0.1862. The annual average total cost for all exchanges during that same time period is $940,159.01. As a result, the MGE fee for fiscal 1997 is:

(.5)($29,728.52)+(.5) (.001862)($940,159.01) = current fee or $14,864.26+$856.85=$15,721.11

As stated in 1993 when the formula was adopted, if the calculated fee using this formula is higher than actual costs, the exchange pays actual costs. If the calculated fee using the formula is less than actual costs then the exchange pays the calculated fee. No exchange will pay more than actual costs. Also, if an exchange has no volume over the three-year period it pays a flat 50% of actual costs.

The National Futures Association (NFA) is a registered futures association which is responsible for regulating the practices of its members. In its oversight role, the Commission performs rule enforcement and financial reviews of the NFA. The Commission's average annual cost for reviewing the National Futures Association during fiscal years 1994 through 1996 is $308,107.27. The National Futures Association will continue to be charged 100% of its actual costs.

Based upon this formula the fees for all of the exchanges and the NFA for fiscal 1997 are as follows:

Exchange	FY 1997 fee
Chicago Board of Trade	$264,818.49
Chicago Mercantile Exchange	230,161.08
New York Mercantile/COMEX Exchange	178,257.22
Coffee Sugar and Cocoa Exchange	56,393.14
New York Cotton/New York Futures Exchange	48,744.34
Kansas City Board of Trade	10,604.16
Minneapolis Grain Exchange	15,721.11
Philadelphia Board of Trade	1,484.42
NFA	308,107.27
Total	1,114,291.23

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as ''exchanges'') and registered futures associations. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered ''small entities'' by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairperson, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

* * * * *

Issued in Washington, DC on May 8, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–12687 Filed 5–13–97; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33–7419 and 34–38581; File No. S7–23–96]

RIN 3235–AG82

Expansion of Short-Form Registration To Include Companies With Non-Voting Common Equity

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') today is adopting amendments to Forms S–3, F–2 and F–3 under the Securities Act of 1933 (''Securities Act'') to include non-voting as well as voting common equity in the computation of the $75 million aggregate market value of common equity held by non-affiliates of the registrant. The Commission also is adopting conforming amendments to include non-voting as well as voting common equity in calculating the float used in determining small business issuer status and in stating the amount of the public float on Forms 10–K and 10–KSB under the Securities Exchange Act of 1934 (''Exchange Act'').

EFFECTIVE DATE: The rule revisions are effective June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Mary J. Kosterlitz, Special Counsel, (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3–3, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 30, 1996, the Commission published for comment proposed amendments to

Forms S–3 [1] and F–3 [2] under the Securities Act [3] to include non-voting common equity in the computation of the required public float. Conforming changes were also proposed to Forms F–2,[4] 10–K,[5] and 10–KSB [6] and to the definition of ''small business issuer'' in Rule 405,[7] in Item 10 of Regulation S–B [8] under the Securities Act, and in Rule 12b–2 [9] under the Exchange Act.[10] Having considered the comments received, the Commission is adopting the revisions as proposed.[11]

I. Discussion of Rule Changes

A. Changes to Forms S–3 and F–3

The Commission's short-form registration statements, Forms S–3 and F–3, require as one condition to eligibility for registration of a primary offering of non-investment grade securities that the company have at least $75 million of voting stock held by non-affiliates (referred to as the ''public float'').[12] Some companies, both domestic and foreign, that have significant amounts of non-voting common stock held by non-affiliates (but not significant amounts of voting stock) are not eligible to use these forms for such an offering because non-voting stock is not included in the calculation of the required public float. The revisions adopted today make Forms S–3 and F–3 available to these issuers, provided they otherwise qualify for these forms. These changes will provide additional flexibility for registered capital raising transactions by extending the availability of the short form registration statements.

The amendments relating to the use of Forms S–3 and F–3 for primary offerings of non-investment grade securities change the transaction requirements outlined in the General Instructions to the Forms to provide that non-voting common equity is included in the calculation of the $75 million float requirement.[13] These changes are accomplished by removing the term ''voting stock'' as it appears in these sections and substituting the phrase ''shares of voting and non-voting common equity.'' The meaning of the term ''common equity'' is as defined in Rule 405 under the Securities Act.[14]

B. Conforming Changes to Other Commission Rules and Forms Referencing Public Float

The Commission also is adopting the proposed conforming changes to Forms F–2, 10–K and 10–KSB, as well as to the definition of ''small business issuer'' in Rule 405 and in Item 10 of Regulation S–B under the Securities Act and to Rule 12b–2 under the Exchange Act. Pursuant to these changes, the public float calculations will include the aggregate market value of both voting and non-voting common equity.

II. Cost-Benefit Analysis

The Commission solicited comment to assist in its evaluation of the costs and benefits that might result from the expansion of the short-form registration to include non-voting common equity in the calculation of required float and to the proposed conforming revisions. It was anticipated that the revisions would have a benefit to issuers with filing obligations that would become eligible to use short form registration, by decreasing their costs. It was also expected that a small number of issuers currently able to use the small business issuer disclosure system might have increased costs due to their inability to use this system. No detrimental effects to investors were expected. Commenters supported the position that revisions would have a benefit to issuers that would become eligible to use short form registration. No comments were received concerning the impact on small business issuers. Consequently, the Commission has determined to adopt the changes as proposed.

III. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis was prepared in accordance with 5 U.S.C. 604 concerning the changes to Forms S–3 and F–3 under the Securities Act to include non-voting common equity in the computation of the required public float and conforming changes to Forms F–2, 10–K, 10–KSB and to the definition of ''small business issuer'' in Rule 405 and in Item 10 of Regulation S–B under the Securities Act and in Rule 12b–2 under the Exchange Act.

The final regulatory flexibility analysis notes that the amendments will revise forms and rules, which may increase the availability of Forms S–3, F–2 and F–3 and possibly decrease the availability of the small business disclosure system (Forms SB–1, SB–2, 10–SB, 10–KSB and 10–QSB) for some issuers.

As discussed more fully in the analysis, the amendments may affect persons that are small entities, as defined in the Commission's rules, because the changes to the definition of small business issuer could cause some issuers that have non-voting common equity held by non-affiliates to become ineligible to use the small business disclosure system. The Commission estimated that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule revisions.

These estimates were the result of estimates provided by the staff of the Division of Corporation Finance based on its expertise from the review of corporate filings and on estimates provided by the Commission's Office of Economic Analysis (''OEA''). The OEA estimates confirmed the estimates made by the Division of Corporation Finance and have been incorporated into the final regulatory flexibility analysis. As a result, the Commission does not expect that the number of companies that will become ineligible to meet the definition of small business issuer will be significant. The Commission also does not expect that materially increased reporting, recordkeeping and compliance burdens will result from the changes.

The Commission sought comment on its preliminary estimates of the number of small entities that would be impacted by the proposed rules and on whether these proposed amendments would result in significant new burdens for small entities. No comments were received concerning the impact of the amendments on small entities.

As stated in the analysis, several possible significant alternatives to the amendments were considered, including, among others, establishing different compliance or reporting

[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 15 USC 77a *et seq.*

[4] 17 CFR 239.32.

[5] 17 CFR 249.310.

[6] 17 CFR 249.310b.

[7] 17 CFR 230.405.

[8] 17 CFR 228.10.

[9] 17 CFR 240.12b–2.

[10] 15 U.S.C. 78a *et seq.*

[11] The Commission received letters from two commenters. These letters are available for inspection and copying in the Commission's public reference room, File No. S7–23–96. Both commenters were generally supportive of the proposed changes, but also suggested that the proposed revisions be expanded to include certain types of preferred stock in the calculation of the required public float. After considering these suggested changes, the Commission has determined to proceed with adoption of the revisions as proposed. However, these comments will be considered by the Commission in connection with future rulemaking.

[12] *See* General Instruction I.B.1 of Forms S–3 and F–3. General registrant requirements for Forms S–3 and F–3 eligibility are outlined in General Instruction I.A to these forms.

[13] The amendments do not alter any other requirements of Forms S–3 or F–3, including the amount of the public float.

[14] Rule 405 defines ''common equity'' as ''any class of common stock, or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.''

requirements for small entities or exempting them from all or part of the amended requirements. As discussed more fully in the analysis, the nature of these amendments does not lend themselves to separate treatment, nor would they impose significant additional burdens on small entities. A copy of the final regulatory flexibility analysis may be obtained by contacting Mary J. Kosterlitz, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3–2, 450 Fifth Street, N.W., Washington, D.C. 20549.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1965 (the ''Act'')(44 U.S.C. 3501 *et seq.*) the staff submitted to the Office of Management and Budget (''OMB'') for review proposals to amend the following forms under the Securities Act and the Exchange Act: ''Form S–1,'' ''Form S–2,'' ''Form S–3,'' ''Form F–1,'' ''Form F–2,'' ''Form F–3,'' ''Form SB–1,'' ''Form SB–2,'' ''Form 10–K,'' ''Form 10–Q,'' ''Form 10–KSB,'' ''Form 10–QSB,'' ''Form 10,'' and ''Form 10–SB.'' The collection of information contained in the fourteen forms at issue is required for the registration of various securities for sale to the public under the Securities Act and periodic reporting obligations under the Exchange Act. The Commission solicited comment on the compliance burdens associated with the proposals but received no public comment on the burden estimates. The Commission is adopting the amendments as proposed.

V. Statutory Basis for the Amendments

The amendments to the Commission's rules and forms are being adopted by the Commission pursuant to Sections 6, 7, 8, 10, 19(a), and 27A of the Securities Act and Sections 12, 13, 14, 15(d), 21E, 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.10 [Amended]

2. By amending § 228.10(a)(1) by removing the word ''securities'' in the *Provided however* sentence immediately following § 228.10(a)(1)(iv) and adding the words ''voting and non-voting common equity'' in its place.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

*   *   *   *   *

§ 230.405 [Amended]

4. By amending § 230.405 the definition of ''*Small Business Issuer*'' by removing the words ''outstanding securities'' in the *Provided however* clause and adding the words ''outstanding voting and non-voting common equity'' in their place.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

*   *   *   *   *

§ 239.13 [Amended]

§ 239.32 [Amended]

§ 239.33 [Amended]

6. 17 CFR 239 is amended by removing the words ''voting stock'' and adding, in their place, the words ''voting and non-voting common equity'' in the following sections:

(a) 17 CFR 239.13(b)(1)
(b) 17 CFR 239.32(b)(2)(i)
(c) 17 CFR 239.33(b)(1)

7. By amending Form S–3 (referenced in § 239.13) by amending the General Instruction I.B.1 of Form S–3, by removing the words ''voting stock'' and adding, in their place, the words ''voting and non-voting common equity'' and by revising the Instruction to General Instruction I.B.1 to read as follows:

(**Note:** The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.)

Form S–3

*   *   *   *   *

General Instructions

I. Eligibility Requirements For Use of Form S–3

*   *   *   *   *

B. Transaction Requirements * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, ''common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of ''affiliate'' in Securities Act Rule 405.

*   *   *   *   *

8. By amending Form F–2 (referenced in § 239.32) by amending the General Instruction I.B.2.(i) of Form F–2, by removing the words ''voting stock'' and adding, in their place, the words ''voting and non-voting common equity'' and by revising Instruction 1 to General Instruction I.B.2.(i) to read as follows:

(**Note:** The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F–2

*   *   *   *   *

General Instructions

I. Eligibility Requirements For Use of Form F–2

*   *   *   *   *

B. * * *

2. * * *

Instructions

1. For the purposes of this Form, ''common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding common equity shall be computed by use of the price at which the voting and non-voting common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of ''affiliate'' in Securities Act Rule 405.

*   *   *   *   *

9. By amending Form F–3 (referenced in § 239.33) by amending the General Instruction I.B.1 of Form F–3, by removing the words ''voting stock'' and adding, in their place, the words ''voting and non-voting common equity'' and by

revising the Instruction to General Instruction I.B.1 to read as follows:

(**Note:** The text of Form F–3 does not appear in the Code of Federal Regulations.)

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F–3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction

For the purposes of this Form, ''common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of ''affiliate'' in Securities Act Rule 405.

* * * * *

PART 240—GENERAL RULE AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.12b–2 [Amended]

11. By amending § 240.12b–2 the definition of ''Small Business Issuer'' by removing the words ''outstanding securities'' in the *Provided however* clause and adding the words ''outstanding voting and non-voting common equity'' in their place.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

§ 249.310 [Amended]

13. By amending the front page of Form 10–K (referenced in § 249.310) by revising the paragraph before the ''Note'' to read as follows:

(**Note:** The text of Form 10–K does not and the amendments will not appear in the Code of Federal Regulations.)

Form 10–K

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the common equity was sold, or the average bid and asked prices of such common equity, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405.)

Note. * * *

14. By amending the front page of Form 10–KSB (referenced in § 249.310b) by revising the paragraph before the ''Note'' to read as follows:

(**Note:** The text of Form 10–KSB does not, and the amendments will not appear in the Code of Federal Regulations.)

Form 10–KSB

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b–2 of the Exchange Act.)

Note: * * *

Dated: May 8, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12637 Filed 5–13–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 310, 316, and 317

Privacy Act of 1974; Implementation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document corrects administrative errors in Department of Defense's privacy rules published in title 32 of the Code of Federal Regulations.

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 310, 316, and 317

Privacy.

Under the authority of 10 U.S.C. 301, title 32, chapter I, subchapter O is amended as follows:

PART 310—[AMENDED]

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1996 (5 U.S.C. 552a).

§ 310.3 [Amended]

2. Section 310.3, the definition for *Access*, is amended by removing the parenthetical phrase ''(see also paragraph (h) of this section.'' and placing a period after the word ''individual''.

§ 310.41 [Amended]

3. The hearing of § 310.41 (h) is amended by removing ''*General Services Administration*.''

Appendix D to Part 310 [Amended]

4. Appendix D to Part 310 is amended by revising ''GSA'' to read ''NARA''.

PART 316 DEFENSE INFORMATION SYSTEMS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 316 continues to read as follows:

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

2. The heading for part 316 is revised to read as set forth above.

§ 316.2 [Amended]

3. Section 316.2 is amended by revising ''DCA'' to read ''Defense Information Systems Agency (DISA)'' the first time it appears and by revising ''DCA'' to read ''DISA'' the second time it appears.

§ 316.4 [Amended]

4. Section 316.4 is amended by revising ''DCA'' to read ''DISA'' each time it appears.

§ 316.5 [Amended]

5. Section 316.5 is amended in the introductory text and paragraph (a)(by revising ''DCA'' to read ''DISA''.

§ 316.6 [Amended]

6. Section 316.6 is amended in paragraphs (a), (c) introductory text, (c) (3) (i), (c)(3) (viii) (C), (c) (3) (ix) through (c) (3) (xii), (c) (3) (xiv), (d) introductory text, (e) (1), concluding paragraph after

(e)(1)(v), (f) introductory text, (f)(1) through (f)(3); by revising ''DCA'' to read ''DISA'' each time it appears; and paragraph (e)(1), concluding paragraph, is amended by adding the word ''and'' after GSA the first time it appears and by adding ''and NARA'' after GSA the second time it appears.

§ 316.7 [Amended]

7. Section 316.7 is amended by revising ''DCA'' to read ''DISA''.

§ 316.8 [Amended]

8. Section 316.8 is amended by revising ''DCA'' to read ''DISA''.

PART 317—[AMENDED]

1. The authority citation for 32 CFR part 316 continues to read as follows:

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

Appendix B to Part 317 [Amended]

2. Appendix B to Part 317 is amended by revising ''GSA'' to read ''NARA''.

Dated: May 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 97–12428 Filed 5–13–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–96–013]

RIN 2115–AA97

Security Zone; Coast Waters Adjacent to South Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Pursuant to Presidential Proclamation No. 6867, declaring a national emergency, the Coast Guard, after consultation with the Department of Justice, is establishing a revised security zone, restricting the operation of certain vessels within the internal waters and territorial seas of the United States, adjacent to or within the coastal waters around southern Florida. The Coast Guard Captain of the Port (COTP) may exercise complete control over all vessel operations and movements within the security zone. Non-public vessels of less than 50 meters (165 feet) in length, may not get underway in or depart the security zone with the intent to enter Cuban territorial waters, absent express authorization from the COTP. These vessel control measures are necessary to provide for the safety of United States citizens and residents and to prevent threatened disturbance of the international relations of the United States.

DATES: This rule is effective from May 7, 1997, and will terminate when the National Emergency as declared by the President in Presidential Proclamation No. 6867 terminates. The Coast Guard will publish a separate document in the **Federal Register** announcing termination of this rule.

ADDRESSES: Permission of the COTP to depart the security zone with the intent of entering Cuban territorial waters may be obtained from the following U.S. Coast Guard units: Marine Safety Office Miami, 51 S.W. First Avenue, Miami, FL 33130, ph. (305) 536–5693; Marine Safety Office Tampa, 155 Columbia Drive, Tampa, FL 33603, ph. (813) 228–2195; Station Miami Beach, 100 MacArthur Causeway, Miami Beach, FL 33139, ph. (305) 535–4368; Station Fort Lauderdale, 7000 N. Ocean Dr., FL 33004, ph. (305) 927–1611; Station Marathon, 1800 Overseas Highway, Marathon, FL 33050, ph. (305) 743–1945; Station Islamorada, PO Box 547, 183 Palermo Dr., Islamorada, FL 33036, ph. (305) 292–8862; Station Key West, Key West, FL 33040, ph. (305) 292–8862; Station Fort Myers Beach, 719 San Carlos Drive, Fort Myers Beach, FL 33931, ph (813) 463–5754. Additional locations may be established.

FOR FURTHER INFORMATION CONTACT: Chief, Marine Safety Division, Seventh Coast Guard District, 909 SE First Avenue, Brickell Plaza Federal Building, Miami, FL 33931, Phone (305) 536–5651.

SUPPLEMENTARY INFORMATION: On March 1, 1996, the President of the United States signed a Proclamation declaring a national emergency. To secure the rights and obligations of the United States and to protect its citizens and residents from the use of excessive force upon them by foreign powers, the Coast Guard is establishing a temporary security zone. In the Proclamation, the President authorized the Secretary of Transportation to regulate the anchorage and movement of domestic and foreign vessels. This authority has been delegated to the Commander, Seventh Coast Guard District, Captain of the Port, Miami FL and Captain of the Port, Tampa FL, by Order No. 96–3–7, signed by the Secretary of Transportation. The Coast Guard has established a security zone pursuant to its regulatory authority in 50 U.S.C. 191 and as supplemented by the authority delegated to the Secretary of Transportation in the Presidential Proclamation. This authority was re-delegated to the Commandant of the Coast Guard, as well as to appropriate District Commanders and Captains of the Port. The security zone includes the internal waters and territorial seas of the United States, adjacent to or within the State of Florida south of 26° 19′ N latitude and extending seaward three nautical miles from the baseline from which the territorial sea is measured.

On March 8, 1996, the Coast Guard published a final rule (61 FR 9348) which established a security zone, restricting the operation of vessels within the internal waters and territorial seas of the United States, adjacent to or within the coastal waters around southern Florida. The rule has been in effect since March 1, 1996. The zone established by that rule prohibits private, noncommercial vessels less than 50 meters in length from departing the security zone with the intent to enter Cuban territorial waters, absent express authorization from the Captain of the Port (COTP). This rule revises the security zone by adding additional security measures that prohibit a similar class of vessels from getting underway in or departing the security zone with the intent to enter Cuban territorial waters without express authorization of the COTP. Under this revised rule, commercial vessels less than 50 meters in length are subject to the same restrictions as private, noncommercial vessels less than 50 meters in length. This revised rule is effective upon signature. Additionally, though the revised security zone created by this rule is effective upon signature, the Coast Guard by policy will give actual notice before enforcing the zone. This revision will minimize any limitations on traditional freedoms of navigation.

The Coast Guard has determined that control of the movement of non-public vessels less than 50 meters in length in the security zone, or departure of such vessels from the security zone, with the intent to enter Cuban territorial waters (hereinafter ''subject vessels''), is necessary to protect the safety of United States citizens and residents and prevent threatened disturbance of the international relations of the United States. These controls do not apply to foreign flag vessels in innocent passage in the territorial sea of the United States. Maintaining such control of vessel movement will necessitate some temporary limitations on traditional freedoms of navigation. Efforts will be made to keep these limitations to a minimum.

The COTP may issue appropriate orders to control the launching, anchorage, docking, mooring, operation, and movement of all subject vessels within the security zone. Additionally, the COTP may remove all persons not specifically authorized by the COTP to go or remain on board the subject vessel, may place guards on the subject vessel and may take full or partial possession or control of any such vessel or part thereof. Such actions to be taken are in the discretion of the COTP as deemed necessary to ensure compliance with the provisions of the security zone or any other order issued under the authority of the COTP.

Under the special regulations included in this rule, subject vessels may not get underway in or depart from the security zone without express authorization from the COTP. Authorization may be requested in person or in writing. If the request is approved, the COTP will issue a written authorization. As a condition of getting underway in or departing from the security zone, the COTP has the discretion, where there is an articulable basis to believe that a vessel intends to enter Cuban territorial waters, to require the owner, master or person in charge to provide verbal assurance to the COTP that the vessel will not enter Cuban territorial waters and require that the COTP be informed of the identity of all persons on board the vessel.

Vessels 50 meters or greater in length and foreign flagged vessels in innocent passage in the territorial sea of the United States are exempt from these security zone control regulations. Past experiences, including the July 13, 1995 Flotilla, the September 2, 1995 attempted Flotilla, the March 2, 1996 Flotilla and the July 13, 1996 Flotilla did not involve vessels outside the subject class of vessels. Commercial vessels are no longer exempted from the departure control regulations. The Coast Guard has determined that it is necessary to add commercial vessels to the scope of coverage of this regulation to provide for the safety of United States citizens and residents and to prevent threatened disturbance of the international relations of the United States. The regulation has also been revised to clarify that the restrictions apply to all auxiliary vessels associated with any vessel within the security zone.

Any non-public vessel less than 50 meters in length getting underway from a berth, pier, mooring, or anchorage in the security zone or departing from the security zone, with the intent to enter Cuban territorial waters, without having express authorization from the COTP will be in violation of the security zone. Failure to comply with the regulations or orders issued under the authority of the COTP may result in seizure and forfeiture of the vessel, suspension or revocation of Coast Guard licenses, and criminal fines and imprisonment. Making a false statement to any agency of the United States may result in additional penalties pursuant to 18 U.S.C. 1001.

This rule is published as a final rule, which is effective upon the signing of this rule. It is based upon a Presidential declaration of a national emergency. Immediate action is needed to protect the safety of lives and property at sea and to prevent threatened disturbance of the international relations of the United States. For this reason, the Coast Guard finds good cause, under 5 U.S.C. 553 (b) and (d), that notice and public comment on the rule before the effective date of this rule are, impractical, unnecessary, contrary to the public interest and this rule should be made effective in less than 30 days after publication.

Regulatory Process Matters

This final rule, designed under the emergency conditions, is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. Therefore, a regulatory evaluation is not required. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). For the reasons stated above, the USCG certifies 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. This rule does not impose unfunded mandates or contain reporting or recordkeeping requirements that require new approval under the Paperwork Reduction Act.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e(34)(g) of Commandant Instruction M16475.1B. this proposal is categorically excluded from further environmental documentation. A categorical exclusion determination and an environmental analysis checklist have been completed and are available in the docket.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implication to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Waterways.

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.TO7–013 is revised to read as follows:

§ 165.TO7–013 Security Zone: Internal waters and territorial seas adjacent to Florida south of 26°19′N latitude.

(a) *Location.* The following area is established as a security zone: All U.S. internal waters and territorial seas adjacent to the State of Florida south of 26°19′N latitude. In general these are the U.S. internal waters and territorial seas adjacent to Collier, Dade, Monroe and Broward Counties of the State of Florida.

(b) *Applicability.* This section applies to non-public vessels less than 50 meters (165 feet) in length and all associated auxiliary vessels within the security zone, but shall not apply to foreign flagged vessels in innocent passage in the territorial sea of the United States. For the purpose of this section, an ''auxiliary vessel'' includes every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water attached to, or embarked in, another vessel to which this section applies.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part do not apply to this security zone.

(2) Non-public vessels less than 50 meters (165 feet) in length and persons on board those vessels may not get underway from a berth, pier, mooring or anchorage in the security zone, or depart from the security zone, with the intent to enter Cuban territorial waters without express written authorization from one of the following officials or their designees; Commander, Seventh Coast Guard District; the Captain of the Port Miami; or the Captain of the Port Tampa. The aforementioned officials may issue orders to control the movement of vessels to which this section applies.

(3) Where there is an articulable basis to believe a vessel to which this section applies intends to enter Cuban

territorial waters, an above referenced official may require the master, owner, or person in charge of a vessel within the security zone, including all auxiliary vessels, to provide verbal assurance that the vessel will not enter Cuban territorial waters as a condition for a vessel to get underway from a berth, pier, mooring, or anchorage in the security zone, or depart from the security zone. In addition, an above referenced official may require the master, owner, or person in charge of the vessel to identify all persons on board the vessel and provide verbal assurances that all persons on board have received actual notice of these regulations.

(4) The owner or person in charge of the vessel shall maintain the express written authorization for the vessel on board the vessel.

(d) *Enforcement.* (1) Vessels or persons violating this section may be subject to:

(i) Seizure and forfeiture of the vessel;

(ii) A monetary penalty of not more than $10,000; and

(iii) Imprisonment for not more than 10 years.

(2) Violation of 18 U.S.C. § 1001 may result in imprisonment for not more than five years or a fine, or both.

(e) This section implements Presidential Proclamation No. 6867. This section is issued under the authority delegated in Department of Transportation Order No. 96–3–7.

Dated: May 7, 1997.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–12646 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–97–012]

Safety Zone—Chicago Sanitary and Ship Canal

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone at Mile 308 of the Chicago Sanitary & Ship Canal during construction-related activities occurring in this area. This zone is needed to protect the maritime public during explosive demolition, excavation and pipeline installation activities associated with this construction project. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Chicago or the Coast Guard representative on-scene.

DATES: These regulations become effective at 11:00 p.m. on May 13, 1997 and terminate at 11:00 p.m. on May 27, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Scott Kuhaneck, U.S. Coast Guard Marine Safety Office Chicago, (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Background and Purpose

This safety zone is needed to protect the safety of the maritime public during construction-related activities involving the use of explosives and obstruction of the navigable channel. This work necessitates the use of a barge configured to drill holes in canal bed and other similar equipment for the excavation of the site which will obstruct or partially obstruct navigation in the immediate vicinity of Mile 308 of the Chicago Sanitary & Ship Canal.

Complete prohibition of vessel transits through this area will only be needed during two separate periods of this safety zone, one of approximately 30 hours at beginning and a second of approximately 12 hours at the end. The exact day and times of the periods is unknown at this point, but will occur sometime during the effective dates of this safety zone. In between these periods, vessel transits will be permitted but may be subject to restrictions as needed. The maritime public will be informed of the exact times of all closures and restrictions via marine radio broadcasts and an existing industry facsimile notification network.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with use of explosives and restricted waterway access in this area. The restrictions being imposed on entry of persons and vessels into this area is temporary.

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 polices and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

The Coast Guard has analyzed this 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 paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary section 165.T0901 is added to read as follows:

§ 165.T09–001 Safety Zone; Sanitary and Ship Canal.

(a) *Location.* The following area is a safety zone: The area within a 500 yard radius of a point centered at Mile 308 on the Chicago Sanitary and Ship Canal.

(b) *Effective time and date.* This section becomes effective at 11:00 P.M. on May 13, 1997, and terminates at 11:00 P.M. on May 27, 1997.

(c) *Regulations.* (1) The Captain of the Port, Chicago, grants blanket permission for all vessels to transit through this safety zone except during announced periods.

(2) The exact times, dates and provisions of any restrictions imposed by this safety zone will be made public via marine radio broadcasts and other

means including use of an existing facsimile notification network.

Dated: April 29, 1997.

M.W. Brown,

Captain, U.S. Coast Guard, Captain of the Port, Chicago.

[FR Doc. 97–12645 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–13–1–7080a, FRL–5822–3]

Approval of a Revision to a State Implementation Plan; Oklahoma; Revision to Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Oklahoma State Implementation Plan (SIP) submitted by the Governor on May 16, 1994. This action approves revisions to the Oklahoma SIP by adopting new rules and opacity requirements to control particulate matter emissions from new, modified, and existing cotton gin operations. Approval of this revision will strengthen the SIP by making it Federally enforceable. In addition, the new rules will simplify the process weight regulations in the State.

DATES: This action is effective on July 14, 1997, unless critical or adverse comments are received by June 13, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the State's submittal and other information relevant to this action are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Oklahoma Department of Environmental Quality, Air Quality Division, 4545 N. Lincoln, Suite 250, Oklahoma City, Oklahoma 73105–5220.

Anyone wishing to review these documents at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6686.

SUPPLEMENTARY INFORMATION:

I. Background

The revisions to this SIP action respond to the requirements of Section 110 of the Federal Clean Air Act (the Act), as amended in 1990. Section 110 requires States to adopt and submit to the Administrator a plan which provides for implementation, maintenance, and enforcement of the primary and secondary standards for the State. Code of Federal Regulations (CFR), 40 Part 50.6 defines the level of the National primary and secondary 24-hour ambient air quality standards (NAAQS) for particulate matter as 150 micrograms per cubic meter ($\mu g/m^3$), 24-hour average concentration and 50 $\mu g/m^3$, annual arithmetic mean. Although Oklahoma is in attainment of the standards for particulate matter, submission and approval of this revision serves to strengthen the SIP in Oklahoma by making it federally enforceable.

This SIP action approves the new cotton gin requirements and opacity rules developed by the State of Oklahoma in consultation with EPA and the affected industry. The new rules require cotton gins to install specific control equipment and to meet a 20 percent visible emissions limit. The affected sources from this action are located throughout the State, but predominately in rural areas. Previously, Oklahoma did not have specific rules for cotton gin operations. Instead, this category of source was regulated under existing general particulate matter rules. These rules serve to strengthen the existing SIP by superseding the general requirements and by making them federally enforceable. In addition, they are applicable to new, existing, and modified gins.

During the development of the State rules, Oklahoma referenced various other State requirements and the EPA Visible Emissions (VE) performance testing methods in 40 CFR Part 60, Appendix A. The approved method for determining VE is Reference Method 9 (Method 9 or RM 9). Method 9 discusses how to make visual determinations of opacity for emissions from stationary sources. The mechanism for determining VE by States has often included the use of an opacity regulation to assist in meeting or maintaining the particulate matter air quality standard.

II. Analysis of State Submittal

Emission Limit

Fugitive emissions from the cotton gin burr hopper dumping area have been a major source of complaints from inhabited areas. Amendments to the State rules update the control requirements for cotton gins throughout Oklahoma by specifying the emissions limitations and specific control measures to be utilized by new, modified, or existing cotton gins. To control fugitive emissions from burr hoppers during dumping, the use of total enclosure at existing gin sites located within the corporate city limits of any city or within 300 feet of two or more occupied establishments is required. All new gin sites are required to install and use a total enclosure on the burr hopper. Action must also be taken to minimize fugitive dust emissions during transportation and other operations. An opacity limit of 20 percent is set for discharges. This opacity limit, however, may be increased for particulates but only after the owner/operator can demonstrate to the satisfaction of the Oklahoma Air Quality Council at a public hearing that their controls meet State requirements and do not violate the National Ambient Air Quality Standards (NAAQS).

Emission Control Equipment

The Oklahoma cotton gin rule specifies the 1D/3D cyclone as the approved control equipment on high-pressure exhausts. This gives higher control efficiencies than the 2D/2D cyclone which is commonly used in cotton gin operations and has a comparable cost. Some facilities in Oklahoma have voluntarily installed 1D/3D cyclones prior to the adoption of this State regulation. However, to minimize the adverse economic impact, a phased-in approach is taken on existing facilities allowing continued use of 2D/2D cyclones until repair costs are no longer cost effective. Facilities will then be required to replace the older equipment with 1D/3D equipment.

For low-pressure exhausts, the use of 70 mesh or finer screens (or approved equivalent) is required. This is the most effective of the sizes considered (70, 80, and 100 mesh). The new rules provide equal or superior control of emissions compared with that provided for the cotton gin industry by the existing general particulate matter control rules and guidelines.

Recordkeeping

All new, modified, or existing cotton gins are required to comply with the State rules and are required to maintain a log documenting the daily process weight, hours of operation, and air emission control equipment replacement schedule or repair costs.

III. Final Action

These rules have been developed with the cooperation of the affected industry, and use a control technology basis for determination of compliance. The rules are needed because the industry represents a significant source of particulate matter emissions and fugitive dust previously controlled by general particulate matter control rules and guidelines.

The EPA is approving the State's SIP revision and the adopted new rules pertaining to opacity requirements for cotton gin operations in Oklahoma. The EPA has reviewed the submittal for consistency with the Act, EPA regulations, and EPA policy. The EPA has determined that the rules meet the Act's requirements for revision to the SIP and today is approving under section 110 the above mentioned cotton gin rules.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this *FR* publication, the EPA is proposing to approve these SIP revisions should adverse or critical comments be received. This action will be effective July 14, 1997, unless adverse or critical comments are received by June 13, 1997.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action 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 adverse comments are received, the public is advised that this action will be effective on July 14, 1997.

Nothing in this action should be construed as permitting or 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, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

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

B. Regulatory Flexibility Act

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

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. 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 prepare a budgetary impact statement to accompany 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 private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to the State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 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 July 14, 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, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 24, 1997.

Jerry Clifford,

Acting Regional Administrator.

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.

Subpart LL—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(44) A revision to the Oklahoma SIP to include Oklahoma Administrative Code, Chapter 310:200, Subchapter 23, entitled, ''Control of Emissions From Cotton Gins,'' submitted by the Governor on May 16, 1994.

(i) Incorporation by reference.

(A) Addition of Oklahoma Administrative Code, Chapter 310:200, Subchapter 23, entitled, ''Control of Emissions From Cotton Gins,'' as adopted by the Oklahoma Air Quality Council on April 30, 1992, and effective June 1, 1993.

(ii) Additional material—None.

[FR Doc. 97–12551 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 023–1023(a); FRL–5822–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA grants final full approval to the State Implementation Plan (SIP) submitted by the state of Missouri for the purpose of meeting the requirements of the EPA's general conformity rule. This fulfills the conditions of the approval granted on March 11, 1996, which became effective May 10, 1996.

DATES: This action is effective July 14, 1997 unless by June 13, 1997 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA granted conditional approval to Missouri's SIP revision (containing rule 10 CSR 10–6.300), regarding Conformity of General Federal Actions to State Implementation Plans, in a rulemaking dated March 11, 1996 (61 FR 9642–9644). This conditional approval was necessary because the state used a model rule developed by the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) that made two provisions of the Missouri rule more stringent than the Federal general conformity rule. The rationale for the conditional approval and for the EPA's determination regarding these provisions is explained in detail in the Technical Support Document which accompanied the March 11, 1996, conditional approval.

Under section 110(k)(4) of the Act, the EPA granted a conditional approval based on Missouri's commitment to correct the noted deficiencies not later than one year after the date of approval of the plan revision. Missouri committed to correct these deficiencies within one year from December 7, 1995. On November 20, 1996, Missouri submitted a revision to the SIP that corrects the deficiencies and meets the requirements of the conditional approval.

As requested by the EPA, this revised SIP specifically amends sections (3)(C)4 and (9)(B) of 10 CSR 10–6.300 regarding conformity analyses timeframes. Prior to the amendment, these cited sections contained sentences regarded as clarifying language in the STAPPA/ALAPCO model rule.

II. Final Action

The EPA is taking final action to approve revisions submitted on November 20, 1996, which fulfills the conditional approval effective May 10, 1996. This meets the Federal requirements set forth in 40 CFR 51.851 and 93.151.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment 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 is effective July 14, 1997 unless, by June 13, 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 document that will withdraw the final action. All public comments received will then 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 is effective July 14, 1997.

Nothing in this action should be construed as permitting or 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.

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

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

III. 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 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. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany 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. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

D. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 9, 1997.

Michael Sanderson,

Acting Regional Administrator.

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.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(97) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(97) On November 20, 1996, the Missouri Department of Natural Resources (MDNR) submitted a revised rule which pertains to general conformity.

(i) Incorporation by reference.

(A) Rule 10 CSR 10–6.300, entitled Conformity of General Federal Actions to State Implementation Plans, effective September 30, 1996.

3. Section 52.1323 is amended by adding paragraph (j) to read as follows:

§ 52.1323 Approval status.

* * * * *

(j) The state of Missouri revised 10 CSR 10–6.300 to remove language in paragraphs (3)(C)4 and (9)(B) which made the language more stringent than that contained in the Federal general conformity rule. This fulfills the requirements of the conditional approval granted effective May 10, 1996, as published on March 11, 1996.

[FR Doc. 97–12553 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH104–1a; FRL–5822–5]

Approval and Promulgation of Implementation Plans; Ohio Ozone Maintenance Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves a revision submitted on July 9, 1996, and January 31, 1997, to the ozone maintenance plans for the Dayton-Springfield Area (Miami, Montgomery, Clark, and Greene Counties), Toledo Area (Lucas and Wood Counties), Canton Area (Stark County), Ohio portion of the Youngstown-Warren-Sharon Area (Mahoning and Trumbull Counties), Columbus Area (Franklin, Delaware, and Licking Counties), Cleveland-Akron-Lorain Area (Ashtabula, Cuyahoga, Lake, Lorain, Medina, Summit, Portage, and Geauga Counties), Preble County, Jefferson County, Columbiana and Clinton Counties.

The revision is based on a request from the State of Ohio to revise the Federally approved maintenance plan for these areas to provide the State and the affected areas with greater flexibility in choosing an appropriate ozone contingency measure for each area in the event such a measure is needed. This action approves the State's request as a common-sense approach to protecting air quality in Ohio.

In the proposed rule section of this **Federal Register**, USEPA is proposing approval of this revision, and is now soliciting public comments on this action. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule based on the proposed rule.

EFFECTIVE DATES: This final rule will become effective on July 14, 1997 unless adverse or critical comments are received by June 13, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested maintenance plan revision, and other materials relating to this rulemaking are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Protection Specialist, at (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Background

During 1993 and 1994, the State of Ohio made a number of submittals of maintenance plans for areas which have been redesignated to attainment for ozone. All of these plans contained contingency provisions which are required as part of Section 175A(d) of the Clean Air Act (CAA) Amendments. These contingency provisions were addressed in detail in the **Federal Register**s approving the State submittals.[1]

On July 9, 1996, the State submitted a request to revise the contingency measure portion of the maintenance plans contained in the approved redesignations for the various counties. The State requested the revision because of concern that the currently approved provisions may not meet the future needs when circumstances regarding controls or technology have changed. The State cited the example of the Stage II vapor control program (one of the approved contingency measures) which becomes less cost-effective out into the future as the automobile fleet turns over with corresponding installation of improved on-board vapor control technology. While the Stage II control measure was effective at the time of implementation, and continues to be at this time; by the year 2010 a significant portion of the automobile fleet will have on-board controls which are expected to serve the same function (controlling gasoline vapors during refueling) as the Stage II requirement. Therefore, the State believes that it is important to retain a degree of flexibility in selecting the appropriate volatile organic compound (VOC) control technology for the circumstances which exist at such time as additional controls become necessary.

The State of Ohio submitted the following language as a substitute for the previously approved contingency plans for all of the areas listed in this document:

The maintenance plan contingency measures to be considered will be chosen from the following list or an unspecified emission control measure deemed appropriate, based upon a consideration of cost effectiveness, VOC reduction potential, economic and social factors, as the contingency measure for each of these areas.

a. Lower Reid Vapor Pressure (RVP) for gasoline;

b. Reformulated gasoline program;

c. Application of Reasonably Available Control Technology (RACT) on sources covered by new control technology guidelines;

d. VOC offsets for new or modified major sources;

e. Automobile Inspection and Maintenance (I/M); and,

f. Trip reduction programs, including but not limited to employer-based transportation management programs, area-wide rideshare programs, work schedule changes and telecommuting.

The decision on which program is to be implemented would be made and executed within 12 months after a determination that a violation has been monitored after all VOC emission reduction programs contained in the State implementation plan have been implemented.

Reasonably available controls for sources of oxides of nitrogen (NOx RACT) would be a secondary contingency to be implemented after a violation occurs after the VOC contingency measure has been fully implemented. This contingency would only apply in those redesignated areas formerly designated moderate non-attainment (the Toledo, Dayton and Cleveland-Akron-Lorain Metropolitan areas).

Each of the areas to which this revision applies have approved maintenance plans which include contingency measures. In this revision the State is broadening the number of measures from which the State or planning agency may choose in order to resolve violations of the ozone ambient air quality standard. For every one of the State's maintenance areas, this revision increases the number of measures from which to choose. Certain of these measures have been addressed in the contingency plan portion of previous State maintenance plan submittals which have been approved by USEPA, as noted in footnote number 1.

II. Contingency Plan Requirements

Section 175A of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the national ambient air quality standards that occurs after the redesignation of the area.[2] These contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the State implementation plan (SIP) and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specific event. The contingency plan should identify the measures to be adopted and include a trigger mechanism and a schedule for adoption and implementation.

Back-up measures are required for areas which selected low-RVP as the contingency measure in the maintenance plan. However, USEPA has approved contingency measures which do not commit to specific back-up programs. (The Indianapolis redesignation 59 FR 54391, dated October 31, 1994, contained a maintenance plan measure which did not commit to specific programs. The USEPA agreed with Indiana that circumstances may change significantly over time for a select group of back-up measures, thereby rendering the measure(s) less useful or implementable). For example, the selection of a basic I/M program as a back-up measure today would render a certain amount of VOC reduction from the current fleet of autos. However, the use of basic I/M in the future would not yield the reductions from a fleet of high tech automobiles because the basic program is not sophisticated enough to identify emission failures in new technology cars.

III. The Ohio Maintenance Plan

The Director of Ohio EPA, in a letter to USEPA dated July 9, 1996, requested a revision to the ozone maintenance plans for a number of maintenance areas and maintenance counties. This request was followed up with a letter dated January 31, 1997, containing additional information completing the request. Based on a comment from the Mid-Ohio Regional Planning Commission, a minor change to the July 9, 1996, submittal was made and subsequently submitted as final in the Ohio EPA Director's January 31, 1997, letter to the USEPA. This change allows contingency measure decision makers to include the implementation of an automobile inspection and maintenance program as a contingency measure for all areas

[1] The redesignation request approvals and the accompanying discussion of contingency provisions are found in 60 FR 7453 dated February 8, 1995, 60 FR 22289 dated May 5, 1995, 60 FR 39115 dated August 1, 1995, 61 FR 3319 dated January 31, 1996, 61 FR 3591 dated February 1, 1996, 61 FR 11560 dated March 31, 1996, and 61 FR 20458 dated May 7, 1996. The original State submittals and the USEPA's analyses of each of the submittals are maintained in the docket in the Air and Radiation Division in Chicago.

[2] Guidance for contingency measures is found in the memoranda ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992; and ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.

required to implement an air quality maintenance plan. The original July 9, 1996, submittal allowed only the Toledo area (consisting of Wood and Lucas counties) to implement I/M. This change allows I/M, in addition to other measures, to be made available for all counties which select I/M as a contingency measure.

Maintenance plans for ozone in Ohio have been approved for the Cleveland/Akron/Lorain area consisting of Cuyahoga, Lake, Lorain, Medina, Summit, Portage, Geauga and Ashtabula counties; and the Canton area consisting of Stark county; and, the Youngstown area consisting of Mahoning and Trumbull counties; and, the Dayton area consisting of Montgomery, Greene, Miami and Clark counties; the Columbus area consisting of Franklin, Delaware and Licking counties; and, the counties of Preble, Jefferson, Columbiana, and Clinton. The Ohio contingency measures were required as part of the redesignation to attainment for ozone and are part of these maintenance plans submitted by the State for the various nonattainment areas which were redesignated to attainment for ozone. The listing of areas is found in 40 CFR part 52.1885(b). Each of the maintenance plans included one or more contingency measures to be implemented in the event a violation of the ozone standard was recorded. The revision approved here revises the maintenance plan to include a list of measures from which to choose for each of the various areas. This action allows more flexibility in determining an appropriate emission reduction measure, or mix of measures, should additional controls become necessary. Air quality managers in these areas are not required to select all of the measures listed, but are expected to select the appropriate measure or measures which at the time of decision are expected to reduce the emissions of VOC and return the area to attainment of the ozone standard.

Ohio has chosen the use of low-RVP gasoline and reformulated gasoline as two of a variety of possible automobile fuel contingency measures from which to choose to reduce the emissions of VOC. The State has indicated that additional measures would be available as back-ups in the event the USEPA does not allow the use of low-RVP gasoline. However these back-ups would be selected based on future circumstances, not present expectations of such measures.

This is consistent with USEPA policy regarding approval of low-RVP fuel controls under section 175A of the Clean Air Act.[3] Also, under this policy, USEPA approved the maintenance plan for Preble County, Ohio, on September 21, 1994 (59 FR 48395) which identified low-RVP without requiring a necessity finding at the time of approval of the plan. The finding of necessity would be made at the time the trigger event occurs, and at that time, the State must commit to adopt a back-up measure in the event the USEPA does not agree with the State's submittal of a study to demonstrate that low-RVP gasoline is necessary.

The State will be required to submit an implementation plan revision adopting State fuel control and request a waiver from federal preemption. The waiver request must indicate the quantity of VOC reductions needed to attain the standard, identify and quantify other control measures, provide background information giving the reason why non-fuel measures are not practicable, and show that these non-fuel measures are not sufficient to achieve timely attainment.

IV. Final Action

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on July 14, 1997, unless USEPA receives adverse or critical comments (which have not been previously addressed) by June 13, 1997.

If USEPA receives such comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date, and publish a subsequent **Federal Register** document which withdraws this final action. Public comments received will then be addressed in a subsequent rule.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on July 14, 1997.

Nothing in this action should be construed as permitting or 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.

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

SIP approvals under 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

[3] See memorandum ''Requirements for Reduced RVP in State Maintenance Plans,'' from Michael Horowitz, Office of General Counsel, USEPA, to William L. MacDowell, Air and Radiation Division, Region 5, USEPA, November 8, 1993.

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 5 U.S.C. 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 5 U.S.C. 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 July 14, 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, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: April 23, 1997.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, 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.

Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(5) to read as follows:

§ 52.1885 Control strategy: Ozone.

(a) * * *

(5) On July 9, 1996, and on January 31, 1997, the Ohio Environmental Protection Agency submitted a revision to the State's maintenance plan for ozone. This revision affects the contingency measures contained in the maintenance plan for a number of counties throughout the State. (These areas include: in the Dayton area, Montgomery, Greene, Miami, and Clark Counties, in the Toledo area, Lucas and Wood Counties, the Canton area, Stark County, the Youngstown area, Mahoning and Trumbull Counties, the Columbus area, Franklin, Delaware, and Licking Counties, the Cleveland/Akron/Lorain area, Cuyahoga, Lake, Lorain, Medina, Summit, Portage, Geauga and Ashtabula Counties, and also Preble, Jefferson, Columbiana, and Clinton Counties. It provides for greater flexibility in selecting the appropriate control technology for the circumstances which exist at that point in the future if additional controls become necessary. The State of Ohio identified the following language as a substitute for the previously approved contingency plans for all of the areas listed in the ozone maintenance plan (see 40 CFR 52.1885(b)):

(i) The maintenance plan contingency measures to be considered will be chosen from the following list or an unspecified emission control measure deemed appropriate, based upon a consideration of cost effectiveness, VOC reduction potential, economic and social factors, as the contingency measure for each of these areas:

(A) Lower Reid Vapor Pressure for gasoline;

(B) Reformulated gasoline program;

(C) Application of Reasonably Available Control Technology (RACT) on sources covered by new control technology guidelines;

(D) VOC offsets for new or modified major sources;

(E) Automobile Inspection and Maintenance; and,

(F) Trip reduction programs, including but not limited to employer-based transportation management programs, area-wide rideshare programs, work schedule changes and telecommuting.

(ii) The decision on which program is to be implemented would be made and executed within 12 months after a determination that a violation has been monitored after all VOC emission reduction programs contained in the State implementation plan have been implemented.

(iii) Reasonably available controls for sources of oxides of nitrogen (NO_X RACT) would be a secondary contingency to be implemented after a violation occurs after the VOC contingency measure has been fully implemented. This contingency would only apply in those redesignated areas formerly designated moderate non-attainment (the Toledo, Dayton and Cleveland/Akron/Lorain Metropolitan areas).

* * * * *

[FR Doc. 97–12633 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE026–1005; FRL–5820–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Regulation 24—Control of Volatile Organic Compound Emissions, Section 47—Offset Lithographic Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision pertains to Regulation 24, Control of Volatile Organic Compound Emissions, Section 47—Offset Lithographic Printing. This section establishes volatile organic compounds (VOCs) emission standards that represent the reasonably available control technology (RACT) for offset lithographic printing operations. This action is being taken under section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on June 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office.

SUPPLEMENTARY INFORMATION:

Background

The Delaware Department of Natural Resources & Environmental Control (DNREC) submitted a revision to the Delaware SIP on December 19, 1994.

The revision consisted of amendments to Delaware Regulation 24—Control of Volatile Organic Compound Emissions which added RACT requirements to control emissions of VOCs from eight source categories. The entire State of Delaware is designated nonattainment for ozone. Kent and New Castle Counties are classified as ''severe,'' and Sussex County is classified as ''marginal.'' The entire State of Delaware is contained within the Ozone Transport Region (OTR). Pursuant to section 184(b)(1)(B) of the CAA, for purposes of controlling VOCs from stationary sources, the Delaware SIP must require that sources in Sussex County meet, as a minimum, the requirements for areas classified as ''moderate.'' Delaware is required to impose RACT on a statewide basis on all major stationary sources of VOC. On January 26, 1996 (61 FR 2419), EPA published a direct final rulemaking approving Delaware's amendments to Regulation 24—Control of Volatile Organic Compound Emissions, as RACT for all eight source categories. On January 26, 1996 (61 FR 2464), EPA simultaneously published a Notice of Proposed Rulemaking (NPR) proposing approval of the amendments to Regulation 24 which provided the opportunity for public comment. On February 26, 1996, EPA received adverse comments on its approval of one section of Delaware Regulation 24 pertaining to one source category, namely, Section 47—Offset Lithographic Printing. In accordance with federal rulemaking procedures, EPA withdrew its final approval of Section 47 in a notice published on March 26, 1996 (61 FR 13101). EPA stated it would prepare a separate final rule for Section 47 of Regulation 24 wherein it would address the comments received on its January 26, 1996 proposal.

EPA's Review of Section 47 of Delaware Regulation 24

EPA reviewed Section 47 of the Delaware's VOC rule using EPA policy guidance documents: Alternative Control Techniques (ACT) Document—Offset Lithographic Printing, June 1994, EPA–453/R–94–054; and Draft Control Techniques Guideline (CTG)—Control of Volatile Organic Compound Emissions from Offset Lithographic Printing, September 1993, EPA–453/D–95–001. EPA has determined that Section 47 of Delaware Regulation 24 is approvable for the purposes of imposing RACT on Offset Lithographic Printing operations in Delaware.

Response to Public Comments

EPA received one letter of comment on its proposed approval of Delaware Regulation 24—Section 47 from the Graphics Arts Association. Those comments are summarized below and EPA responses are provided:

Comment: The commenter states that EPA has not finalized a CTG for this source category or included a model rule in its ACT. The commenter includes a history of the Graphic Arts industry's comments on EPA's ACT and draft CTG, and points to instances where Delaware's regulation differs from those documents.

Response: Delaware was required by section 182(b)(2)(C) of the CAA to revise its SIP to impose RACT on all major sources of VOCs irrespective of the fact that EPA had not issued a final CTG and did not include a model rule in its ACT for this source category. Although there may be instances where Delaware's regulation differs from EPA's guidance documents, EPA has determined that Delaware's regulation satisfies its obligation under Title I of the CAA to impose RACT on major sources of VOC.

Comment: The commenter takes issue with the Delaware regulation's applicability threshold of 15 pounds/day and requests it be amended to 50 tons/year. The commenter argues that while EPA's ACT suggested an applicability threshold of 15 pounds/day, no justification was provided by EPA in its ACT.

Response: EPA has determined that the applicability levels in Delaware's regulation are approvable for offset lithographic printers. As enacted in 1977, the RACT requirement of the CAA applied to stationary sources and was not limited in application to ''major'' stationary sources. Hence, many of the CTGs developed under the 1977 CAA include a recommendation that states apply RACT to sources of VOC that are below the definition of ''major'' sources. A general lower size cutoff of 15 pounds/day actual VOC emissions without control devices from all activities in a particular CTG category was suggested by EPA in other related guidance and adopted into many state regulations. As amended in 1990, the CAA still requires major and non-major sources to comply with RACT in accordance with CTGs issued by EPA. With respect to sources for which EPA has not issued a CTG, the CAA requires RACT at such major ''non-CTG'' sources. However, States have the authority to establish limits more stringent than those required by the CAA. *See* CAA section 116. Therefore, Delaware may define its applicability thresholds as it seems necessary and appropriate. As the relevant CAA's requirements are met by Section 47 of Regulation 24, EPA has no basis to disapprove Delaware's applicability thresholds. Moreover, the commenter's request that EPA amend the applicability threshold to 50 tons/year raises a more fundamental issue. In taking action to approve Delaware's request that it approve Section 47 of Regulation 24 as a SIP revision, EPA is exercising its authority under section 110 of the CAA. Section 110 of the CAA authorizes EPA to approve, disapprove or conditionally approve a state's submittal to amend its SIP. EPA must act upon the state submittal as received, and has no authority to amend the state's request. Lastly it is worth noting that in ozone nonattainment areas classified as severe, such as Kent and New Castle Counties, a major stationary source of VOC is defined as a stationary source which emits 25 tons/year. Therefore, if Delaware had selected a 50 ton/year threshold as the commenter suggests, its RACT regulation for Lithographic Printers would not satisfy the CAA.

Comment: The commenter suggested deletions and additions to the Delaware Offset Lithographic Printing Rule on the following sections: Applicability, Definitions, Standards, Control Devices, Test Methods and Procedures, and Recordkeeping and Reporting, and Calculations.

Response: EPA has determined that Delaware's rule is consistent with EPA guidance and policies. Furthermore, as provided above, EPA must act upon a state submittal as received and has no authority to amend the state's request.

Other specific requirements of Section 47 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

Final Action

EPA is approving Delaware's Regulation 24, Section 47—Offset Lithographic Printing, as a revision to the Delaware SIP.

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

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the CAA does 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, EPA 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany 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 private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 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 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 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 on the Delaware Regulation 24, Section 47—Offset Lithographic Printing, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 22, 1997.

Stanley Laskowski,

Acting Regional Administrator, Region III.

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.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(55) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(55) Revisions to the Delaware Regulations, Regulation 24, Section 47—Offset Lithographic Printing submitted on December 19, 1994 by the Delaware Department of Natural Resources & Environmental Control (DNREC):

(i) Incorporation by reference.

(A) Letter of December 19, 1994 from the Delaware DNREC transmitting Regulation 24, Section 47—Offset Lithographic Printing, effective November 29, 1994.

(B) Regulation 24, Section 47—Offset Lithographic Printing, effective November 29, 1994.

(ii) Additional Material from Delaware's December 19, 1994 submittal pertaining to Section 47 of Regulation 24.

[FR Doc. 97–12630 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ23–1–164, FRL–5823–9]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting conditional interim approval of a State Implementation Plan (SIP) revision submitted by New Jersey. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the State. There are two intended effects of this action. One effect is to give conditional approval to the State's proposed enhanced I/M program under section 110 of the Clean Air Act. The other intended effect is to grant interim approval incorporating provisions authorized by section 348 of the National Highway System

Designation Act, where applicable, to last a period of 18 months. Application of section 348 may result in some program adjustments during the 18-month period to ensure efficacy of the I/M program is achieved.

EFFECTIVE DATE: This rule will be effective June 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866 and New Jersey Department of Environmental Protection, East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1996 (61 FR 56172), EPA published a notice of proposed conditional interim approval of New Jersey's enhanced I/M program. New Jersey submitted changes to the existing program on March 27, 1996 to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway System Designation Act (NHSDA).

As described in the October 31, 1996 document, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The NHSDA also directs EPA and the states to review the program results at the end of the 18-month interim period and to make a determination as to the effectiveness of the program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith estimate to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes that Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so at least six months of operational program data can be collected to evaluate the programs. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of these programs. If New Jersey fails to start its program by November 15, 1997, the interim approval granted under the provisions of the NHSDA, which EPA believes allows the State to take full credit in its 15 percent plan for all the emission reduction credits in its proposal, will convert to a disapproval after a finding letter is sent to the State by EPA. Therefore, New Jersey would be required to include additional provisions in its SIP to provide the necessary emission credit reductions. Because the start date is not being imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), the failure to start the program by this date will not convert the SIP approval to a disapproval automatically. EPA is imposing the start date under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion; therefore, the approval will be converted to a disapproval only upon EPA's notification of the State by letter.

EPA recognizes New Jersey's intent to start up the program on or prior to November 15, 1997 but no later than February 1, 1998.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both qualitative and quantitative measures and has been deemed acceptable to EPA. The core requirement for the quantitative measure is that a mass emission transient test (METT) be performed on 0.1% of the subject fleet, as required by the I/M Rule at 40 CFR 51.353 and 51.366. EPA believes that METT evaluation testing is not precluded by the NHSDA, and therefore, is still required to be performed by states implementing I/M programs under the NHSDA and the CAA.

As per the NHSDA requirements, this interim approval of the program will expire on December 14, 1998. A full approval of New Jersey's final I/M SIP revision, which will include the State's program evaluation and final adopted State regulations, is still necessary under sections 110, 182, 184 and 187 of the CAA. After EPA's review of the State's submitted program evaluation and final regulations, any necessary additional rulemaking on New Jersey's SIP revision will occur. If the State's program evaluation demonstrates a shortfall, the State must find additional emission reductions.

Specific requirements of the New Jersey enhanced I/M SIP and the rationale for EPA's proposed action are explained in the October 31, 1996 notice and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the Federal comment period for the notice of proposed rulemaking, published in the October 31, 1996 **Federal Register**, and provides EPA's responses to those comments. Comments were received from only the State of New Jersey. Copies of the original comment letter, along with EPA's summary and response to comments, are available at EPA's Region II office at the address listed in the **ADDRESSES** section of this notice.

Comment—Functional Evaporative System Testing

New Jersey commented that underlying uncertainties remain with the functional evaporative system pressure and purge testing procedures as indicated in a draft report by the New Jersey Institute of Technology and in EPA's November 5, 1996 guidance. The State also commented that these uncertainties are carried through the MOBILE model used to determine compliance with the I/M performance standard requirement.

Response to Comment

On November 5, 1996, EPA issued a policy memorandum from Margo Oge, Director of EPA's Office of Mobile Sources (OMS), entitled ''I/M Evaporative Emissions Tests''. This memo outlines the difficulties related to pressure and purge functional testing, in practice in I/M programs. The memo provides that EPA will accept states' credit claims for the benefits from implementing purge testing, although many states are not expected to begin using this test for 12–18 months.

On December 20, 1996, EPA issued an addendum to the November 5, 1996 memo. This memorandum from Leila Cook, Regional and States Program Group Leader of EPA's OMS, serves to clarify the policy set forth in the November 5, 1996 memo. Specifically, this memo requires states to actually perform an available pressure test to receive credits claimed for such a program in their SIP revision. Full modeled credit (i.e., from the MOBILE model) for the performance of pressure testing is available only if a state performs an Arizona-like pressure test from the fill pipe *and* a separate gas cap check. States performing only a gas cap check will receive only 40% of the available MOBILE-modeled credits for pressure testing.

EPA has acknowledged problems with the current purge test. Therefore, states such as New Jersey that have indicated that they will perform a purge test when one is available may continue to take 100% of the credit for the purge test, without actually performing such testing, until such time as EPA develops a viable purge test procedure. New Jersey has also indicated that they will be performing a gas cap check and an Arizona-like pressure test as part of the enhanced I/M program.

Comment—Implementation Date

New Jersey anticipates that implementation of the enhanced I/M program will begin on or before November 15, 1997. However, full program start-up will probably not occur until early 1998. New Jersey believes that this schedule will allow them enough time to collect at least six months of operational data consistent with EPA guidance under the NHSDA.

New Jersey cites section 348(c) of the NHSDA which states that interim approval expires 18 months from the date of final interim approval or on the date of final approval, whichever is earlier and that final approval will be granted after the state demonstrates that the I/M program credits are appropriate. New Jersey also cites the EPA December 12, 1995 guidance which states that to obtain at least six months of program operation to evaluate performance, programs must start as soon as possible but no later than 12 months after final interim approval.

Response to Comment

As stated earlier in this notice, the NHSDA is clear that the interim approval shall last for only 18 months and that the program evaluation is due to EPA at the end of that period. This interim approval will expire on December 14, 1998. While EPA is in agreement with the State that start-up in early 1998 would allow New Jersey to collect sufficient data for program evaluation prior to the expiration of this conditional interim approval, EPA continues to believe that under the NHSDA the program should start up as soon as possible, which EPA believes is on or before November 15, 1997. If the State fails to start its program by this date, this interim approval will convert to disapproval after a finding letter is sent to the State, as addressed above.

III. Conditional Interim Approval

a. Major Deficiencies

Under the terms of EPA's October 31, 1996 proposed conditional interim approval notice, the State was required to make commitments within 30 days to correct two major deficiencies with the I/M program SIP by dates certain. On November 27, 1996, New Jersey submitted a letter to EPA from Robert C. Shinn, Jr., Commissioner of the New Jersey Department of Environmental Protection, committing to satisfy the major deficiencies cited in the October 31, 1996 notice by dates certain specified in the letter. On April 22, 1997, Commissioner Shinn submitted a letter amending the date by which the required performance standard modeling would be submitted. A discussion of New Jersey's deficiencies follows below.

Enhanced I/M Performance Standard Modeling

States must submit modeling demonstrating that the proposed I/M program achieves the required emission reductions by the relevant dates to determine whether the state I/M program meets the enhanced I/M performance standard. New Jersey did not include modeling results or assumptions in its submittal, but in its April 22, 1997 letter has committed to submit them no later than February 1, 1998.

Test Procedures, Standards and Equipment

Written test procedures and pass/fail standards and equipment specifications shall be established and followed for each model year and vehicle type included in the I/M program. New Jersey's I/M program will be using a one-mode ASM emissions test for most of its fleet. New Jersey has been working with other states and the equipment manufacturers, in coordination with EPA, to develop their own procedures, specifications and standards for one and-two-mode ASM testing. EPA must receive the State's test procedures, standards and equipment specifications well before testing begins since finalization of these program elements is critical to the program beginning operation as planned. New Jersey committed to submit the final test procedures, standards and equipment specifications by January 31, 1997. EPA has received the State's final test equipment, specifications and standards. Therefore, this condition has been met.

EPA is taking final conditional approval action upon the New Jersey I/M SIP, under section 110 of the CAA on the condition that the State performs and submits modeling results to EPA no later than February 1, 1998. As discussed in detail later in this notice, this approval program is also being granted an interim approval for an 18-month period, under the authority of the NHSDA.

b. De Minimus Deficiencies

In addition to the above, the State must correct eight minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. Although satisfaction of these deficiencies does not affect the conditional interim approval status of the State's program, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period:

(1) New Jersey must submit proof that adequate funding will be available throughout the life of the program as per 40 CFR 51.354.

(2) New Jersey must submit final requirements for inspection of fleet vehicles as per 40 CFR 51.356.

(3) New Jersey's quality control measures must be in accordance with the requirements set forth in 40 CFR 51.359.

(4) New Jersey must provide a detailed description of its motorist compliance enforcement program as per 40 CFR 51.361.

(5) New Jersey must provide a description of the procedures that will ensure program quality; such as audits, and training requirements as set forth in 40 CFR 51.363.

(6) New Jersey must provide final program requirements for data collection as set forth in 40 CFR 51.365.

(7) New Jersey must provide final procedures for analyzing and reporting program data as per 40 CFR 51.366.

(8) New Jersey must complete the public information program, including the repair station report card as set forth in 40 CFR 51.368.

IV. Explanation of the Interim Approval Process

At the end of the 18-month period, the interim approval for this program, which satisfies the requirements of CAA section 182(c)(3), will automatically expire pursuant to the NHSDA. It is expected that the State will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. EPA expects the State will have at least six months of program data that can be used for the demonstration. If the State fails to provide a demonstration of the program's effectiveness to EPA at the end of the 18-month interim approval period, the interim approval will expire, and EPA may disapprove the emission credits claimed for the State's I/M SIP revision. If the State's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the State's previous submittal, EPA will adjust the State's credits accordingly, and use this information to act on the State's final I/M program.

V. Final Rulemaking Action

EPA is conditionally approving New Jersey's enhanced I/M program based upon the conditions described in Section III(a) of this notice. Unlike the start date condition, which was addressed above, should the State fail to fulfill the performance standard modeling condition by February 1, 1998, this conditional interim approval will convert to a disapproval pursuant to CAA section 110(k)(4). In that event, EPA would issue a letter to notify the State that the condition has not been met, and the approval has converted to a disapproval. EPA clarifies that it is taking both a limited conditional approval of the New Jersey enhanced I/M program under section 110 which strengthens the SIP, as well as a conditional interim approval under section 348 of the NHDSA for purposes of compliance with the CAA section 182(c)(3). The limited approval of the enhanced I/M program will not expire at the time the interim approval of the 15 percent and 9 percent plans and the interim approval of the enhanced I/M program under the NHSDA expire. Thus, although an approved I/M program satisfying all of the requirements of section 182(c)(3) may no longer be in place, the I/M program will remain an enforceable SIP requirement. As explained above, the credits provided by the I/M program on an interim basis for those plans may be adjusted based on EPA's evaluation of the I/M program's performance.

VI. Further Requirements for Permanent I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, in order for an evaluation of emission reduction credits, under the authority of section 348 of the NHSDA. At the end of this period, the interim approval of the emission credits will expire and the credits will be adjusted accordingly based on the evaluation. At that time, EPA must take action regarding the efficacy of the State's SIP under the authority of sections 110 and 182 of the CAA. EPA will evaluate New Jersey's I/M program based upon the following criteria:

(1) The State has complied with all the conditions of its commitment to EPA,

(2) EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the program during the interim period,

(3) Final program regulations are submitted to EPA, and

(4) The State's I/M program meets all of the requirements of EPA's I/M rule, including those de minimus deficiencies identified in Section III(b) above as minor for purposes of interim approval.

The State will be required to meet all conditions of this approval. In addition, the emission credits obtained will be evaluated for their adequacy for attainment, maintenance and other requirements of the CAA.

VII. Administrative Requirements

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

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

B. Regulatory Flexibility Act

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

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 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 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 1997. Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the New Jersey I/M SIP, on an interim basis, 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) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 28, 1997.

William J. Muszynski,

Deputy Regional Administrator, Region II.

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.

Subpart FF—New Jersey

2. Section 52.1580 is added to read as follows:

§ 52.1580 Conditional approval.

(a) The State of New Jersey's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on November 27, 1996 and April 22, 1997, is conditionally approved based on certain contingencies, for an interim period to last 18 months. If New Jersey fails to start its program by November 15, 1997, the interim approval granted under the provisions of the NHSDA, which EPA believes allows the State to take full credit in its 15 percent plan for all of the emission reduction credits in its proposal, will convert to a disapproval after a finding letter is sent to the State by EPA. If the State fails to submit to EPA the final modeling demonstrating that its program will meet the relevant enhanced I/M performance standard by February 1, 1998, the conditional approval will automatically convert to a disapproval as explained under Section 110(k) of the Clean Air Act.

(b) In addition to the above condition, the State must correct eight minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. The minor deficiencies are listed in EPA's conditional interim final rulemaking on New Jersey's motor vehicle inspection and maintenance program published on May 14, 1997. Although satisfaction of these deficiencies does not affect the conditional interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period.

(c) EPA is also approving this SIP revision under Section 110(k), for its strengthening effect on the plan.

[FR Doc. 97–12628 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 021–1021; FRL–5817–5]

Approval and Promulgation of Implementation Plans and State Operating Permit Programs; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is fully approving the operating permit program submitted by the state of Missouri for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and certain other sources.

The EPA is also approving a revision to the Missouri State Implementation Plan (SIP) which updates references and modifies the Missouri intermediate operating permit program. SIP approval of revised state rules ensures that the SIP is current and permits Federal enforceability of the state rules.

DATES: This rule is effective on June 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Part 70 Program

The Clean Air Act (Act) and its implementing regulations at 40 CFR Part 70 require that states develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving a complete submittal. The EPA reviews state programs pursuant to section 502 of the Act and the Part 70 regulations, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR Part 70, the EPA may grant the program interim approval for a period of up to two years. If a state does not have an approved program within two years of interim approval, the EPA must establish and implement a Federal operating permits program for that state.

The EPA published a notice of interim approval of the Missouri operating permit program on April 11, 1996. The revisions required by the EPA for full approval of the state's program were discussed fully in that notice and accompanying technical support document. Missouri made the required revisions to its program and submitted that information, along with a request for full approval, to the EPA on August 6, 1996. Consequently, on December 3, 1996, the EPA published a notice proposing full approval. This notice explained the EPA's rationale for finding that Missouri had corrected the deficiencies that were the basis for the interim approval.

B. Section 112(g) and Section 112(l) Programs

In the April 11, 1996, interim approval notice, the EPA approved the state's preconstruction review program for the purpose of implementing the 112(g) requirements. This approval remains in effect. The EPA issued a final 112(g) rule on December 27, 1996. The state has 18 months from the effective date of the rule to adopt an equivalent program.

In the April 11, 1996, **Federal Register** notice, the EPA granted full approval of the state's program under section 112(l)(5) and 40 CFR Part 63.91. It also ratified prior delegations to Missouri for implementation of certain national emission standards for hazardous air pollutants for which Missouri had requested and received delegation prior to approval of the state's section 112(l) program. This approval gives the state the authority to implement section 112 standards as promulgated without changes for both Part 70 and non-Part 70 sources. The EPA is reaffirming this approval.

C. SIP Program

In the December 3, 1996, notice, the EPA also proposed to approve revisions to the state SIP submitted pursuant to section 110 of the Act. These revisions update references in rule 10 CSR 10–6.020, and modify the insignificant activities provisions in rule 10 CSR 10–6.065 with regard to the state's intermediate operating permit program in subsection 4(G). The provisions of this subsection apply to Missouri's basic and intermediate operating permit programs. The EPA is approving the revisions to this subsection only to the extent that they apply to the intermediate program. The Missouri basic operating permit program is not a Federally approved program, and the EPA is not taking action on the revisions as they relate to that program.

II. Final Action and Implementation

A. Part 70 Program

No comments were received during the public comment period on the proposed approval of the state's revisions relating to the Part 70 program. Consequently, the EPA is now taking final action to grant full approval of the Missouri Part 70 operating permit program. This approval extends to relevant portions of the following Missouri rules: 10 CSR 10–6.020, Definitions and Common Reference Tables; 10 CSR 10–6.065, Operating permits; and 10 CSR 10–6.110, Submission of Emission Data, Emission Fees and Process Information.

B. SIP Program

No comments were received during the public comment period on the proposed approval of the SIP revisions relating to rules 10 CSR 10–6.020 and 10 CSR 10–6.065. Therefore, the EPA is granting final approval of these revisions to Missouri's SIP. The EPA is approving the revisions to section 4(G) of rule 10 CSR 10–6.065 as they relate to the intermediate operating permit program, which was approved by the EPA on September 25, 1995.

Nothing in this action should be construed as permitting or 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.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

III. Administrative Requirements

A. Docket

Copies of the Missouri submittal and other information relied upon for the final approval are contained in the docket maintained at the EPA Region VII office. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. 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 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany 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 private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 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

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: April 2, 1997.

Dennis Grams,

Regional Administrator.

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.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(96) A revision to the Missouri SIP submitted by the Missouri Department of Natural Resources on August 6, 1996, pertaining to its intermediate operating permit program. The EPA is not approving provisions of the rules which pertain to the basic operating permit program.

(i) Incorporation by reference.

(A) Regulations 10 CSR 10–6.020, Definitions and Common Reference Tables, effective June 30, 1996; and 10 CSR 10–6.065, Operating Permits, effective June 30, 1996, except sections (4)(A), (4)(B), and (4)(H).

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 741, et seq.

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

(a) * * *

(b) The Missouri Department of Natural Resources program submitted on January 13, 1995; August 14, 1995; September 19, 1995; October 16, 1995; and August 6, 1996. Full approval effective June 13, 1997.

* * * * *

[FR Doc. 97–12631 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300485; FRL–5716–1]

RIN 2070–AB78]

Cymoxanil; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the fungicide cymoxanil in or on the raw agricultural commodity potatoes in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of cymoxanil on potatoes in the states of Alabama, California, Colorado, Delaware, Florida, Idaho, Indiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Virginia, Washington and Wisconsin. This tolerance will expire and is revoked on March 15, 1999.

DATES: This regulation becomes effective May 14, 1997. Objections and requests for hearings must be received by EPA on or before July 14, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300485], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300485], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300485]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA, (703) 308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide cymoxanil on potatoes at 0.05 parts per million (ppm). This tolerance will expire and be revoked by EPA on March 15, 1999. After March 15, 1999, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996)(FRL–5572–9).

New Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Cymoxanil on Potatoes and FFDCA Tolerances

EPA has authorized under FIFRA section 18 the use of cymoxanil on potatoes for control of late blight, as requested by the states previously listed. Recent failures to control late blight in potatoes as well as tomatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight (*Phytophthora infestans*), which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the United States were previously controlled by treatment with metalaxyl. Presently, there are no fungicides registered in the United States that will provide adequate control of the immigrant strains of late blight. After having reviewed their submissions, EPA concurs that emergency conditions exist.

As part of its assessment of these specific exemptions, EPA assessed the potential risks presented by residues of cymoxanil on potatoes. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for residues of cymoxanil will permit the marketing of potatoes treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on these emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and is revoked on March 15, 1999, under FFDCA section 408(l)(5), residues of cymoxanil not in excess of the amount specified in these tolerances remaining in or on potatoes after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, section 18 of FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether cymoxanil meets EPA's registration requirements for use on potatoes or whether a permanent tolerance for this use would be appropriate. This tolerance does not serve as a basis for registration of cymoxanil by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than previously listed and states which are subsequently granted specific exemptions for this use to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for cymoxanil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Cymoxanil is not registered by EPA for use in the United States. Nevertheless, EPA believes it has sufficient data to assess the hazards of cymoxanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of cymoxanil on potatoes at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity*. Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has selected an RfD for cymoxanil of 0.02 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOEL of 1.6 mg/kg/day in a 1–year dog feeding study, using an uncertainty factor of 100. The lowest observed effect level (LOEL) of 3.1 mg/kg/day was based on decreased food consumption, decreased body weight, and decreased feed efficiency.

2. *Acute toxicity*. Agency toxicologists have recommended that the acute endpoint of 10 mg/kg/day from the rat developmental toxicity study be used for acute dietary risk calculations. The developmental LOEL of 25 mg/kg/day is based on increased skeletal effects in fetuses. The population of concern for this risk assessment is females 13+ years old.

3. *Short-term non-dietary inhalation and dermal toxicity*. The OPP recommends use of the developmental toxicity study in rabbits for short-term non-dietary risk calculations. The maternal NOEL was 8.0 mg/kg/day. At the LOEL of 16 mg/kg/day there was an increased incidence of animals with cold ears, reduced food consumption, decreased defecation, and decreased weight gain.

4. *Carcinogenicity*. Cymoxanil has not been classified as to carcinogenic potential. No cancer risks have been identified in the available cymoxanil data evaluation records.

B. Aggregate Exposure

There are no established U.S. tolerances for cymoxanil, and there are no registered uses for cymoxanil in the United States.

For the purpose of assessing chronic dietary exposure from cymoxanil, EPA assumed tolerance level residues and 100% of crop treated for the proposed use of cymoxanil. These conservative assumptions result in overestimation of human dietary exposures. Secondary residues of cymoxanil are not expected to transfer to animal commodities as a result of the proposed use.

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause cymoxanil to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with cymoxanil in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerances are granted.

There is no entry for cymoxanil in the ''Pesticides in Groundwater Data Base'' (EPA 734–12–92–001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of cymoxanil in drinking water. No drinking water health advisory levels have been established for cymoxanil. Cymoxanil is not registered for any residential uses so no exposure from this route is expected. Because there are no short- or intermediate-term non-dietary, non-occupational exposure scenarios associated with cymoxanil, a short- or intermediate-term aggregate risk assessment is not required.

C. Cumulative Exposure to Substances with Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cymoxanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cymoxanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cymoxanil has a common mechanism of toxicity with other substances.

D. Safety Determinations For U.S. Population

Based on the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to cymoxanil in food from published tolerances will utilize less than 1 percent of the RfD for the U.S. population. A dietary (food only) MOE of 25,000 was calculated. This MOE value does not exceed the Agency's level of concern for acute dietary exposure. Whatever reasonable bounding figure the Agency eventually decides upon for the contribution from water, exposure to cymoxanil is not expected to exceed the RfD or to pose acute dietary concerns. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cymoxanil residues.

E. Determination of Safety for Infants and Children.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/MOE (safety) is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor. Based on current toxicological data requirements, the data base for cymoxanil relative to pre- and post-natal toxicity is not complete.

Cymoxanil demonstrates extra pre-natal sensitivity for infants and children based on the results of the developmental study in rats. The developmental NOEL and LOEL were 10 and 25 mg/kg/day respectively. In comparison, the maternal NOEL and LOEL were 25 and 75 mg/kg/day respectively. This difference means that developmental effects (skeletal findings) occurred in the absence of maternal effects at 25 mg/kg/day. Therefore, OPP recommended that an acute dietary risk assessment be performed for females 13+ years. Given that the database is incomplete, and available data suggest extra pre-natal sensitivity, an extra uncertainty factor (3X) is appropriate for MOE calculations. That is, provided the MOE for females 13+ is greater than 300 the Agency would have no concerns for pre-natal exposure. The calculated MOE of 25,000 clearly demonstrates that the acute pre-natal risk to unborn children from exposure to aggregate residues of cymoxanil does not exceed the Agency's level of concern.

The results of the rabbit developmental study did not suggest any pre-natal toxicity concerns. The developmental NOEL was 32 mg/kg/day (highest dose tested) and the maternal NOEL was 8 mg/kg/day.

The results of the rat reproduction study did not demonstrate any special post-natal toxicity. The parental NOEL and LOEL and the pup NOEL and LOEL occurred at the same dose levels (5 and 25 mg/kg/day, respectively). EPA has concluded that the percent of the RfD that will be utilized by chronic dietary (food) exposure to residues of cymoxanil is less than 1% for all population subgroups which includes nursing and non-nursing infants (<1 year old), and children (1 to 6 years old) and (7 to 12 years old). This calculation assumes tolerance level residues and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. The addition of potential exposure from cymoxanil residues in drinking water is not expected to result in an exposure which would exceed the RfD. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cymoxanil residues.

V. Other Considerations

The metabolism of cymoxanil in potatoes is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of cymoxanil. The residue of concern, for the purposes of this tolerance, is cymoxanil. The proposed enforcement methods include Multi-Residue Protocol D, a method (adequate for generation of field trial residue data) submitted by Du Pont and a gas chromatography (GC) method published in the open literature. The methods are available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 703–305–5805.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of cymoxanil in or on potatoes at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ‘‘object’’ to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 14, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300485] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ‘‘ADDRESSES’’.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300485]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not ‘‘a significant regulatory action’’ and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ‘‘unfunded mandates’’ as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950) (May 4, 1981).

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 1, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.503 to read as follows:

§ 180.503 Cymoxanil, tolerance for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the fungicide cymoxanil in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Potatoes	0.05	3/15/99

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–12475 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300483; FRL–5715–5]

RIN 2070–AB78

Dimethomorph; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the fungicide dimethomorph in or on the food commodity potatoes in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of dimethomorph on potatoes in the states of Alabama, California, Colorado, Delaware, Florida, Idaho, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. The tolerance will expire and is revoked on March 15, 1999.

DATES: This regulation is effective May 14, 1997. Objections and requests for hearings must be received by EPA on or before July 14, 1997.

ADDRESSES: Written objections and hearing requests, identified by the doument control number,[OPP–300483], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300483], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document control number [OPP–300483]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, 703–308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide dimethomorph on potatoes at 0.05 parts per million (ppm). This tolerance will expire and is revoked by EPA on March 15, 1999. After March 15, 1999, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new FFDCA section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996)(FRL–5572–9).

New Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food commodity) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food commodities that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or a period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of FFDCA section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Dimethomorph on Potatoes and FFDCA Tolerances

EPA has authorized under FIFRA section 18 the use of dimethomorph on potatoes for control of late blight, as requested by the states previously listed. Recent failures to control late blight in potatoes as well as tomatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight (phytophthora infestans), which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the United States were previously controlled by treatment with metalaxyl. Presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. After having reviewed their submissions, EPA concurs that emergency conditions exist.

As part of its assessment of these specific exemptions, EPA assessed the potential risks presented by residues of dimethomorph on potatoes. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for residues of dimethomorph will permit the marketing of potatoes treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on these emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food commodity is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under FFDCA section 408(e) as provided in FFDCA section 408(l)(6). Although this tolerance will expire and is revoked on March 15, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amount specified in the tolerance remaining in or on potatoes after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, section 18 of FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether dimethomorph meets EPA's registration requirements for use on potatoes or whether a permanent tolerance for this use would be appropriate. This tolerance does not serve as a basis for registration of dimethomorph by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than previously listed and States which are subsequently granted specific exemptions for this use to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 of FIFRA as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for dimethomorph, contact the Agency's Registration Division at the address provided above in ''ADDRESSES''.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no-observed effects (the ''no-observed-effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear-low-dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food commodity in question, residues in other food commodities for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food commodity contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food commodity contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most food commodities when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Dimethomorph is not registered by EPA for use in the United States. Nevertheless, EPA believes it has sufficient data to assess the hazards of dimethomorph and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for the time-limited tolerances for residues of dimethomorph on potatoes at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dimethomorph are discussed below.

1. *Chronic toxicity*. Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has selected an RfD for dimethomorph of 0.01 milligrams(mg)/kilogram(kg)/day. This RfD is based on a NOEL of 10 mg/kg/day in a 2-year chronic rat study, using an uncertainty factor of 1,000. The lowest-observed-effect level (LOEL) of 57.7 mg/kg/day was based on decreased body weight and increased incidence of liver ''ground glass'' foci in females. The additional 10-fold uncertainty factor was used to protect infants and children, since data gaps consisted of rat and rabbit developmental studies and the rat reproduction study.

2. *Acute toxicity*. An acute dietary risk endpoint was not identified by OPP.

3. *Short-term, non-dietary inhalation and dermal toxicity*. OPP recommends use of the developmental toxicity study in rats for short-term, non-dietary risk calculations. The maternal NOEL was 60.0 mg/kg/day. At the LOEL of 160 mg/kg/day there was reduced food commodity consumption, body weights, and weight gain. Intermediate-term risk endpoints have also been identified. The NOEL of 15 mg/kg/day in the 90-day dog feeding study has been chosen as the intermediate-term toxicity endpoint. At the LOEL of 43 mg/kg/day, there were decreases in the absolute and relative weights of the prostrate and possible threshold liver effects.

4. *Carcinogenicity*. Dimethomorph has not been classified as to carcinogenic potential. No cancer risks have been identified in the available dimethomorph data evaluation records.

B. Aggregate Exposure

There are no established U.S. tolerances for dimethomorph, and there are no registered uses for dimethomorph in the United States.

For the purpose of assessing chronic dietary exposure from dimethomorph, EPA assumed tolerance level residues and 100% of crop treated for the proposed use of dimethomorph. These conservative assumptions result in overestimation of human dietary exposures. Secondary residues of dimethomorph are not expected to transfer to animal commodities as a result of the proposed use.

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food commodities and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause dimethomorph to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with dimethomorph in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerances are granted.

There is no entry for dimethomorph in the ''Pesticides in Groundwater Data Base'' (EPA 734–12–92–001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of dimethomorph in drinking water. No drinking water health advisory levels have been established for dimethomorph. Dimethomorph is not registered for any residential uses so no exposure from this route is expected. Because there are no short- or intermediate-term, non-dietary, non-occupational exposure scenarios associated with dimethomorph, a short- or intermediate-term, aggregate-risk assessment is not required.

C. Cumulative Exposure to Substances With Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed). EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances.

D. Safety Determinations for U.S. Population

Based on the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to dimethomorph in food commodities from published tolerances will utilize less than 1% of the RfD for the U.S. population. An acute-dietary-risk endpoint was not identified. Therefore, an acute-aggregate- risk assessment is not required. Whatever reasonable bounding figure the Agency eventually decides upon for the contribution from water, exposure to dimethomorph is not expected to exceed the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues.

E. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty (safety) factor/MOE (safety) is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard 100-fold margin/factor not the additional 10-fold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor. Based on current toxicological data requirements, the data base for dimethomorph relative to pre- and post-natal toxicity is not complete.

It can not be established whether dimethomorph does or does not demonstrate extra pre- or post-natal sensitivity for infants and children based on the results of the rat and rabbit developmental studies and the rat reproduction study. These studies were rated supplementary (not acceptable). To compensate for the lack of acceptable studies, the RfD (0.01 mg/kg/day) was calculated using an uncertainty factor of 1,000. The additional 10-fold uncertainty factor was added because of the data gaps and in order to protect infants and children from possible pre- and post-natal, toxic risks from dietary exposure to dimethomorph.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary (food commodity) exposure to residues of dimethomorph is less than or equal to 1% for all population subgroups which includes nursing and non-nursing infants (<1 year old), and children (1–6 yrs.) and (7–12 yrs.). This calculation assumes tolerance level residues and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. The addition of potential exposure from dimethomorph residues in drinking water is not expected to result in an exposure which would exceed the RfD. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dimethomorph residues.

V. Other Considerations

The metabolism of dimethomorph in potatoes is adequately understood only for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of dimethomorph. The residue of concern, for the purposes of this tolerance, is dimethomorph. An adequate method is available for detection of the residues of concern for the purpose of this FIFRA section 18 request. High Performance Liquid Chromotography/Ultra Violet (HPLC/UV) analytical method FAMS 002–02 is adequate for detecting residues of dimethomorph in/on potatoes. This method has undergone a successful Agency validation. The methods are available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5805.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of dimethomorph in or on potatoes at 0.05 ppm. This tolerance will expire and is revoked by EPA on March 15, 1999. After that date, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new FFDCA section 408(e) and (l)(6) as was provided in the old FFDCA section 408 and in FFDCA section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law. Any person may, by July 14, 1997, file written objections on any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given in ''ADDRESSES'' (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record

A record has been established for this rulemaking under document control number [OPP–300483]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ‘‘ADDRESSES’’at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not ‘‘a significant regulatory action’’ and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ‘‘unfunded mandates’’ as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950, May 4, 1981).

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 1, 1997.

James J. Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.493 to subpart C to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the fungicide dimethomorph in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. This tolerance will expire and is revoked by EPA on March 15, 1999. After March 15, 1999, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Commodity	Parts per million	Expiration/ Revocation date
Potatoes	0.05	3/15/99

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect and inadvertent residues.* [Reserved]

[FR Doc. 97–12474 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–41; RM–8985]

Radio Broadcasting Services; Glen Arbor, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 227A to Glen Arbor, Michigan, in response to a proposal filed by Arborland Broadcasting Company. *See* 62 FR 5791, February 7, 1997. The coordinates for Channel 227A at Glen Arbor are 44–50–05 and 86–01–55. There is a site restriction 7.9 kilometers (4.9 miles) south of the community. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 227A at Glen Arbor, Michigan, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order, MM Docket No. 97–41, adopted April 30, 1997, and released May 9, 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.

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 Michigan, is amended by adding Channel 227A at Glen Arbor.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12605 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–214; RM–8886]

Radio Broadcasting Services; Dededo, GU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rolando Manuntag, allots Channel 286C to Dededo, Guam, as the community's first local aural transmission service. *See* 61 FR 55780, October 29, 1996. Channel 286C can be allotted to Dededo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 286C at Dededo are North Latitude 13–29–01 and East Longitude 144–49–29. With this action, this proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 286C at Dededo, Guam, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–214, adopted April 30, 1997, and released May 9, 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 contractors, International Transcription Service, 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: Sections 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 Guam, is amended by adding Dededo, Channel 286C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12604 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–247; RM–8914]

Radio Broadcasting Services; Pangburn, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 256A to Pangburn, Arkansas, as that community's first local aural transmission service in response to a petition filed on behalf of Greers Ferry Broadcasting. *See* 62 FR 2996, January 21, 1997. Coordinates used for Channel 256A at Pangburn are 35–26–52 and 91–48–57. With this action, the proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 256A at Pangburn, Arkansas, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 256A at Pangburn, Arkansas, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–247, adopted April 30, 1997, and released May 9, 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 Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

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 Arkansas, is amended by adding Pangburn, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12602 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–127; RM–8676; RM–8726]

Radio Broadcasting Services; Oro Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 270A to Oro Valley, Arizona, in lieu of originally requested Channel 277A, as that community's second local FM service, in response to a petition for rule making filed on behalf of Rita Bonilla (RM–8676). See 60 FR 40146, August 7, 1995. The *First Report and Order* issued in this proceeding with regard to the communities of Comobabi, Florence, Oracle and San Carlos,

Arizona (RM–8726), advised that final action with respect to Oro Valley was deferred pending concurrence of the Mexican government to that proposal. See 62 FR 04465, January 30, 1997. The requested consent remains outstanding. However, due to the extended pendency of the proceeding, Channel 270A is allotted to Oro Valley conditionally to expedite the initiation of a new FM service at that community. Coordinates used for Channel 270A at Oro Valley are 32–23–27 and 110–57–57. With this action, the proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 270A at Oro Valley, Arizona, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 270A at Oro Valley, Arizona, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 95–127, adopted April 30, 1997, and released May 9, 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.

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 Arizona, is amended by adding Channel 270A at Oro Valley.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12601 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–43; RM–8986]

Radio Broadcasting Services; Pinconning, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 281A to Pinconning, Michigan, as that community's second FM broadcast service in response to a petition filed by Queso Broadcasting Company. *See* 62 FR 5790, February 7, 1997. The coordinates for Channel 281A at Pinconning are 43–52–56 and 83–55–07. There is a site restriction 4.5 kilometers (2.8 miles) northeast of the community. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 281A at Pinconning, Michigan, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–43, adopted April 30, 1997, and released May 9, 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.

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 Michigan, is amended by adding Channel 281A at Pinconning.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12597 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–30; RM–8922]

Radio Broadcasting Services; Pocatello, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 221A to Pocatello, Idaho, as that community's fourth local FM service in response to a petition filed on behalf of Riverside Broadcasting Company. *See* 62 FR 4225, January 29, 1997. Coordinates used for Channel 221A at Pocatello are 42–52–24 and 112–27–00. With this action, the proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 221A at Pocatello, Idaho, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 221A at Pocatello, Idaho, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–30, adopted April 30, 1997, and released May 9, 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 Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

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 Idaho, is amended by adding Channel 221A at Pocatello.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12600 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–246; RM–8904]

Radio Broadcasting Services; Salida, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 229C3 to Salida, Colorado, as that community's second local FM service in response to a petition filed on behalf of Cyrus Esphahanian. *See* 62 FR 2996, January 21, 1997. Coordinates used for Channel 229C3 at Salida are 38–29–10 and 105–58–53. With this action, the proceeding is terminated.

DATES: Effective June 23, 1997. The window period for filing applications for Channel 229C3 at Salida, Colorado, will open on June 23, 1997, and close on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 229C3 at Salida, Colorado, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–246, adopted April 30, 1997, and released May 9, 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 Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

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 Colorado, is amended by adding Channel 229C3 at Salida.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–12599 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201, 1202, 1203, 1211, 1214, 1237, 1246, 1252, and 1253

Amendment of Department of Transportation Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Transportation Acquisition Regulation (TAR) to reflect the changes to the Federal Acquisition Regulation through the Federal Acquisition Circular 90–42 and to delete certification requirements.

DATES: This rule is effective June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Charlotte Hackley, Office of Acquisition and Grant Management, M–60, 400 Seventh Street SW., Washington, DC 20590: (202) 366–4267.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation has determined that changes to the Transportation Acquisition Regulation (TAR) are necessary to implement and align it with 48 CFR Chapter Circulars 90–34 through 90–42, to delete certification requirements, amend part 1211 to insert language inadvertently omitted in 61 FR 50248, published September 25, 1996, and to make minor editorial revisions and corrections.

B. Regulatory Analysis and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department does not believe that there would be significant Federalism implications to warrant the preparation of a Federalism assessment.

C. Regulatory Flexibility Act

The Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely restates previous TAR coverage, deletes certification requirements which do not significantly alter the amount of information currently required, and makes minor editorial revisions.

D. Paperwork Reduction Act

There are no new information collection requirements that require clearance previously approved under OMB Control No. 2105–0517.

List of Subjects in 48 CFR Parts 1201, 1202, 1203, 1211, 1214, 1237, 1246, 1252, and 1253

Government procurement.

The Final rule is issued under the delegated authority of 49 CFR Part 1.59(p). This authority is redelegated to the Senior Procurement Executive, issued this 7th day of May 1997, at Washington, DC.

David J. Litman,

Director of Acquisition and Grant Management.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR Chapter 12 is amended as follows:

1. The authority citation for 48 CFR chapter 12, parts 1201, 1202, 1203, 1211, 1214, 1237, 1246, 1252, and 1253 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM [AMENDED]

1201.301–70 [Amended]

2. Section 1201.301–70 is amended by removing paragraph (a)(4) and redesignating paragraph (a)(5) as (a)(4) and by removing in paragraph (b) introductory text the words ''TAR Council System'' and adding in their

place the words ''TAR/TAM change process''.

Section 1201.304(a) is revised to read as follows:

1201.304 Agency control and compliance procedures.

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in paragraph (b) of this section) by using an internal TAR change process that involves input from many DOT elements including operating administration representatives on the Procurement Management Council. The operating administration member shall represent their operating administration's viewpoint along with Departmentwide considerations in reaching a decision on TAR changes.

* * * * *

PART 1202—DEFINITIONS OF WORDS AND TERMS

3. Section 1202.1 is amended by revising paragraphs (f) and (g) to read as follows and by amending paragraph (i)(7) by removing the phrase ''/Office of the Secretary (OST)'':

1202.1 Definitions.

* * * * *

(f) *Head of the agency* or *agency head* means the Deputy Secretary except for acquisition actions that, by the terms of a statute or delegation, must be done specifically by the Secretary of Transportation.

(g) *Head of the contracting activity (HCA)* means the individual responsible for managing the contracting offices within an operating administration who is a member of the Senior Executive Service or a flag officer and is the same as the term ''head of the procuring activity.''

* * * * *

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1203.409 [Amended]

4. Section 1203.409 is redesignated as section 1203.405.

PART 1211—DESCRIBING AGENCY NEEDS

5. Subparts 1211.1 and 1211.2 are added to read as follows:

Subpart 1211.1—Selecting and Developing Requirements Documents

1211.104 Items peculiar to one manufacturer.

1211.104–70 Offer evaluation and award, brand name or equal descriptions.

(a) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation may be defective and need to be amended or the requirement resolicited.

(b) The contracting officer shall insert in the solicitation an entry substantially as follows for completion by the offeror in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies:

Offering on:

____

Manufacturer's Name:

____

Brand:

____

No:

____

(c) Except when bid samples are requested for brand name or equal procurements, the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this note:

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to the equality of the product(s) offered (see the provision at (TAR) 48 CFR 1252.211–70, Brand Name or Equal).

Subpart 1211.2—Using and Maintaining Requirements Documents

1211.204–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.211–70, Brand Name or Equal, in solicitations using a brand name or equal purchase description whenever practicable.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.211.71, Index for Specifications, when an index or table of contents may be furnished with the specification.

PART 1214—SEALED BIDDING

6. Section 1214.303(b) is amended by revising the certification to read as follows:

1214.303 Modification or withdrawal of bids.

(b) * * *

I, as a bona fide agent for or representative of

____

(Bidder's name and address), am authorized to withdraw the bid on IFB No. ________ scheduled for opening on ________________ and hereby acknowledge receipt of the unopened bid.

____

(Name and telephone No.)

____

(Date)

PART 1237—SERVICE CONTRACTING

7. Subpart 1237.1—Service Contracts—General is amended by adding sections 1237.104 and 1237.104–90 to read as follows:

Subpart 1237.1—Service Contracts—General

1237.104 Personal services contracts. (USCG)

1237.104–90 Delegation of authority. (USCG)

PART 1246—QUALITY ASSURANCE

Subpart 1246.7—Warranties

1246.701–70 [Amended]

8. Section 1246.701–70, paragraph (b) of the definition *Major system* is amended by removing the citation ''48 CFR 15.804–3(c)'' and adding in its place the citation ''48 CFR 15.804–1''.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1252.219–70 [Amended]

9. Section 1252.219–70, is amended by removing paragraph (b) and redesignating paragraph (c) as (b).

PART 1253—[AMENDED]

Subpart 1253.3—Forms

10. Part 1253, Forms DOT F 4220.4, DOT F 4220.43, DOT F 4220.45, and DOT F 4220.46 are revised to read as follows:

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION **CONTRACTOR'S RELEASE**	OMB Control No. 2105-0517 Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, DC 20503.

CONTRACTOR (Name and Address) CONTRACT NO.	ENTER SUM OF TOTAL OF AMOUNTS PAID AND PAYABLE $

Pursuant to the terms of the above numbered contract and in consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state "None")

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with all provisions of the said contract, provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESSES WHEREOF, this release has been executed this _______ day of __________________, 19 ______.

WITNESSES

____
(Contractor)

______________________________ **BY** ______________________________

______________________________ **TITLE** ______________________________

NOTE: **In the case of a corporation, witnesses are not required but the below statement must be completed.**

I. ______________________________, am the ______________________ secretary of the corporation named as Contractor in the foregoing release; that ____________________ who signed said release on behalf of the Contractor was then ______________________ of said corporation; release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) ______________________________

CONTRACTOR REPORT OF GOVERNMENT PROPERTY

OMB Control No. 2105-0517
Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

1. Contract Number: ________________

2. Report Period Ending: ________________

3. Contractor (Name and Address)

4. Contracting Office (Name and Address)

5. Name and location of Government-Owned, Contractor-Operated Plant (if applicable)

6. Any Government property located at a subcontractor's plant? _____ Yes _____No. If yes, give the name and address of the subcontractor(s) on an attached sheet to this report.

7. Date contractor's property control system approved? ________________

8. Approved by whom? ________________
Name of Agency/Office

9 Property Class (See FAR 45.5)	Starting Balance: Total Acquisition Cost (in dollars)	Starting Balance: Total Quantity (in acres or units)	Items Added in $	Items Deleted in $	Ending Balance: Total Acquisition Cost (in dollars)	Ending Balance: Total Quantity (in acres or units)
a. Land & Rights Therein						
b. Other Real Property						
c. Plant Equipment						
d. Special Test Equipment						
e. Special Tooling						
f. Materials in Stock (when total value exceeds $50,000)						

NOTE: This report shall include all Government property (i.e., property furnished by the Government, or acquired or fabricated by the contractor or subcontractors). By signature hereon, the contractor's property administrator declares that the report was prepared from the contractor's records that are required by FAR 45.5.

10. Typed Name of Contractor Property Administrator

11. Signature and Date

Form DOT F 4220.43 (2/97) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS	OMB Control No.: 2105-0517 Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

Pursuant to the terms of Contract No. ________________ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, ____________________________ (hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over the release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits or other amounts (including any interest thereon) due or which may become due, and to promptly forward to the UNITED STATES TREASURER checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection with; and to permit the Government to represent it at any hearing, trial, or other proceeding arising out out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this __________ day of ________________________, ____________________.

BY: __________________________________
(CONTRACTOR)

By signature hereon, I, ____________________________, declare that I am the ____________________________ (official title) of the corporation named as Contractor in the foregoing assignment; that ________________________ signed said assignment on behalf of the Contractor was then _________________________ of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) ________________________________

Form DOT F 4220.45 (REV. 2/97) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

CUMULATIVE CLAIM AND RECONCILIATION STATEMENT

OMB Control No. 2105-0517

Expiration Date: 4/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

1. Name of Contractor ____________
2. Address of Contractor ____________

3. Contract No. ____________
4. Delivery/Task Order No. ____________

5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:

a. Direct Labor........ $ ________
b. Direct Material........ $ ________
c. Other Direct Costs........ $ ________
d. Overhead........ $ ________
e. G&A........ $ ________
f. Subcontract Cost........ $ ________
g. Total Costs (5a through 5f)........ $ ________
h. Fixed Fee........ $ ________
i. Total Amount Claimed........ $ ________

6. Total amount due under the above numbered contract, delivery order, task order is as follows:

a. Total Amount Claimed........ $ ________
b. Total Amount Paid by the Government under Voucher Nos. _______ thru _______ .... $ ________
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet)........ $ ________
d. Total Amount Due........ $ ________

I, ____________________, as the ____________________

(Full Name) (Title)

of the above named contractor, declare that the above statements are correct in accordance with the records of the contractor.

____

(Signature)

Form DOT F 4220.46 (REV. 2/97) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

[FR Doc. 97–12583 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 117]

RIN 2127—AG80

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: In March 1997, NHTSA temporarily amended the agency's occupant crash protection standard to ensure that vehicle manufacturers can quickly depower all air bags so that they inflate less aggressively. More specifically, the agency adopted an unbelted sled test protocol as a temporary alternative to the standard's full scale unbelted barrier crash test. NHTSA took this action to provide an immediate, but interim, solution to the problem of the fatalities and injuries that current air bag designs are causing in relatively low speed crashes to small, but growing numbers of children, and occasionally to adult occupants. This document makes a further amendment to the agency's occupant crash protection standard, so that certain exclusions from requirements in two other safety standards that are available for vehicles certified to the unbelted barrier test will also be available for vehicles certified to the alternative sled test. This action is necessary to prevent a delay in depowering. NHTSA also solicits comments on this amendment.

DATES: *Effective date:* The amendments made by this interim final rule are effective May 9, 1997.

Comments: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

For information about air bags and related rulemakings: Visit the NHTSA web site at http://www.nhtsa.dot.gov and select ''AIR BAGS: Information about air bags.''

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On March 19, 1997, NHTSA published in the **Federal Register** (62 FR 12960) a final rule temporarily amending Standard No. 208, *Occupant Crash Protection,* to ensure that vehicle manufacturers can quickly depower all air bags so that they inflate less aggressively. More specifically, the agency adopted an unbelted sled test protocol, recommended by the American Automobile Manufacturers Association (AAMA), as a temporary alternative to Standard No. 208's full scale unbelted barrier crash test. The agency did not change the standard's full scale belted barrier crash test.

NHTSA took this action to provide an immediate, but interim, solution to the problem of the fatalities and injuries that current air bag designs are causing in relatively low speed crashes to small, but growing numbers of children, and occasionally to adult occupants. The sled test alternative will be available for vehicles manufactured before September 1, 2001, by which time the agency expects the vehicle manufacturers to be able to adopt more advanced air bags that will address these problems.

In early April 1997, AAMA advised the agency that its member companies had discovered that certain provisions in Standard No. 203, *Impact protection for the driver from the steering control system,* and Standard No. 209, *Seat belt assemblies,* could prevent or substantially delay depowering. In each case, the other standard specified an exclusion from certain requirements for vehicles certified to meet Standard No. 208's barrier crash test requirements. The exclusion would thus not be available for a vehicle which was certified to Standard No. 208's alternative sled test requirement.

NHTSA notes that neither it nor the commenters on the depowering proposal identified the issue of whether these exclusions in standards other than Standard No. 208 should be available for vehicles certified to the alternative sled test requirement. The agency did, however, make it clear that it believes it is critical to ensure that vehicle manufacturers can quickly depower all air bags so that they inflate less aggressively. NHTSA therefore does not want the vehicle manufacturers to face any unnecessary impediments to depowering.

In that context, the agency has considered whether the exclusions in Standards No. 203 and 209 should be made available for vehicles certified to the alternative sled test requirement. The agency's analysis for each of the standards is set forth below.

Standard No. 203, Impact Protection for the Driver From the Steering Control System

Standard No. 203 specifies requirements for steering control systems to minimize chest, neck, and facial injuries to the driver as a result of impact. The standard does not apply to ''vehicles that conform to the frontal barrier crash requirements (S5.1) of Standard No. 208 (49 CFR 571.208) by means of other than seat belt assemblies.''

The agency adopted this exclusion in 1975, in response to a petition from General Motors (GM). GM had advised that in developing driver air bags, it found that the changes in the steering control system made conformity with Standard No. 203 difficult and in some cases impossible. GM petitioned the agency to exclude vehicles which meet the frontal barrier crash requirements of Standard No. 208 from Standard No. 203 on the grounds that compliance with the latter would be redundant and design restrictive in the development of air bags.

In deciding to provide the requested exclusion, NHTSA stated that it had determined that the redundant protection offered by Standard No. 203 is not justified where it directly interferes with the development of a more advanced, convenient and effective restraint system. 40 FR 17992, April 24, 1975. In the notice of proposed rulemaking, the agency explained that the level of protection offered by Standard No. 208's frontal barrier crash test is at least equivalent to that of the 15-mile-per-hour body impact of Standard No. 203. The agency also explained that Standard No. 208's barrier crash test requirements alone are designed to provide adequate protection to the driver from impact forces. NHTSA noted that in the case of an air bag, this protective level must be met by the uncushioned steering control system below the system's deployment level and by the air bag above the deployment level, at any speed up to 30 mph.

NHTSA believes that the rationale for Standard No. 203's exclusion for vehicles certified to Standard No. 208's barrier test is also applicable to vehicles certified to the alternative sled test. The concern about the need to meet Standard No. 203 interfering with the design of air bags would not differ depending on whether an air bag is depowered or not. Moreover, the need to meet Standard No. 203 would particularly interfere with depowering.

It is NHTSA's understanding, based on its discussions with AAMA, that the vehicle manufacturers do not test their air-bag-equipped vehicles to Standard No. 203, based on the current exclusion. Thus, the manufacturers do not know whether their vehicles would pass Standard No. 203's requirements.

In the absence of an exclusion for vehicles certified to the alternative sled test, the vehicle manufacturers would need to conduct significant testing to determine whether a vehicle could comply with Standard No. 203. To the extent that a vehicle could not comply, the manufacturer would then need to determine whether it was possible to make design changes that would result in compliance. All of this would result in significant delays to depowering.

NHTSA also believes that the protection specified by Standard No. 203 is redundant to that offered by depowered air bags certified to the alternative sled test. The agency notes that the alternative sled test addresses the same safety problems as the full scale barrier test.

In the depowering rulemaking, the agency recognized that a full scale barrier test does offer a number of advantages over a sled test. However, the agency decided to allow the sled test as a temporary measure given the need to provide manufacturers with maximum flexibility to respond rapidly to the risk posed by air bag activation in low speed crashes. See 62 FR 12965–66, March 19, 1997.

The agency believes that this same consideration leads to applying the Standard No. 203 exclusion to vehicles certified to the alternative sled test, even if the degree of redundancy is somewhat less than that afforded by the barrier test requirement. NHTSA notes that the sled test requirement need only be met at a single change in velocity, rather than at all speeds up to 30 mph. However, the agency believes that a depowered air bag will provide protection at speeds above the deployment level, and does not believe manufacturers will reduce the protection currently being offered by steering control systems at speeds below the deployment level.

Standard No. 209, Seat Belt Assemblies

One of the performance requirements specified by Standard No. 209 limits the amount that the webbing of a belt assembly is permitted to extend or elongate when subjected to certain forces. This requirement does not apply to seat belt assemblies that include a load limiter and that are installed at designated seating positions subject to the requirements of S5.1 of Standard No. 208.

This exclusion had its origin in a petition for rulemaking submitted by Mercedes-Benz (Mercedes). That company petitioned the agency to exclude from the elongation requirement seat belt assemblies installed in conjunction with air bags.

Mercedes was considering the use of a belt system that incorporates a load-limiting device. A load-limiter is a seat belt assembly component or feature that controls tension on the seat belt to modulate the forces that are imparted to occupants restrained by the belt assembly during a crash. These load-limiting systems are intended to reduce head and upper torso injuries through increased energy management.

Mercedes indicated that the webbing in its belt system would elongate beyond the limits that were specified in Standard No. 209. However, Mercedes argued that this type of belt system should be allowed in vehicles equipped with air bags since the two systems used in conjunction with one another can be designed to achieve the maximum reduction in head injuries and upper torso injuries.

NHTSA adopted the exclusion requested by Mercedes in 1981. The agency limited the exclusion to vehicles equipped with automatic restraints since there were then no dynamic performance requirements or injury criteria for manual belt systems used alone. See 46 FR 2618–19, January 12, 1981. Later, however, after it established dynamic testing requirements for manual safety belt systems in passenger cars and light trucks, the agency extended this exclusion to permit the use of load limiters on all safety belts installed at seating positions subject to dynamic testing. See 56 FR 15295, April 16, 1991.

With respect to whether this exclusion should apply to vehicles certified to the alternative sled test, the key point is that these vehicles will continue to have to be certified to Standard No. 208's full scale *belted* barrier crash test. Thus, safety belts will continue to be subject to the same dynamic performance requirements as before the depowering final rule was issued. The agency therefore believes there is no reason why this exclusion should not be available for vehicles certified to the alternative sled test, which addresses unbelted, rather than belted, performance.

NHTSA finds that the issuance of this interim final rule without prior opportunity for comment is necessary in view of the fact that depowering would be significantly delayed if the standard were not amended. For the same reason, the agency finds for good cause that it is in the public interest to establish an immediate effective date for this amendment. The amendment imposes no new requirements but instead provides additional flexibility to manufacturers by removing a design restriction.

NHTSA is requesting comments on this amendment. Because there has not been a prior opportunity for comment, the agency is limiting application of this interim final rule to vehicles manufactured before September 1, 1998. However, NHTSA contemplates making the amendment apply for the same duration as the depowering amendment, i.e., for vehicles manufactured before September 1, 2001. The agency will announce a final decision as soon as possible after the comment closing date.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The amendment does not impose any new requirements but simply ensures that the vehicle manufacturers do not face previously unidentified impediments in depowering air bags. The agency concludes that the impacts of the amendment are so minimal that a full regulatory evaluation is not required. Readers who are interested in the costs and benefits of depowering are referred to the agency's regulatory evaluation for that rulemaking action, which remains valid.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. The amendment does not impose any new requirements but simply ensures that the vehicle manufacturers do not face previously unidentified impediments in depowering air bags. Further, since no price increases are associated with the rule, small organizations and small governmental units are not to be affected in their capacity as purchasers of vehicles.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this rule.

D. National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

Interested persons are invited to submit comments on this document. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to this rulemaking action will be considered as suggestions for further rulemaking action. Comments on the document will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S3 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9, *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash. Notwithstanding any language to the contrary, any vehicle manufactured after March 19, 1997 and before September 1, 2001 that is subject to a dynamic crash test requirement conducted with unbelted dummies may meet the requirements specified in S13 instead of the applicable unbelted requirement. For vehicles manufactured before September 1, 1998, compliance with S13 shall, for purposes of Standards No. 203 and 209, be deemed as compliance with the unbelted frontal barrier requirements of S5.1 of this section.

* * * * *

Issued on: May 8, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–12640 Filed 5–9–97; 2:01 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 112696C]

RIN 0648-AI23

Atlantic Swordfish Fishery; Request for Comments on Drift Gillnet Emergency Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency closure; request for comments.

SUMMARY: On December 5, 1996, NMFS published an emergency closure for the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, from December 1, 1996, through May 29, 1997. NMFS is requesting comments from the public on this emergency closure.

DATES: Comments must be submitted on or before May 29, 1997.

ADDRESSES: Comments on the emergency rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347 or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: NMFS published in the **Federal Register** an emergency closure of the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, from December 1, 1996, through May 29, 1997 (61 FR 64486, December 5, 1996). The emergency closure was made effective while NMFS continues with consultation under section 7 of the Endangered Species Act (ESA) for Atlantic swordfish fisheries due to new information regarding the status of the northern right whale (*Eubaleana glacialis*). The closure was necessary to ensure that, pending consultation on this fishery, no irreversible and irretrievable commitment of resources is made that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. Additional background on the reasons for the action are detailed in the emergency closure and are not repeated here.

This emergency closure is to remain effective until May 29, 1997, or until completion of consultation with the issuance of a biological opinion on the swordfish drift gillnet fishery, whichever comes first. To date, a biological opinion is pending and NMFS is continuing with consultation under the ESA.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 7, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12529 Filed 5–8–97; 4:42 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 674 and 679

[Docket No. 970326069–7069–01; I.D. 022597F]

RIN 0648–AJ38

Fisheries of the Exclusive Economic Zone Off Alaska; High Seas Salmon Fishery Off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS issued a final rule (I.D. 022597F), which was published in the **Federal Register** on April 23, 1997 (62 FR 19686). The final rule consolidated 50 CFR part 674 into 50 CFR part 679 as part of the President's Regulatory Reform Initiative. This document contains a correction to that final rule.

EFFECTIVE DATE: May 23, 1997.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction removed 50 CFR part 674, the regulations implementing the Salmon Fishery Management Plan, and consolidated the regulations contained therein into 50 CFR part 679, Fisheries of the Exclusive Economic Zone (EEZ) off Alaska. It was not intended to make substantive changes to existing regulations. The action was intended to provide the public with a single reference source for the Federal fisheries regulations specific to the EEZ off Alaska and result in regulations that are more concise and easier to use.

Need for Correction

As published, the final rule revised the definition of ''Authorized fishing gear'' to include the ''hand troll gear'' and ''power troll gear'', the authorized gears as defined in 50 CFR part 674 for the salmon fishery off Alaska. However, the introductory text for the term ''Authorized fishing gear'' did not contain the terms ''dive'' and ''scallop dredge''. Dive gear and scallop dredges were designated as authorized fishing gear in the scallop fishery off Alaska by a final rule published in the **Federal Register** on July 23, 1996 (61 FR 38099). NMFS inadvertently removed the terms from the introductory text in the consolidation.

Correction of Publication

Accordingly, the publication on April 23, 1997 (62 FR 19686), of the final regulations (I.D. 022597F), which was the subject of FR Doc. 97–10462 is corrected as follows:

On page 19687, in the third column, in § 679.2, the introductory paragraph of the definition of ''Authorized fishing gear'' is revised by adding the term ''dive,'' after the word ''means'' and by adding the term ''scallop dredge,'' after the term ''pot-and-line,''

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: May 7, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12530 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 050197B]

Atlantic Shark Fisheries; Quota Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota adjustment.

SUMMARY: NMFS announces that the catch of large coastal sharks in the Atlantic, Caribbean, and Gulf of Mexico was 958 metric tons (mt) during the first semiannual 1997 season. Because of the overharvest of this category quota, the second semiannual 1997 quota is adjusted accordingly.

DATES: Effective July 1, 1997.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, John Kelly or Margo Schulze at 301–713–2347; or Buck Sutter at 813–570–5324.

SUPPLEMENTARY INFORMATION:

The Atlantic, Caribbean, and Gulf of Mexico shark fisheries are managed by NMFS according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by NMFS under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.24(b) of the regulations provides for two semi-annual quotas of 642 mt of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota was available for harvest from January 1 through June 30, 1997.

The Assistant Administrator for Fisheries, NOAA, is authorized under § 678.24(c) to adjust the semiannual quota to reflect actual catches during the preceding semiannual period. Final data indicate that the catch of large coastal shark species from January through April 7, 1997, totaled 958 mt, which is 316 mt more than the established quota. Therefore, the adjusted quota for large coastal shark species for the second 1997 semiannual period is decreased from 642 mt to 326 mt. The adjusted quota of 326 mt is available for the period July 1 through December 31, 1997.

Classification

This rule is exempt from review under E.O. 12866.

Dated: May 8, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12620 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 050797A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the second seasonal bycatch allowance of Pacific halibut apportioned to the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 9, 1997, through 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Directed fishing for yellowfin sole by vessels using trawl gear in the BSAI was prohibited on April 29, 1997 (62 FR 24058, May 2, 1997) to prevent exceeding the second seasonal bycatch allowance of Pacific halibut apportioned to that fishery.

The Administrator, Alaska Region, NMFS, has determined that as of May 3, 1997, 20 metric tons of halibut mortality remain in the second seasonal bycatch allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. The third seasonal bycatch allowance of yellowfin sole by vessels using trawl gear in the BSAI becomes available on May 11, 1997.

All other closures remain in full force and effect.

Classification

This action is required by § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: May 8, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12619 Filed 5–9–97; 1:29 pm]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 050797C]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting retention of Pacific cod and Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels using hook-and-line gear. This action is necessary to prevent overfishing of the shortraker/rougheye rockfish species group.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 10, 1997, until 2400 hrs, A.l.t., December 31, 1997. Comments must be received at the following address no later than 1630 hrs, A.l.t., May 27, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Magnuson-Stevens Act requires that conservation and management measures prevent overfishing. The 1997 overfishing level for the shortraker/rougheye rockfish species group in the Aleutian Islands subarea of the BSAI is established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 1,250 metric tons (mt) and the acceptable biological catch as 938 mt. As of April 26, 1997, 1,189 mt of shortraker/rougheye rockfish have been caught.

NMFS closed directed fishing for shortraker/rougheye rockfish in the Aleutian Islands subarea in the Final 1997 Harvest Specifications of Groundfish for the BSAI and prohibited retention of shortraker/rougheye rockfish on April 2, 1997 (62 FR 16736, April 8, 1997). The trawling season for Atka mackerel and rockfish of the genus *Sebastes* and *Sebastolobus* was closed April 21, 1997 (62 FR 20129, April 25, 1997) to prevent overfishing of shortraker/rougheye. Substantial hook-and-line fishing effort will be directed at remaining amounts of Pacific cod and Greenland turbot in the Aleutian Islands subarea during 1997. These fisheries can have significant bycatch of shortraker/rougheye rockfish.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.25(a)(1)(i) and (a)(2)(iii), that closing the seasons by prohibiting retention of Pacific cod and Greenland turbot in the Aleutian Islands subarea by vessels using hook-and-line gear is necessary to prevent overfishing of the shortraker/rougheye rockfish species group, and are the least restrictive measures to achieve this purpose. Without this prohibition of retention, significant incidental catch of shortraker/rougheye rockfish would occur by hook-and-line vessels targeting Pacific cod and Greenland turbot.

Therefore, NMFS is requiring that further catches of Pacific cod and Greenland turbot by vessels using hook-and-line gear in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b)(2).

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing of shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 27, 1997.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12621 Filed 5-9-97; 1:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 93

Wednesday, May 14, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 307

RIN 3064–AB88

Notification of Changes of Insured Status

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to revise its regulation addressing notification of changes of insured status to clarify that an assuming insured depository institution must provide the FDIC with a certification of any partial or total assumption of deposits from another insured depository institution. This certification would not be required, however, when deposits are transferred and assumed by an operating insured depository institution from an insured depository institution in default in an FDIC-administered receivership. Forms are being provided to assist the industry with compliance with the certification and depositor notice requirements.

DATES: Written comments on the proposal must be received by the FDIC on or before July 14, 1997.

ADDRESSES: Send written comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, NW., 20429, on business days between 8:30 a.m. and 4:30 p.m.; sent by facsimile: (202) 898–3838; or by Internet: Comments@fdic.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William P. McNamara, Examination Specialist, Division of Supervision, (202) 898–6778; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) (12 U.S.C. 4803), the FDIC has reviewed part 307 of the Code of Federal Regulations and determined that the sections contained therein are still beneficial to the public and needed by the FDIC. It is proposed that the sections be revised to clarify their scope and applicability, eliminate unnecessary compliance requirements, and assist the industry with compliance.

Background

Part 307 was originally promulgated in 1950 and was last revised on May 31, 1983, prior to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Public Law 101–73, 103 Stat. 183 (1989).

Section 307.1 implements section 8(q) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1818(q)), as amended.[1] The regulation requires an insured bank or insured branch of a foreign bank which assumes deposits (assuming institution) of another insured bank or insured branch of a foreign bank (transferring institution) to provide the FDIC with a certification that it has assumed deposits of the transferring institution. The assuming institution is required to make the certification to the FDIC within 30 days after the date of the assumption, and state the date the assumption took effect. The certification is intended to satisfy section 8(q)'s ''satisfactory evidence of such assumption'' requirement, which is a condition that must be met before the transferring institution's insured status can be terminated pursuant to section 8(q)(1) of the FDI Act (12 U.S.C. 1818(q)(1)). The certification also provides the FDIC with notice of when the assumption takes effect for purposes of determining the continuation of separate deposit insurance coverage on the assumed deposits. *See* 12 CFR 330.3(g)(2).

Section 307.2, which implements section 8(a)(6) of the FDI Act (12 U.S.C. 1818(a)(6)),[2] requires an insured bank or insured branch of a foreign bank (insured institution) seeking to voluntarily terminate its insured status, but whose deposits will not be assumed, to provide notice to its depositors (depositor notice) of the date its insured status will terminate. The regulation further authorizes the FDIC, through the appropriate FDIC Regional Director of the Division of Supervision, to prescribe the form, manner and timing of the depositor notice, as well as such other conditions as may be deemed necessary for the protection of the institution's depositors.

In response to a Notice of Opportunity for Comment, published on December 6, 1995, at 60 FR 62345, as part of the CDRIA review process, an industry group suggested that § 307.1 be eliminated because the industry group believed the FDIC could obtain the specified information from regulatory approvals required for assumptions of deposit liabilities by merger, consolidation, assumption or contract. The industry group noted that the FDIC received antitrust notices and that each governmental agency published administrative approvals in the newspapers.

After investigating the commentor's suggestion, FDIC staff has recommended that § 307.1 be retained. While it is possible to obtain some of the information required by the regulation from other agencies, bank merger applications, and newspaper notices,

[1] Section 8(q) reads as follows:

Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the semiannual period in which the assumption takes place.

[2] Section 8(a)(6) reads as follows:

PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last known address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

this method of data collection would not provide the FDIC or the industry with sufficient certainty of receiving the data or a clear standard for judging when the FDIC had received the ''satisfactory evidence of such assumption'', required by section 8(q)(1), to terminate the transferring institution's insured status. The FDIC's preliminary view is that the inefficiency and additional costs associated with collecting the statutorily required information through these means outweighs any benefit which would be realized by eliminating the FDIC certification requirement. Finally, from a practical standpoint, timely and accurate submissions of the required information are needed to maintain the accuracy of the FDIC's structure database, which is utilized to calculate, collect, and process deposit insurance assessments.

The FDIC is, however, proposing to revise § 307.1 to define its scope and applicability more precisely. Additionally, consistent with the theme of the industry group's suggestion, the FDIC has determined that it can obtain timely, accurate, and easily verifiable information from records in the FDIC's possession regarding deposit liabilities assumed when those liabilities are transferred and assumed by an operating insured depository institution from an insured depository institution in default, as defined by section 3(x)(1) of the FDI Act (12 U.S.C. 1813(x)(1)), in an FDIC-administered receivership, and the regulation would be revised accordingly.

No comments were received regarding § 307.2. Nonetheless, that section was reviewed and it is proposed that the section be retained because it assists the FDIC in ensuring that the interests of depositors are safeguarded when an insured depository institution seeks to voluntarily terminate its insured status without the assumption of its deposit liabilities by another insured depository institution. *See e.g.* 12 U.S.C. 1818(a)(6) (requiring notification of depositors when insured status is voluntarily or involuntarily terminated)[3] and 1828(i)(4)(E) (requiring the FDIC to consider the convenience and needs of the community to be served in approving the conversion of an insured depository institution into a non-insured institution).

Proposed Revisions

The existing sections in part 307 would be redesignated §§ 307.2 and 307.3, respectively. A new § 307.1 also would be added.

The proposed revisions to the regulations and reasons supporting them are as follows:

A. Institutions Covered

Proposed § 307.1 is new. It would be added to indicate that the part applies to insured depository institutions, as defined in section 3(c)(2) of the FDI Act.[4] Part 307, however, would not apply to assumptions of insured deposits by uninsured depository institutions; assumptions of uninsured deposits by insured depository institutions; or assumptions of uninsured deposits by uninsured depository institutions.

As revised, any insured depository institution assuming deposits from another insured depository institution, other than those excluded from coverage by proposed § 307.2(b), would be required to provide the certification. Section 307.3 would apply to insured depository institutions seeking to voluntarily terminate their insured status without the assumption of their deposit liabilities by another insured depository institution.

B. Transitions Covered

Proposed § 307.2 would apply to partial and complete transfers of deposits from transferring to assuming institutions.

As presently written, § 307.1 does not distinguish between transactions involving partial deposit assumptions where a transferring institution intends to continue in the business of receiving deposits after the partial assumption takes effect, and total deposit assumptions, where the transferring institution intends to cease receiving deposits after the assumption takes effect. In the past, the FDIC has viewed § 307.1 as being applicable in both instances.

The FDIC has taken the view that an order must be entered by the FDIC before the transferring institution's insured status is terminated.[5] 12 U.S.C. 1818(q), 12 U.S.C. 1828(i)(3), (4). This reading avoids terminating the insured status of the transferring institution when only a portion of that institution's deposits are assumed and the transferring institution intends to continue in the business of receiving deposits after the partial assumption takes effect. This continues to be the FDIC's interpretation of the termination of insured status provision contained in section 8(q)(1).

To avoid confusion on this issue, § 307.2 (e) and (f) would be added to the regulation. New § 307.2(e) addresses the deposit insurance coverage of the assumed deposits. It would be applicable to partial and total assumptions of deposits from transferring institutions and would utilize the assumption date specified in the certification to determine when the separate deposit insurance coverage on the assumed deposits terminates pursuant to section 8(q)(2).[6] *See also* 12 CFR 330.3(g).

Section 307.2(f) would address the insured status of the transferring institution. It would be applicable to total deposit assumptions where the transferring institution intends to cease receiving deposits after the assumption takes effect. Under new § 307.2(f), when the FDIC receives the certification and a total assumption has taken place (other than in instances where the FDIC has been appointed receiver for an insured depository institution in default), the FDIC will issue an order terminating the transferring institution's insured status pursuant to applicable

[3] While part 307 addresses depositor notifications when an institution seeks to voluntarily terminate its insured status, part 308 addresses depositor notifications for involuntary terminations which are effected through enforcement proceedings.

[4] An ''insured depository institution'' is defined in section 3(c)(2) (12 U.S.C. 1813(c)(2)) as ''any bank or savings association the deposits of which are insured by the Corporation pursuant to this [the FDI] Act''. Federal branches and insured branches are included in the definition of ''bank'' in section 3(a)(1)(A) (12 U.S.C. 1813(A)(1)(a)). Accordingly, insured branches would be subject to the proposed regulation.

[5] Orders are not issued by the Board of Directors in instances where deposits are transferred and assumed upon the default of an insured depository institution because the insured status of the institution terminates automatically after default.

[6] Under the regulation, FDIC's receipt of the certification constitutes satisfactory evidence of the assumption, for purposes of section 8(q). In appropriate circumstances, however, such as an assuming institution's failure to provide the certification in the manner specified, the regulation specifies that the FDIC also may consider other evidence of such deposit assumption for purposes of section 8(q).

provisions of the FDI Act, including section 8(q)(1).

C. FDIC Appointed Receiver for Insured Depository Institution in Default

Current § 307.1 does not distinguish between deposit assumptions where the transferring institution has been placed in receivership and deposit assumptions between operating institutions. Since the FDIC plays an integral role in the transfer and assumption of deposit liabilities by operating institutions when it is appointed as receiver for an insured depository institution in default, this situation may represent an instance where, consistent with the previously mentioned industry group suggestion, the FDIC has access to readily verifiable information regarding the deposit transfer and assumption transaction which makes compliance with the regulation unnecessary. Therefore, § 307.2(b) would be added to confirm that compliance with the certification requirement is not necessary when the deposit liabilities being transferred and assumed by an operating insured depository institution from an insured depository institution in default and the FDIC has been appointed as receiver for the institution.

D. Required Certification and Depositor Notice Letters

Section 307.1 requires the assuming institution to certify that it has assumed deposit liabilities from the transferring institution within 30 days after the assumption takes effect. The regulation, however, is silent regarding the form of the certification. In the past, the FDIC has considered this requirement satisfied by a short letter from the assuming institution containing the required information. Therefore, to assist the industry with compliance and eliminate ambiguity, § 307.2(C) would be added to require that the certification, which *may* follow the format provided in appendix A, be provided by the assuming institution on its letterhead.

Section 307.2 also requires that the FDIC approve the form of any proposed depositor notices when an insured depository institution intends to voluntarily terminate its insured status without having its deposits assumed by another institution. Although the FDIC may require additional or substitute information to be contained in the depositor notice if warranted under the circumstances, the suggested depositor notice provided in appendix B is being provided to assist the industry with compliance. A copy of this notice must be provided to and approved by the appropriate Regional Director of the Division of Supervision prior to the notice being distributed to the institution's depositors.

Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such documents sent to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), FDIC, Room F–400, 550 17th Street, NW, Washington, DC 20429. All comments should refer to ''Part 307—Certification and Depositor Notification.'' OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation. Appendix A to this **Federal Register** notice provides an example of a format that will satisfy the collection of information requirement contained in § 307.2. Appendix B provides an example of a format that will satisfy the collection of information requirement contained in § 307.3.

The revisions to the collection of information in this proposed rule are found in §§ 307.2 and 307.3. Section 307.2 would require insured depository institutions assuming deposits from other insured depository institutions to provide the required certification whenever a partial or complete assumption of deposits occurs. The certification would be required to determine the date upon which the separate deposit insurance coverage on the assumed deposit liabilities terminates, as provided in section 8(q)(2) of the FDI Act. The certification also would be utilized when a complete assumption of deposit liabilities occurs to terminate the insured status of the transferring institution, pursuant to section 8(q)(1) of the FDI Act. Section 307.3 would require an insured depository institution seeking to voluntarily terminate its insured status without the assumption of its deposits by another insured depository institution to provide the FDIC with a copy of the depositor notification letter required by section 8(a)(6) of the FDI Act for review prior to the letter being sent to the institution's depositors.

The estimated average burden associated with all collections of information in this proposed regulation is approximately 0.25 hours per respondent. Additional information regarding the collections of information and total estimated reporting burden in the proposed regulation is summarized below:

Title: Part 307—Certification and Depositor Notification.

Frequency of Response: Occasional.

Affected Public: The certification required by § 307.2 would affect all insured depository institutions assuming deposit liabilities from other insured depository institutions. The depositor notification required by § 307.3 would affect all insured depository institutions seeking to voluntarily terminate their insured status without having their deposit liabilities assumed by another insured depository institution.

Estimated Number of Respondents: 942 for § 307.2 certification and 1 for § 307.3 notice.

Estimated Time per Response: 0.25 for section 307.2 certification and 1 hour for § 307.3 notice.

Estimated Total Annual Burden: 236.50 hours.

Regulatory Flexibility Act

Pursuant to subsections (b) and (c) of section 603 of the Regulatory Flexibility Act, the FDIC provides the following initial regulatory flexibility analysis:

Reasons Why Agency Action is Being Considered: Insured depository institutions would be required to provide the FDIC with a certification, pursuant to § 307.2, when they partially or completely assume deposit liabilities from another insured depository institution. The certification is necessary to implement the provisions of section 8(q) of the FDI Act, regarding termination of the insured status of the transferring institution and termination of the separate deposit insurance coverage provided on deposit accounts assumed by the assuming institution.

Insured depository institutions seeking to voluntarily terminate their insured status also would be required to provide the FDIC with a copy of any proposed depositor notification before the notification is provided to the institution's depositors. The depositor notification is required by section 8(a)(6) of the FDI Act. The requirement for pre-review of the proposed depositor notification letter by the FDIC establishes a procedure to assure that the institution's depositors receive information which the appropriate Regional Director of the Division of Supervision deems appropriate regarding the institution's intent to terminate its insured status. The requirement for pre-review of the proposed depositor notification letter by the FDIC also is intended to ensure that, prior to the termination of the institution's insured status, depositors receive appropriate information concerning federal deposit insurance coverage of their accounts once the institution's insured status is terminated.

Statement of Objectives of and Legal Basis for Proposed Rule: The proposed rule implements the statutory requirements imposed by section 8(q) of the FDI Act for assumptions of deposits from insured depository institutions. The proposed rule also implements the statutory depositor notification requirement imposed by section 8(a)(6) of the FDI Act when an insured depository institution seeks to voluntarily terminate its insured status without the assumption of its deposit liabilities by another insured depository institution.

Description of and Estimate of the Number of Small Entities to Which Proposed Rule Would Apply: The proposed rule would apply to all insured depository institutions assuming deposit liabilities from another insured depository institution. It also would apply to insured depository institutions seeking to voluntarily terminate their insured status without having their deposit liabilities assumed by another insured depository institution. Based upon information supplied to the FDIC by insured depository institutions or other federal banking regulators, approximately 105 insured depository institutions which were classified as small entities, for purposes of the RFA,[7] engaged in transactions during the 1996 calendar year which would be covered by the proposed regulation. The FDIC has no reason to believe that the number of small entities covered by the proposed regulation will vary significantly in the future.

Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: Small entities engaging in transactions governed by the proposed regulation should be maintaining information regarding depositor accounts and deposit assumptions as part of their normal banking operations. The number of deposit assumption certifications required by § 307.2 will depend upon the number of deposit assumption transactions engaged in by an assuming insured depository institution. The FDIC anticipates that the depositor notification process established by § 307.3 will only occur once because depositor notification is required prior to the voluntary termination of an insured depository institution's insured status with the FDIC. The FDIC estimates that small entities will be able to comply with the requirements imposed by the regulation by utilizing their existing senior management and clerical support.

Identification of Federal Rules Which may Duplicate, Overlap or Conflict With the Proposed Rule: Some information concerning deposit liabilities assumed or proposed to be assumed by merger, consolidation, other statutory assumption, or contract is required to be filed with the FDIC, pursuant to part 327 and § 303.3 of the FDIC's rules and regulations (12 CFR part 327 and 12 CFR 303.3, respectively). Information filed with the FDIC pursuant to § 303.3, however, is in the form of an application which is subject to modification and information filed pursuant to part 327, does not specify the institution whose deposits were assumed or when the assumption took effect. Therefore, while there is some overlapping of general information being submitted, the information contained in the certification required by proposed § 307.2 provides the FDIC with more specific and timely data needed to comply with the requirements of section 8(q) of the FDI Act. Additionally, the regulation provides the FDIC and industry with a clear standard for judging when an insured depository institution's insured status should be terminated.

[7] The RFA defines the term ''small entity'', in 5 U.S.C. 601, by reference to definitions published by the Small Business Administration. The Small Business Administration has defined a ''small entity'', for banking purposes, as a national or commercial bank, savings institution or credit union with less than $100 million in assets. *See* 13 CFR 121.201.

Discussion of Significant Alternatives to Proposed Rule: The proposed regulation imposes minimal reporting burdens upon insured depository institution. As discussed in the preamble to the regulation, the FDIC considered obtaining the information from other sources but determined that those methods of data collection would not provide the FDIC with sufficient certainty of receiving the data required by section 8(q). Additionally, absent the regulation, the FDIC and industry would have no clear standard for judging when an insured depository institution's insured status should be terminated. To reduce regulatory burden, however, the FDIC is excluding deposit assumptions from FDIC-administered receiverships from the coverage of § 307.2. The FDIC also is providing recommended certification and depositor notification forms as guidelines for the industry.

List of Subjects in 12 CFR Part 307

Bank deposit insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors proposes to revise part 307 of chapter III of the Code of Federal Regulations to read as follows:

PART 307—NOTIFICATION OF CHANGES OF INSURED STATUS

Authority: 12 U.S.C. 1818(a)(6), 1818(q), and 1819(a) [Tenth].

§ 307.1 Scope and purpose.

(a) *Scope.* This part applies to all insured depository institutions, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(c)(2)).

(b) *Purpose.* This part sets forth the rules governing:

(1) The time and manner of providing the FDIC with a certification regarding the assumption of any deposit liabilities of an insured depository institution by any insured depository institution; and

(2) The notification which should be provided to depositors when an insured

depository institution voluntarily terminates its insured status and its deposits are not assumed by another insured depository institution.

§ 307.2 Certification of assumption of deposit liabilities.

(a) *Certification required.* Whenever any of the deposit liabilities of an insured depository institution are assumed (whether by merger, consolidation, other statutory assumption, or by contract) by another insured depository institution, the assuming insured depository institution shall provide a written certification to the FDIC that it has assumed deposit liabilities from the transferring insured depository institution. The certification shall be provided to the FDIC within 30 calendar days after the assumption takes effect and shall state the date the assumption took effect.

(b) *Exception.* The certification required by paragraph (a) of this section shall not be required when deposit liabilities are transferred and assumed by an operating insured depository institution from an insured depository institution in default, as defined in section 3(x)(1) of the FDI Act (12 U.S.C. 1813(x)(1)), that has been placed in an FDIC-administered receivership.

(c) *Form of certification.* The certification required by paragraph (a) of this section shall be provided on the letterhead of the assuming insured depository institution, be signed by a duly authorized official of the institution, and may follow the format of the certification contained in appendix A to this part.

(d) *Filing.* The certification required by paragraph (a) of this section shall be provided to the appropriate FDIC Regional Director of the Division of Supervision, as determined by reference to 12 CFR part 303, for the assuming insured depository institution.

(e) *Evidence of assumption.* The receipt by the FDIC of the certification required by paragraph (a) of this section shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act (12 U.S.C. 1818(q)), and the separate deposit insurance on the deposits so assumed shall terminate in the manner specified in section 8(q)(2) of the FDI Act (12 U.S.C. 1818(q)(2)). In appropriate circumstances, the FDIC, in its sole discretion, may also consider other evidence of such deposit assumption to be satisfactory for purposes of section 8(q).

(f) *Issuance of an order.* Except where the FDIC has been appointed as receiver for an insured depository institution in default, the FDIC shall issue an order terminating the insured status of the transferring insured depository institution, pursuant to section 8(q)(1) of the FDI Act (12 U.S.C. 1818(q)(1)), in the event that all of the transferring institution's deposits are assumed by one or more insured depository institutions.

§ 307.3 Notice to depositors when insured status is voluntarily terminated and deposits are not assumed.

(a) *Notice required.* Any insured depository institution seeking to voluntarily terminate its insured status, but whose deposit liabilities will not be assumed by another insured depository institution, shall provide prior written notification to each of its depositors, at the depositor's last address of record on the books of the institution, of the date of the termination of its insured status under the FDI Act.

(b) *Prior approval of notice.* Prior to distributing the notice to depositors required by paragraph (a) of this section, a copy of the proposed notice shall be provided to the appropriate FDIC regional director of the Division of Supervision, as determined by reference to 12 CFR part 303, for approval. After being approved for distribution, the notice shall be provided to depositors in the time and manner specified by the appropriate regional director.

(c) *Form of notice.* The notice to depositors required by paragraph (a) of this section shall be provided on the letterhead of the insured depository institution and, unless otherwise specified by the appropriate Regional Director of the Division of Supervision, may follow the format of the notice contained in appendix B to this part.

(d) *Obligations.* The FDIC may require the insured depository institution to take such other actions as the FDIC considers appropriate for the protection of depositors.

Appendix A to Part 307—Certification of Change in Insured Status

(Date)

(Name and Address of Regional Director)

SUBJECT: *Certification of Change In Insured Status*

This certification is being provided pursuant to 12 U.S.C. 1818(q) and 12 CFR 307.2(a). On *(state the date the deposit assumption took effect), (state the name of the depository institution assuming the deposit liabilities)* assumed (if a partial assumption, state the amount) (if all deposits were assumed, state ''all'') of the deposits of *(state the name of the insured depository institution whose deposits were assumed).* Please contact the undersigned if additional information is needed.

(Name of Assuming Institution)

By: ___________________________________

(Name and Title)

Appendix B to Part 307—Notice to Depositor of Voluntary Termination of Insured Status

(Date)

(Name and Address of Depositor)

SUBJECT: *Notice to Depositor of Voluntary Termination of Insured Status*

The insured status of *(name of insured depository institution)* under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ________ Day of ____________________, 19____ (''termination date''). Insured deposits in the *(name of insured depository institution)* on the termination date, less all subsequent withdrawals from such deposits, will continue to be insured by the Federal Deposit Insurance Corporation, to the extent provided by law, until *(date).* Any deposits made by you after the termination date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

This notice is being provided pursuant to 12 U.S.C. 1818(a)(6) and 12 CFR 307.3(a).

Please contact *(name of institution official in charge of depositor inquiries),* at *name and address of insured depository institution* if additional information is needed regarding this Notice or the insured status of your account.

By order of the Board of Directors. Dated at Washington, D.C., this 29th day of April, 1997.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–12549 Filed 5–13–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB73

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is seeking comment on specific proposed revisions to the FDIC's deposit insurance regulations. The intended effect of the proposed rule is to simplify and revise the FDIC's regulations on deposit insurance by making several technical revisions and certain substantive revisions.

DATES: Written comments must be received by the FDIC on or before August 12, 1997.

ADDRESSES: Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838; Internet address: comments@FDIC.gov). Comments will be available for inspection in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

One of the FDIC's corporate operating projects under its Strategic Plan is to simplify the deposit insurance rules. The purpose is to promote public understanding of deposit insurance and to increase financial institution and consumer understanding of deposit insurance. This effort to simplify the FDIC's insurance regulations, found in 12 CFR part 330 (part 330), is also intended to satisfy the provisions in section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), to reduce regulatory burden and improve efficiency.

The FDIC revised its insurance regulations twice in the recent past. The first time, in 1990, was necessitated by the termination of the Federal Savings and Loan Insurance Corporation (FSLIC). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)) required the FDIC to issue uniform insurance regulations for deposits in all insured depository institutions, including those previously insured by the FSLIC. The second set of recent changes in the FDIC insurance rules were made pursuant to provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242 (1991)). A provision in FDICIA, in essence, limited the insurance coverage of employee benefit and retirement plans. Also, in February 1995, the FDIC issued disclosure requirements in connection with the limited availability of insurance for employee benefit plan accounts, 60 FR 7701 (Feb. 9, 1995), codified at 12 CFR 330.12.

The amendments made to the insurance rules in 1990 reconciled differences between the FSLIC insurance regulations and the then-existing FDIC regulations. They also revised the insurance regulations to, among other things, better organize and define terms used in the regulations, convert long-standing interpretive opinions into regulations, resolve outstanding issues and clarify ambiguous provisions. Although the insurance rules were revised in 1990 and, to a lesser extent in 1993 and 1995, the Board of Directors believes that the revisions in the proposed rule would be helpful. The need for these changes has been brought to the FDIC's attention in several ways, especially through the steady receipt of letters and phone calls on insurance questions. Experience with bank and thrift failures also has enabled the staff to identify procedural aspects of the regulations which, when applied in accordance with the regulations, may prove unfair to certain depositors in some situations.

The FDIC must be mindful of the applicable statutory parameters in considering whether and to what extent to modify the insurance regulations. The general statutory basis for and guidance on deposit insurance is found in section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a), which provides, in relevant part, that depositors are insured up to $100,000 based on the ''right'' and ''capacity'' in which the deposits are maintained. The statute does not define ''depositor,'' ''right'' or ''capacity.'' The FDIC regulations implementing the ''right-and-capacity'' language recognize different categories of insured accounts based on an analysis of ownership. Thus, the rules provide ''separate'' insurance coverage for different types of accounts which are owned in different ways. For example, accounts owned by an individual are not added to joint accounts in which that same individual has an ownership interest. ''Separate'' insurance means that each category of account in which a person has an ownership interest is covered for up to $100,000 separately insured from the funds in other categories of accounts.

Advance Notice of Proposed Rulemaking

In May 1996 the FDIC issued an Advance Notice of Proposed Rulemaking (ANPR), 61 FR 25596 (May 22, 1996), soliciting preliminary views on whether and, if so, how the FDIC should simplify its deposit insurance regulations. The ANPR requested comment on all aspects of streamlining, simplifying and clarifying the insurance rules, including the likely effect of such changes on consumers and the banking industry. The FDIC also sought comment on several specific revisions to the insurance rules that the Board was then considering.

The possible areas of simplification identified in the ANPR were: (1) Rewriting certain parts of the rules to make them clearer and easier to understand; (2) eliminating step one of the two steps involved in determining the insurance coverage for joint accounts; (3) revising the recordkeeping rules allowing the FDIC more flexibility (for the benefit of depositors) in determining the ownership of deposits held in a custodial or fiduciary capacity; (4) changing the rules on ''payable upon death'' accounts; (5) modifying the way the FDIC insures certain types of accounts upon the death of the owner(s) of the accounts; (6) recommending to Congress that the FDI Act be amended to change the way employee benefit plans are insured; and (7) revising the rules on living trust accounts.

The comment period for the ANPR closed on August 20, 1996. The FDIC received sixty-eight comments on the ANPR, almost all of which supported the FDIC's deposit insurance simplification efforts. The FDIC considered the comments received on the ANPR in preparing the specific revisions in the proposed rule. Comments on the ANPR are identified and discussed below in the context of specific issues and proposed revisions.

Approach to Deposit Insurance Simplification

The Board believes that certain technical revisions and moderate substantive revisions to the deposit insurance rules are warranted. The technical changes are described below in the section-by-section discussion of the proposed rule. They consist of numerous wording and organizational changes to the insurance rules intended to make the rules clearer and easier to understand. The technical changes also encompass the addition of several examples in the insurance regulations illustrating the application of the various deposit insurance rules. The proposed substantive revisions in the proposed rule are as follows.

Proposed Substantive Revisions

1. The Recordkeeping Rules for Fiduciary Accounts

The insurance regulations impose specific recordkeeping requirements as a precondition for insuring parties other than those whose names appear on the depository institution's deposit account records. 12 CFR 330.4(a).[1] For example,

[1] The rules derive from section 12(c) of the FDI Act (12 U.S.C. 1822(c)) which provides that the FDIC is not required to recognize as the owner of

if A is acting as an agent for B, C, and D and places funds belonging to them in an insured bank or thrift, the institution's deposit account records must show that A is holding the account as an agent in order for the FDIC to recognize the ownership interests of B, C, and D. The FDIC will then insure the account as if it were held directly by B, C, and D (the owners of the account) as long as either the institution's deposit account records or the agent's records (maintained in ''good faith and in the regular course of business'') evidence B, C, and D's ownership interests in the account. *Id.* at 330.4(b). In this context, we say that the insurance ''passes-through'' the agent to the owner(s) of the account. The same ''pass-through'' principle applies to other types of custodial and fiduciary accounts, including those that constitute a separate right and capacity, such as irrevocable trust accounts and employee benefit plan accounts. *Id.* at 330.10 & 330.12.

The concept of ''pass-through'' insurance stems from and is consistent with the statutory principle that insurance is provided according to the right and capacity in which the funds are owned. In this agency situation B, C, and D's ownership interests in the agency account would be added to any other funds held at the same bank or thrift by or for them (in the same ownership capacity) and insured to a limit of $100,000. *Id.* at 330.6(a). Thus, if A had an individual account at a bank and an agent was holding funds for him or her at the same bank, the funds in the individual account would be added to his or her ownership interest in the agency account and insured to a combined limit of $100,000, assuming compliance with the recordkeeping requirements explained above. *Id.* at 330.4.

The reasons the FDIC imposes recordkeeping requirements for ''pass-through'' insurance purposes are: (1) To safeguard against fraud when an insured institution fails and the FDIC is called upon to pay insurance claims and (2) to enable the FDIC to estimate the amount of insured deposits when considering the resolution options for a failing insured depository institution.[2]

The recordkeeping requirements intentionally limit the FDIC's ability to consider evidence outside the deposit account records of an insured institution in determining the ownership of deposits. They establish a presumption that deposited funds are actually owned in the manner indicated on the account records. Those records are binding on the depositor if they are ''clear and unambiguous.'' *Id.* at 330.4(a). The FDIC has the discretion, however, to decide whether records are clear and unambiguous. If the FDIC determines that the records are unclear or ambiguous, then it may consider evidence other than the deposit account records. The issue the FDIC has faced from time to time is whether this discretion provides the FDIC with sufficient flexibility to recognize beneficial and/or multiple ownership of accounts when such ownership is not reflected on the bank or thrift's deposit account records. In other words, if the deposit account records are not unclear or ambiguous, the regulations restrict the FDIC from considering extraneous evidence in determining the ownership interest of the deposits, even if such evidence exists and would demonstrate ownership other than that reflected in the institution's deposit account records.

A specific situation at a recent bank failure involved a deposit account held by a title company as agent for customers in the process of buying and selling houses. Because the bank's deposit account records did not indicate the agency nature of the account, the funds were deemed to be owned by the title company and insured to a limit of $100,000; thus, the funds were not afforded the ''pass-through'' coverage (for each customer of the title company) that would have applied if the bank's records had indicated that the title company was acting as an agent.

The revisions to the deposit insurance recordkeeping rules in the proposed rule are intended to provide the FDIC with more flexibility in considering the actual ownership interests in deposit accounts held by fiduciaries and thereby prevent possible hardships. The approach used in the proposed rule is to allow the FDIC to look beyond the deposit accounts records of the depository institution where account titles are indicative of a fiduciary relationship. Two examples would be accounts held by escrow agents and those held by entities such as title companies, who commonly hold funds for others.[3] Another situation would be where an account is held in the name of an entity, or the nominee of that entity, whose primary business is to hold, for safekeeping reasons, deposits for others.

The FDIC received forty-two comments on the ANPR concerning this possible revision to the insurance coverage recordkeeping rules. The vast majority of those who commented encouraged the FDIC to revise the recordkeeping rules to allow the FDIC more flexibility in determining the ownership of account funds. Others commented that the FDIC should relax the recordkeeping rules only if it can be done without increasing the compliance burden on insured banks and thrifts.

The FDIC requests specific comment on whether the recordkeeping rules for ''multi-tiered fiduciary relationships'' should be revised. 12 CFR 330.4(b)(3). Those rules specify alternative requirements in situations where a fiduciary is holding funds for another party who also is a fiduciary. The rules were added to the FDIC's insurance regulations in 1990 to codify the FDIC staff views on the recordkeeping requirements for such multi-tiered (or multiple pass-through) fiduciary accounts. Preliminarily, the FDIC believes that the rules provide certainty to the industry on the subject and, thus, should be retained. As indicated, however, the FDIC seeks comments on the necessity and clarity of these special recordkeeping rules.

2. Treatment of Accounts Upon the Death of the Owner(s) of the Accounts

Depending on the applicable state law, the ownership interest of a deposit account often changes upon the death of the owner of a deposit account. For deposit insurance purposes, the FDIC has adopted this general principle of state law[4] and thus, under the FDIC's current position, if the beneficiaries/executor of the decedent do not act immediately after the decedent's death to restructure the account(s), insurance coverage of the decedent's accounts may be decreased, sometimes significantly. For example, if a husband and wife hold a joint account, a POD account and two individual accounts in their respective names, the death of one spouse would

a deposit any claimant whose name or interest as owner is not disclosed on the records of the depository institution if such recognition would increase the aggregate amount of the insured deposits in the institution.

[2] In many cases where an insured institution is declared insolvent, the FDIC transfers some or all of the assets and deposit liabilities to another institution. In such cases, speed and accuracy in accounting for the assets and liabilities being transferred is critical to the consummation of the transaction. Permitting the FDIC to rely on the account records facilitates these transactions and prevents post-default fraudulent claims to increase insurance coverage.

[3] This option also would encompass multi-tiered fiduciary relationships where, for example, an agent maintains a deposit account for a party who also is an agent. The current regulations include special recordkeeping rules for such situations. 12 CFR 330.4(b)(3).

[4] The FDIC's insurance regulations provide that, while ownership under state law is a necessary condition for deposit insurance, ownership under state law is not decisive in determining deposit insurance coverage. 12 CFR 330.3(h).

result in the surviving spouse's becoming the sole owner of the joint account and the POD account. Thus, the accounts would be aggregated with the surviving spouse's individual account, possibly resulting in a substantial reduction in insurance coverage.

Over the years the FDIC has received several questions and complaints about the treatment of deposit accounts, for deposit insurance purposes, upon the death of the owner of the deposits. A question of fairness has been raised about whether a survivor of a decedent should be ''penalized'' for not rearranging the decedent's bank accounts quickly enough after the decedent's death so as not to cause a reduction in deposit insurance coverage. Some have complained that time is needed after the death of an accountholder before proof can be shown to the depository institution of the decedent's death. Specifically, a delay is sometimes occasioned before death certificates are available. Moreover, state laws are not consistent about when, after the death of a depositor, the ownership interests in deposit accounts actually change.

The ANPR requested comment on whether the FDIC should provide a ''grace period'' after the death of a depositor during which the accounts would be insured as if the depositor had not died. Almost all of those who commented on this issue expressed support for such a grace period, noting that it seemed fair and was within the FDIC's authority to provide. The FDIC believes that there is merit in allowing survivors a limited amount of time to attend to a decedent's deposit accounts, particularly if in some situations the survivors would have no control over the decedent's accounts until certain administrative and probate requirements are satisfied. Although it is infrequent that a depositor dies and his or her depository institution closes at or about the same time, there have been and will be situations where individuals were and will be faced with this unfortunate sequence of events. Although, for purposes of national uniformity, the FDIC currently deems the ownership interests in deposit accounts to change immediately upon the death of a depositor, the laws of all the states are not uniform on this issue.

For these reasons, the proposed rule would permit a six-month period after the death of an accountholder during which time the insurance coverage of the accounts in which the decedent has an ownership interest would not change, unless those authorized to do so restructure the account(s), thereby rendering the grace period inapplicable.[5] The use of the six-month grace period is not intended to result in a reduction in coverage. The regulation therefore provides that the grace period is optional and shall not be applied if the result would be a decrease in deposit insurance coverage. The FDIC specifically requests comment on whether the proposed six months is the appropriate length of time for the grace period.

3. The Rules on Living Trust Accounts

A ''living trust'' is a formal trust in which the owner retains control of the trust assets during his or her lifetime and designates the beneficiaries of the assets upon his or her death. The owner may revoke or change the terms of the trust during his or her lifetime. In 1993 the FDIC Legal Division prepared guidelines on the insurance of revocable accounts, with an emphasis on living trusts. The guidelines were updated in 1994. FDIC Adv. Op. 94–32 (May 18, 1994) (Guidelines). The Guidelines are necessarily detailed and somewhat complex. At the same time the Legal Division prepared the Guidelines, the FDIC also adopted an informal policy not to review complex living trust documents to determine POD coverage but, instead, to make copies of the Guidelines available and recommend that persons inquiring about such coverage consult with the lawyer who drafted the living trust. Despite the availability of the FDIC's Guidelines and the existence of the FDIC's current policy not to review trust documents, the FDIC still receives numerous questions about the insurance of POD accounts held in connection with living trusts.

Over the years the FDIC has found that the vast majority of deposit accounts held pursuant to a living trust are not eligible for insurance coverage under the POD rules because the trusts contain ''defeating contingencies.'' As explained in the Guidelines, a defeating contingency exists when a named beneficiary in a living trust would not, simply by operation of the settlor's death, become the owner of the trust assets. A contingency of some sort has to be satisfied before the beneficiary becomes entitled to the assets. One example would be that the beneficiary must be married at the time of the settlor's death to be entitled to the assets. The existence of a defeating contingency in a living trust would disqualify the portion of the funds in the POD account corresponding to the unqualified beneficiary for POD insurance coverage treatment, because POD coverage is conditioned in part upon the intention of the owner that the funds in the account pass to the named beneficiary(ies) upon the owner's death. 12 CFR 330.8(a). In such situations, the funds in the POD account corresponding to an unqualified beneficiary would be treated as single-ownership funds of the owner of the account. *Id.* at 330.8(b).

Because, in the FDIC's experience, it seems that at least a majority of POD accounts held in connection with living trusts do not qualify for POD coverage, an argument can be made that, to avoid depositor confusion, the FDIC should simply amend its regulations to indicate accounts held pursuant to living trusts would not qualify for insurance coverage under the POD account category. In fact, the FDIC suggested this option in the ANPR. As indicated in some of the comments received on this alternative, however, the POD coverage category is broader than just POD accounts and includes all types of accounts held in connection with revocable trusts that satisfy the requirements in the POD insurance coverage regulations. It seems inappropriate, therefore, to exclude accounts held in connection with living trusts from POD insurance treatment where the requirements of the regulation are otherwise satisfied.

As an alternative to eliminating the living trust deposit accounts from the POD insurance category, the FDIC is proposing to amend the POD rules to indicate that those rules might apply to accounts held in connection with living trusts, but only if the requirements of the POD regulation are satisfied. The revised rules would specify that the existence of a ''defeating contingency'' would prevent corresponding funds in a POD account from receiving POD deposit insurance coverage, as to the beneficiary whose interest in the assets of the living trust is subject to the defeating contingency.

Other Possible Substantive Changes Mentioned in the ANPR

In the ANPR the FDIC requested comments on three additional possible substantive revisions to the deposit insurance rules. For the reasons indicated below, however, those possible revisions are not included as part of the proposed rule.

[5] The former FSLIC, as a matter of policy, allowed a grace period of six months following the death of a depositor for the decedent's deposits to be restructured. If an insured thrift failed during the grace period and additional insurance would be available if the decedent had not died, the FSLIC insured the account(s) based on the account ownership shown on the institution's records as if the decedent were still living. The reason for the FSLIC policy was to ''lessen the hardship'' that might be caused otherwise.

1. The Joint Account Rules

Joint ownership is one of the account categories that qualifies for separate insurance coverage. 12 CFR 330.7. Thus, a depositor who has an individual deposit and interests in joint accounts at the same insured bank or thrift is insured for up to $100,000 per category of account. Currently deposit insurance for joint accounts is determined by a two-step process: first, all joint accounts that are identically owned (*i.e.*, held by the same combination of individuals) are added together and the combined total is insurable up to the $100,000 maximum; second, each person's interests in joint accounts involving different combinations of individuals are combined and the total is insured up to the $100,000 maximum. The general rules are: (1) No one joint account can be insured for over $100,000, (2) multiple joint accounts with identical ownership cannot be insured for over $100,000 in the aggregate, and (3) no one person's insured interest in the joint account category can exceed $100,000.

These rules governing joint accounts are somewhat complex and sometimes misunderstood by both consumers and bankers. Thus, in the ANPR the FDIC raised the possibility of simplifying the current joint account rules by eliminating the first step of the two-step process. Under this alternative, all funds held in joint accounts would be allocated among the owners and each owner's interests in all joint accounts (held at the same depository institution) would be added and insured up to $100,000 in the aggregate. The ANPR comments on this possible revision to the joint account rules were uniformly favorable. Members of the banking industry and others, however, have raised questions about the potential ''moral hazard'' of expanding deposit insurance coverage beyond current limits. The moral hazard exists, in this context, because insured depositors do not have an incentive to monitor and discipline their institutions. The managers of those insured banks and thrifts, consequently, may take more risks than they otherwise would. Members of Congress also have expressed concerns about expanding federal deposit insurance coverage. Moreover, there are legislative proposals that take the opposite approach by seeking to limit FDIC insurance.

The FDIC acknowledges that, while the possible amendment to the joint account rules mentioned in the ANPR would simplify and likely improve public understanding of the joint account rules, it also could increase deposit insurance coverage significantly. For example, under the current rules a qualifying joint deposit account held by A&B for $200,000 would be insured for $100,000 based on the ''step one'' rule that no joint account owned by the same combination of individuals can be insured for more than $100,000. If step one were eliminated, that same account would be insured for up to $200,000. In this connection, the staff of the Board of Governors of the Federal Reserve System performed an analysis in 1992 in conjunction with the FDIC study, *The Costs, Feasibility and Privacy Implications of Tracking Deposits.* The Federal Reserve analysis concluded that eliminating step one of the joint account rules would result in a $22 billion increase in insurance coverage. Although the FDIC is uncertain that the Federal Reserve analysis is an accurate measurement of the potential increase in deposit insurance, the analysis raises concerns that require further consideration.

For these reasons, the FDIC has decided to further study the policy, economic and other implications of eliminating step one of the joint account rules. The FDIC staff will conduct such a study and report its findings to the Board. The objective is to simplify the joint account rules without significantly increasing deposit insurance.

2. The Rules on ''Payable on Death'' Accounts

The insurance rules provide for separate coverage for funds owned by an individual and deposited into any account commonly referred to as a ''payable-on-death'' account, tentative or ''Totten'' trust account, revocable trust account, or similar account (POD accounts). 12 CFR 330.8. The regulation limits qualifying beneficiaries to the owner's spouse, children and grandchildren. *Id.* at 330.8(a). The owner is insured up to $100,000 as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. Thus, if the individual names his spouse, three children and two grandchildren as beneficiaries, the account would be insured up to $600,000, assuming the other requirements of the regulation are satisfied. Over the years the FDIC has received numerous questions on why other types of relatives of POD account owners are not included within the qualifying degree of kinship. Thus, in the ANPR the FDIC requested comment on whether and, if so, how the POD insurance rules should be changed. The FDIC received fifty-one ANPR comments on this issue. The majority of those who commented encouraged the FDIC to expand the qualifying beneficiaries to include those likely to be named by a POD account owner/settlor. Others commented that the current rules seem fair and should be retained. As with the possible amendments to the joint account rules mentioned in the ANPR, however, members of the banking industry and others have raised questions about the potential ''moral hazard'' of expanding deposit insurance coverage. Members of Congress also have expressed concerns about expanding federal deposit insurance.

Expanding the list of qualifying beneficiaries in the POD accounts rules would provide additional depositors with access to POD insurance and could significantly expand the scope of deposit insurance. Thus, at this time the FDIC believes that the best alternative is to retain the current POD rules and to continue to study the nature and scope of POD coverage. The staff will conduct such a study and report its findings to the Board.

3. Statutory Requirements Regarding Employee Benefit Plans

Under an amendment to the FDI Act made by FDICIA, pass-through insurance coverage is not available to employee benefit plan deposits that are accepted by an insured bank or thrift when the institution does not meet prescribed capital requirements. 12 U.S.C. 1821(a)(1)(D). If an institution accepts employee benefit plan deposits at a time when it is not sufficiency capitalized, such deposits are insured only up to $100,000 per plan (as opposed to $100,000 per participant of the plan). This FDICIA-originated provision is the only one in the FDI Act and the FDIC's regulations to base insurance coverage on the capital sufficiency of the insured institution where the deposits are placed. Section 330.12 of the FDIC's insurance regulations implements this statutory limitation on pass-through coverage for employee benefit plan deposits. 12 CFR 330.12. The FDIC believes that the statute is complex and difficult for the industry and the public to understand.

The FDIC raised this matter in the ANPR. Based on the varied comments received, the FDIC intends to study the issue further to determine what, if any, action need be taken by the FDIC.

Section-by-Section Discussion of the Proposed Rule

The following is an identification and, where appropriate, an explanation of the various proposed revisions to each section of the FDIC's insurance regulations.

Section 330.1—Definitions

Various clarifying and technical changes are proposed to be made to this definitional section of part 330. Some definitions provided in other provisions of part 330 (for example, the definition of ''independent activity'' in section 330.9) are moved to this section. The definition of ''Corporation'' (meaning the FDIC) is added to the section.

Section 330.2—Authority and Purpose

This section is reduced to simply stating the purpose of part 330. The narrative description of the FDIC's authority to issue deposit insurance regulations is eliminated as no longer necessary.

Section 330.3—General Principles

Certain examples are added to this section. Because of its importance, paragraph (g) on the continuation of separate insurance after a merger of depository institutions is moved to a new separate § 330.4. The rules on the insurance coverage of bank investment contracts and the relevant definitions are moved from the current § 330.13 to this section. Section 330.13 is thereby eliminated.

A new paragraph (j) is added to provide a six-month grace period for insurance coverage after a deposit owner dies, if allowing for such a grace period would not result in a reduction of insurance coverage.

Section 330.4—Continuation of Separate Deposit Insurance After Merger of Insured Depository Institutions

This is a new section comprised of the provisions in the current § 330.3(g). The FDIC receives numerous questions on the deposit insurance implications of bank mergers and acquisitions. It seems appropriate for these provisions to be contained in a separate, more easily accessible section of the regulations.

Section 330.5—Recognition of Deposit Ownership and Recordkeeping Requirements

The section would amend the current § 330.4. The recordkeeping requirements would be amended to provide an exception to the general rule that the deposit account records of a depository institution must expressly disclose the existence of a fiduciary relationship in order for the FDIC to recognize the fiduciary nature of the account. The exception provides that the general requirement would not apply if the FDIC determines, in its discretion, that the titling of the account and the underlying deposit account records of the depository institution indicate the existence of a fiduciary relation. The section specifies that the exception might apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company, or an entity (or its agent or nominee) whose business is to hold, for safekeeping reasons, deposits for others.

This section also would be amended to allow for the grace period provided for in the proposed § 330.3(j).

Section 330.6—Single Ownership Accounts

This is essentially the same as the current § 330.5. The language has been modified slightly and an example is provided. Also, the ''decedent's account'' provision in this section would cross-reference the grace period provided for in the proposed § 330.3(j).

Section 330.7—Accounts Held by an Agent, Nominee, Guardian, Custodian or Conservator

This is the current § 330.6. The language of the section has been modified slightly. The provision on mortgage servicing accounts has been clarified to indicate that such accounts are not entitled to separate insurance, but are insured as custodial accounts under the general rules of the section. The provision on annuity contract accounts has been moved to a new, separate § 330.8.

Section 330.8—Annuity Contract Accounts

This is a new section comprised of the provisions in current § 330.6(f). Funds in such accounts are entitled to separate insurance coverage. It is appropriate, therefore, that the provisions be in a separate section of the regulations.

Section 330.9—Joint Ownership Accounts

This is the current § 330.7. Examples have been added to illustrate how the joint account rules operate. The language of other parts of the section has been modified.

Section 330.10—Revocable Trust Accounts

This is the current § 330.8. Examples are provided on the general rule and the rule involving the interests of nonqualifying beneficiaries. A paragraph on living trusts has been added to clarify when accounts held in connection with living trusts would be insured under this provision. Other parts of the section have been clarified.

Section 330.11—Accounts of a Corporation, Partnership or Unincorporated Association

These are the rules currently provided in § 330.9. The definition of ''independent activity'' is moved to § 330.1. The language of other parts of the section has been modified slightly.

Section 330.12—Accounts Held by a Depository Institution as the Trustee of an Irrevocable Trust

This is the current § 330.10. The language is modified slightly.

Section 330.13—Irrevocable Trust Accounts

This is the current § 330.11. The definitions of ''trust interest'' and ''non-contingent trust interest'' are moved to § 330.1. The language of other parts of the section is modified slightly.

Section 330.14—Retirement and Other Employee Benefit Plan Accounts

This is the current § 330.12. No changes are proposed to this provision.

The Current Section 330.13—Bank Investment Contracts

The substantive parts of this regulation are moved to § 330.1 and the remainder is eliminated. The FDIC is proposing to delete this section because it is largely definitional and essentially reiterates the corresponding statutory provisions.

Section 330.15—Public Unit Accounts

This is the current § 330.14 and is essentially unchanged.

The Current Section 330.15—Notice to Depositors

The FDIC proposes to eliminate this section as no longer necessary.

Section 330.16—Effective Dates

Changes have been made to this section to indicate that the designated effective dates apply to former changes to part 330. The FDIC proposes to retain the substance of this section because the effective dates might be relevant in connection with time deposits issued prior to December 19, 1991, that have not yet matured.

Request for Comment

The Board of Directors of the FDIC is seeking comment on all of the above-mentioned possible means of simplifying the deposit insurance rules, including the likely effect of such changes on consumers and the banking industry. Comments are specifically requested on the identified proposed substantive revisions. The Board also is seeking suggestions on any other ways that the rules might be streamlined, simplified or clarified.

Paperwork Reduction Act

The proposed rule is intended to simplify the rules governing FDIC deposit insurance. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The proposed rule would not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The proposed revisions to the deposit insurance rules would apply to all FDIC-insured depository institutions and would impose no new reporting, recordkeeping or other compliance requirements upon those entities. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to revise part 330 of title 12 of the Code of Federal Regulations to read as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

§ 330.1 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Corporation* means the Federal Deposit Insurance Corporation.

(c) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(d) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Independent activity.* A corporation, partnership or unincorporated association shall be deemed to be engaged in an ''independent activity'' if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Insured deposit* has the same meaning as that provided under subsection 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(j) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) *Natural person* means a human being.

(l) *Non-contingent trust interest* means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

(m) *Sole proprietorship* means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(n) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(o) *Trust funds* means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(p) *Trust interest* means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

§ 330.2 Purpose.

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and this part are based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other. (Example: single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.* Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership. (Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.) The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency.* The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 p.m. rates (the ''noon buying rates for cable transfers'') quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) *Deposits in insured branches of foreign banks.* Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States and certain other locations.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits.* An ''international banking facility time deposit'', as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Bank investment contracts.* As required by section 11(a)(8) of the Act (12 U.S.C. 1828(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits ''benefit responsive withdrawals'' or transfers (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term ''substantial penalty or adjustment'' used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) *Determination of the amount of a deposit*—(1) *General rule.* The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit.* The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements.* In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) *Continuation of insurance coverage following the death of a deposit owner.* When a deposit owner dies, eligibility for the category of insurance coverage of the account(s) owned by that person shall be unaffected until the earlier of: the restructuring of the account(s) or six months after the death of the deposit owner. The operation of this grace period, however, shall not result in a reduction of coverage during the six-month period, unless the account(s) is (are) restructured. If an account is not withdrawn or restructured within six months after the depositor's death, the insurance shall be provided on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

§ 330.4 Continuation of separate deposit insurance after merger of insured depository institutions.

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

§ 330.5 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership*—(1) *Evidence of deposit ownership.* Except as indicated in this paragraph (a)(1) or as provided in § 330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts.* In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements*—(1) *Disclosure of fiduciary relationships.* The ''deposit account records'' (as defined in § 330.1) of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution. The general requirement for the express indication that the account is held in a fiduciary capacity will not apply, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two alternative methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate on the deposit account records of the insured depository institution that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements*—(i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; Provided, That the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§ 330.6 Single ownership accounts.

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to $100,000 in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney) the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of § 330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts.* Funds owned by a business which is a ''sole proprietorship'' (as defined in § 330.1) and deposited in one or more deposit accounts in the name of the business, shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to $100,000 in the aggregate; provided, however, that nothing in this paragraph shall affect the operation of § 330.3(j). The deposit insurance provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of § 330.13.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.9.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured in accordance with paragraph (a) of this section for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

(e) *Custodian accounts for American Indians.* Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior the (''BIA'') on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to $100,000, separately from any other accounts maintained by that person in the same insured depository institution.

§ 330.8 Annuity contract accounts.

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds; and

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained in a different right and capacity by the corporation or the annuitants at the same insured depository institution.

§ 330.9 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. (Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to $100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* Step one: all qualifying joint accounts owned by the same combination of individuals shall first be added together and insurable up to $100,000 in the aggregate. (Example: A qualifying joint account owned by ''A&B'' would be added to a qualifying joint account owned by ''B&A'' and the insurable limit on the combined balances in those accounts would be $100,000.) Step two: the interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to $100,000. (Example: ''A&B'' have a qualifying joint account with a balance of $100,000; ''A&C'' have a qualifying joint account with a balance of $150,000; and ''A&D''

have a qualifying joint account with a balance of $100,000. The balance in the account owned by ''A&C'' exceeds $100,000, so under step one the excess amount, $50,000, would be uninsured. A's combined ownership interests in the insurable amounts in the accounts would be $150,000, of which under step two $100,000 would be insured and $50,000 would be uninsured; B's ownership interest would be $50,000, all of which would be insured; C's insurable ownership interest would be $50,000, all of which would be insured; and D's ownership interest would be $50,000, all of which would be insured.)

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are ''natural persons'' (as defined in § 330.1); and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the rules in this part governing the insurance of such accounts.

(e) *Determination of interests.* The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction ''and'' or ''or'' is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§ 330.10 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into an account evidencing an intention that upon the death of the owner the funds shall belong to one or more qualified beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term ''qualifying beneficiaries'' means the owner's spouse, child/children or grandchild/grandchildren. (Example: If A establishes a qualifying account payable upon death to his spouse, two children and one grandchild, assuming compliance with the rules of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.) Accounts covered by this provision are commonly referred to as a tentative or ''Totten trust'' account, ''payable-on-death'' account, or revocable trust account.

(b) *Required intention.* The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, ''in trust for'', ''as trustee for'', ''payable-on-death to'' or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) *Interests of nonqualifying beneficiaries.* If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owners, and insured up to $100,000 per owner. (Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, the POD account would be eligible for POD coverage up to $200,000 corresponding to the two qualifying beneficiaries (*i.e.*, the spouse and child). The amount corresponding to the non-qualifying beneficiary (*i.e.*, the nephew) would be deemed to be owned by B in her single-ownership capacity and insured accordingly.)

(d) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to $100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the joint account provisions of § 330.9.

(e) *Definition of ''children'' and ''grandchildren''.* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term ''children'' includes any biological, adopted and step-children of the owner and ''grandchildren'' includes biological, adopted, or step-children of any of the owner's children.

(f) *Living trusts.* This section also applies to revocable trust accounts held in connection with a so-called ''living trust'', a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the deposit account held in connection with the living trust may be eligible for deposit insurance under this section, assuming compliance with all the provisions of this part. If, however, for example, the living trust includes a ''defeating contingent'' relative to that beneficiary's interest in the trust assets, then insurance coverage under this section would not be provided. For purposes of this section, a ''defeating contingency'' is generally defined as a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner's death.

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any ''independent activity'' (as defined in § 330.1) shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any ''independent activity'' (as defined in § 330.1) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an ''independent activity'' (as defined in § 330.1) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to $100,000 in the aggregate.

§ 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

(a) *Separate insurance coverage.* ''Trust funds'' (as defined in § 330.1) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 of each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following rules:

(1) *Allocated funds of a trust estate.* If trust funds of a particular ''trust estate'' (as defined in § 330.1) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.11(a)(2).

§ 330.13 Irrevocable trust accounts.

(a) *General rule.* Funds representing the ''non-contingent trust interest(s)'' (as defined in § 330.1) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each ''trust interest'' (as defined in § 330.1) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured for up to $100,000, separately from the funds of any other such estate.

§ 330.14 Retirement and other employee benefit plan accounts.

(a) *''Pass-through'' insurance.* Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a ''pass-through'' basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the FDIC's recordkeeping requirements, as outlined in § 330.5, are satisfied.

(b) *Exception.* ''Pass-through'' insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act unless, at the time the deposit is accepted:

(1) The institution meets each applicable capital standard; and

(2) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis.

(c) *Aggregation*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) *Certain retirement accounts.* (i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986; and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to ''pass-through'' insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of $100,000 per-plan.

(d) *Determination of interests*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account.* For the purposes of applying the rule under paragraph (c)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or ''457 Plan,'' excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the rules contained in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion(s) of an employee benefit plan's deposits which are not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(g) *Definitions of ''depositor'', ''employee benefit plan'', ''employee organizations'' and ''non-contingent interest''.* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

(2) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* (i) An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of an accurate

explanation of the requirements for pass-through deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category, and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for ''pass-through'' insurance coverage.

(ii) An insured depository institution shall provide the notice required in paragraph (h)(2)(i) of this section to depositors who have employee benefit plan deposits with the insured depository institution on July 1, 1995 that, at the time such deposits were placed with the insured depository institution, were not eligible for pass-through insurance coverage under paragraphs (a) and (b) of this section. The notice shall be provided to the applicable depositors within ten business days after July 1, 1995.

(3) *Disclosure when ''pass-through'' coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for ''pass-through'' insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within 10 business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of ''employee benefit plan''.* For purposes of this paragraph (h), the term ''employee benefit plan'' has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

§ 330.15 Public unit accounts.

(a) *Extent of insurance coverage*—(1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits. In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time savings or demand deposits.

(3) *Accounts of the District of Columbia.* (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) Accounts of an Indian tribe. Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the official custodian*—(1) *Qualifications for an official custodian.* In order to qualify as an ''official custodian'' for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one ''official custodian'' for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to $100,000.

(d) *Definition of ''political subdivision''.* The term ''political subdivision'' includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

§ 330.16 Effective dates.

(a) *Prior effective dates.* Former §§ 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 (*See* 12 CFR part 330, as revised January 1, 1997.) became effective on December 19, 1993.

(b) *Time deposits.* Except with respect to the provisions in former § 330.12 (a) and (b), (*See* 12 CFR part 330, as revised January 1, 1997.) and current § 330.14 (a) and (b), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993 shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of these rules shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

By order of the Board of Directors.

Dated at Washington, D.C., this 29th day of April, 1997.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–11965 Filed 5–13–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 566

[No. 97–44]

RIN 1550–AA77

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to update, simplify, and streamline its liquidity regulation. This proposal follows a detailed review of the regulation to determine whether it is necessary, imposes the least possible burden consistent with statutory requirements and safety and soundness, and is written in a clear, straightforward manner. Today's proposal is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

DATES: Comments on this proposed rule must be received on or before July 14, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 97–44. These submission may also be hand delivered to 1700 G Street, NW, from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Francis Raue, Program Analyst, (202) 906–5750, Robyn Dennis, Manager, Thrift Policy, (202) 906–5751, Supervision Policy, or Susan Miles, Senior Attorney, (202) 906–6798, Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Objectives of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive, systematic regulatory burden review. The first areas reviewed—lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance—were selected because they have a significant impact on thrift operations, and had not been developed on an interagency basis or been comprehensively reviewed for many years. OTS has issued comprehensive final regulations in all of these areas.[1]

Today's proposal is a part of the next phase of OTS's review of its regulations. The proposed liquidity rule follows an intensive review of the relevant statute and regulation, legal interpretations, and requirements of other federal banking agencies. Like other OTS reinvention efforts, this proposal was prepared in consultation with those who use the regulation on a daily basis, including the agency's regional examination staff.

Both the industry and OTS regulatory staff have consistently cited the liquidity requirement and attendant calculations as an unnecessary burden. Consequently, the review process has led to a consensus that the statutory liquidity requirement no longer serves any useful purpose and should be eliminated. The OTS has in the past recommended legislative action to repeal this requirement.

In the interim, OTS has reviewed its current liquidity regulation and has identified modifications that would reduce the burden of compliance to the maximum extent possible, consistent with the requirements of the statute and safety and soundness considerations. Specifically, the burden of compliance with the liquidity regulation would be decreased by: (1) reducing the liquidity base by excluding withdrawable accounts payable in more than one year

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[1] 61 FR 50951 (September 30, 1996) (Lending and Investment); 61 FR 66561 (December 18, 1996) (Subsidiaries and Equity Investments); 61 FR 60173 (November 27, 1996) (Conflicts of Interest, Corporate Opportunity and Hazard Insurance); 61 FR 64007 (December 3, 1996) (Corporate Governance).

from the definition of the term ''net withdrawable accounts''; (2) streamlining the calculations used to measure compliance with the liquidity requirement; (3) reducing the liquidity requirement from five percent of net withdrawable accounts and short-term borrowings to four percent; (4) removing the one percent short-term liquidity requirement; and (5) expanding the categories of liquid assets that may count toward satisfying a savings association's liquidity requirement. In addition, a general requirement that thrifts maintain a safe and sound level of liquidity would be added to the regulation. Each of these changes is discussed in full below.

OTS believes that these proposed changes will significantly reduce regulatory burden with respect to the statutory liquidity requirement. While some thrifts may choose to modify their systems to take advantage of the new rule, thrifts need not change any systems they have in place to comply with the current rule.

II. Historical Overview of Current Liquidity Regulation

A. Statutory Requirement and Current Regulation

Section 6 of the Home Owners' Loan Act (HOLA)[2] requires savings associations to meet a liquidity requirement by holding liquid assets in an amount prescribed by the Director of OTS. The Director may, by regulation, vary the amount of the liquidity requirement, but only within pre-established statutory limits. The requirement must be no less than 4 percent and no greater than 10 percent of ''the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less.''[3] The law identifies the assets that are suitable for liquidity purposes. The Director, however, has express authority to issue regulations defining the terms used in the statute and to prescribe or limit the extent to which certain assets included on the statutory liquidity list may be used to meet the liquidity requirement. The Director also has express authority to prescribe the method for calculating the liquidity requirement.

Regulations implementing the Director's authority under section 6 of the HOLA appear at 12 CFR Part 566. Among other things, these rules define liquid assets to include cash and certain securities with maturity limitations and marketability requirements that are set out in detail.[4] The rules currently impose a liquidity requirement of 5 percent of an institution's liquidity base and a separate, ''short-term'' liquidity requirement of 1 percent of the liquidity base. The liquidity base is defined as net withdrawable accounts plus short-term borrowings. Except for institutions with less than $25,000,000 in assets, liquidity requirements are based on the ''average daily balance'' of the liquidity base during the preceding month. Institutions with less than $25,000,000 in assets may calculate their liquidity using month-end figures. These requirements are discussed more fully in Section III below.

B. Reasons for Modifying the Current Rule

When first enacted in 1950, the liquidity statute provided a mechanism for regulating the money supply available for housing. That purpose was reflected in the statutory text, which provides:

> The purpose of this section is to provide a means for creating effective and flexible liquidity in savings association which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency. More flexible liquidity will help support sound mortgage credit and a more stable supply of such credit.[5]

Consistent with this purpose, for many years the OTS's predecessor, the Federal Home Loan Bank Board, raised the liquidity requirement when the supply of money for housing was abundant and lowered the requirement when the supply was scarce.

Over the years, however, this mechanism for ensuring a stable flow of housing credit has become obsolete. In recent decades, a vast secondary market for home loans has developed. This market has become the primary source of funding for home loans. Savings associations, as well as other lenders, can now originate home loans without regard to whether they themselves have the capacity to hold those loans in portfolio.

Moreover, due largely to the development of the secondary market, lenders other than thrifts have become major mortgage lenders. Although savings associations are still an important source of housing credit, they are no longer the predominant source. For example, in 1975, thrifts were responsible for 55 percent of home mortgage originations, with mortgage companies originating only 14 percent. Today, those percentages are nearly reversed, with thrifts accounting for only 18 percent of home mortgage originations, while the mortgage companies' share has increased to 56 percent. Mortgage companies, commercial banks and other lenders, unlike savings associations, are not subject to a statutory liquidity requirement.

Adjusting the amount that savings associations must invest in liquid assets is no longer an effective means for regulating or ensuring the stable supply of credit for housing. Thrifts, banks, and mortgage bankers can obtain steady funding for home loans from the secondary market. As a result, the statutory liquidity requirement for savings associations no longer serves a useful purpose.

As indicated above, the statutory liquidity requirement was designed as a mechanism for regulating housing credit, not safety and soundness. Thus, although adequate liquidity is vital to the safety and soundness of depository institutions, the OTS does not rely on the statutory liquidity requirement to ascertain whether an institution has adequate liquidity for purposes of safety and soundness. The statutory requirement is far too rigid and imprecise to be an effective measure of liquidity for safety and soundness purposes. Determining a safe level of liquidity for any particular institution depends on the overall asset/liability structure of the institution, the conditions of the markets where the institution operates, the activities of the institution's competitors and the requirements of the institution's own deposit and loan customers. Through the examination process, the OTS carefully reviews the process that an institution uses to allocate its assets and structure its liabilities to ensure sufficient liquidity to meet its needs and customer demands.

This is the same general approach that the other banking agencies use to examine the institutions they regulate to determine the adequacy of liquidity. For example, the Office of the Comptroller of the Currency states,

> A sound basis for evaluating funds management requires understanding the bank, its customer mix, the nature of its assets and liabilities, and its economic and competitive environment. The adequacy of a bank's liquidity will vary from bank to bank. In the same bank, at different times, similar liquidity positions may be adequate or inadequate depending on anticipated need for funds. In addition, a liquidity position which is adequate for one bank may be insufficient for another bank. Determining the adequacy of a bank's liquidity position depends upon an analysis of the bank's

[2] 12 U.S.C. 1465.

[3] 12 U.S.C. 1465(b)(2).

[4] 12 CFR 566.1(g) (1996).

[5] 12 U.S.C. 1465(a).

present and anticipated asset quality, present and future earnings capacity, historical funding requirements, current liquidity position, anticipated future funding needs, options for reducing funding needs or attracting additional funds, and sources of funds.[6]

It is important to emphasize that the changes the OTS is proposing today are not intended to suggest that the OTS believes that the HOLA's prescribed percent ratio of liquid assets to liabilities is ordinarily a sufficient level of liquidity. As indicated above, from a safety and soundness perspective, the appropriate level of liquidity varies significantly from institution to institution depending upon factors unique to each institution. Thus, compliance with the statutory liquidity requirement does not create a presumption that an institution has adequate liquidity for safety and soundness purposes. As indicated above, the statutory requirement was established as a means of regulating the supply of funds for housing credit, not as a measure of safety and soundness. A savings association's management is responsible for ensuring that the institution has adequate procedures in place to maintain a safe level of liquidity. The OTS will carefully monitor this via examinations.

III. Description of Proposal

The OTS proposes the following amendments to 12 CFR Part 566:

A. Excluding Accounts With Unexpired Maturities Exceeding One Year From the Definition of ''Net Withdrawable Accounts''

A savings association must maintain liquid assets of not less than a stated percentage of the amount of its liquidity base. The regulation defines the term ''liquidity base'' as net withdrawable accounts plus short-term borrowings. 12 CFR 566.1(c). The term ''net withdrawable accounts'' is defined to mean, with certain exclusions, all withdrawable accounts less the unpaid balance of all loans secured by such accounts. 12 CFR 566.1(d). Short term borrowings are generally defined as borrowings where any portion of the principal is payable on demand or in one year or less. 12 CFR 566.1(e).

The OTS proposes to change the regulation's definition of the term ''net withdrawable accounts'' to exclude accounts with unexpired maturities exceeding one year, and to delete the word ''all'' from the phrase ''all withdrawable accounts'' in the first part of the definition.

The effect of changing the ''net withdrawable accounts'' definition will be to reduce a savings association's liquidity base by the amount of its outstanding savings accounts payable in more than one year, and to reduce the association's liquid asset requirement accordingly. The OTS believes that this proposed reduced liquid asset requirement is warranted and appropriate to the purpose of the liquidity statute. This change is consistent with the regulation's present exclusion from the liquidity base of borrowings payable in more than one year.

B. Streamlining the Average Balance Calculations of Liquid Assets and Liquidity Base

Under the current rule, for every calendar month, every savings association (other than certain small institutions and mutual institutions that are discussed below) must calculate its average daily balance of its liquid assets and liquidity base. This requires the calculation of the institution's liquid assets and liquidity base as of the close of each business day, from which the daily average balance of liquid assets and liquidity base for each month is computed. The OTS proposes to amend the regulation to require that while institutions must continually satisfy their liquidity requirements, the liquidity base must be calculated only on the last day of the preceding calendar quarter. This eliminates the necessity for savings associations to determine average daily balances for each month.

This change is consistent with other OTS regulations, including the loans-to-one-borrower rule and the capital rule, that use a quarter-end calculation to measure compliance with an ongoing requirement.

The current rule permits a savings association with less than $25 million in total assets at the beginning of a fiscal year, by resolution of its board of directors, to compute its liquid asset requirement as a percentage of its liquidity base at the end of the preceding calendar month (rather than as a percentage of the average daily balance of its liquidity base during the preceding calendar month). 12 CFR 566.2(b). Because the proposed rule would base the liquidity requirement on the institution's liquidity base at the end of the preceding quarter, the exception for small institutions would be more burdensome than the proposal. Accordingly, the OTS proposes to eliminate this provision.

The current rule also contains a provision that grants mutual savings banks an alternative election for satisfying the liquidity requirement. 12 CFR 566.2(e). Although in prior years the election permitted such institutions to maintain a lower percentage of liquid assets than other savings associations, the election is currently no more lenient than the requirement for all savings associations, and would be more burdensome than the proposal. Therefore this provision would also be eliminated.

C. Reducing the Liquid Asset Requirement From Five to Four Percent and Removing the One Percent Short-term Requirement

The OTS proposes to reduce the liquidity requirement from five percent of an institution's liquidity base to four percent. The four percent floor is the lowest the OTS may prescribe under section 6(b)(2) of the HOLA.[7] As noted above, this change would minimize the regulatory burden associated with the statutory liquidity requirement, and is not intended to suggest that OTS considers four percent liquidity sufficient for most institutions. The OTS is aware that most savings associations maintain more than four percent liquidity in order to operate in a safe and sound manner. The OTS will continue to require a savings association to maintain a level of liquidity that is prudent given its particular circumstances. The OTS also encourages institutions to diversify their investments in qualifying liquid assets. Unsafe and unsound concentrations may occur in a securities portfolio, as well as in a loan portfolio.

Section 566.2(a) also requires a savings association, other than a mutual savings bank, to maintain an average daily balance of short-term liquid assets[8] of not less than one percent of the average daily balance of its liquidity base during the preceding calendar month. The original intent of this provision was to require savings associations to have sufficient short-term, easily convertible assets that may be used to meet a portion of the liquidity requirement. With the expansion of the secondary mortgage

[6] *Comptroller's Handbook for National Bank Examiners,* section 405.1, Funds Management-Introduction (March 1990). *See, FDIC–DOS Manual of Examination Policies,* ''Liquidity and Funds Management,'' Section II (August 1995); and *Commercial Bank Examination Manual,* section 4020.1 Asset/Liability Management (March 1994).

[7] 12 U.S.C. 1465(b)(2).

[8] This term is currently defined at § 566.1(h)(1996). These assets include cash and liquid assets with short maturities, such as government obligations that will mature in 12 months or less, and corporate debt obligations that will mature in six months or less. The removal of the requirement will also eliminate the need for this definition.

market and the resultant increase in the sources and amount of funds available for mortgages, the one percent short-term liquid asset requirement is no longer necessary. Accordingly, the OTS proposes to eliminate the requirement.

D. Expanding the Categories of Liquid Assets That Count Toward Satisfaction of the Liquidity Requirement

Under sections 6(b)(1)(C)(vi) and (vii) of the HOLA,[9] as added in 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),[10] certain mortgage-related securities and mortgage loans now qualify as liquid assets to the extent approved by the Director of the OTS. The first category consists of mortgage-related securities that are defined in section 3(a)(41) of the Securities Exchange Act of 1934. The second category consists of mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or are guaranteed by the Government National Mortgage Association. The qualifying mortgage-related securities and mortgage loans must have one year or less remaining until maturity, or be subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year. In addition, the person that agrees to purchase the securities must be an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

The OTS liquidity regulation has never been amended to reflect the foregoing FIRREA provision. The OTS proposes to update the liquidity regulation to reflect this statutory provision.

E. Adding a General Safety and Soundness Requirement

The OTS also proposes to add a general requirement that savings associations must maintain a safe and sound level of liquidity at all times. This is not a new position. The minimum level of liquidity required by the statutory liquidity provision does not necessarily constitute a safe level of liquidity. As explained above, savings associations have always been required to maintain a safe level of liquidity and the statutory liquidity provision has not been viewed as indicative of what constitutes a safe level of liquidity.

The OTS views the statutory liquidity provision as a rigid and imprecise measure of the sufficiency of an institution's liquidity. For this reason, the OTS is seeking to reduce the burden imposed by the rigid statutory formula, while making clear that the statutory liquidity requirement and its implementing regulations do not constitute a safe harbor for demonstrating a safe and sound level of liquidity. As indicated above, safety and soundness determinations must be made on a case-by-case basis in light of the particular circumstances of each institution.

[9] 12 U.S.C. 1465(b)(1)(C)(vi), (vii).

[10] Pub. L. 101–73, 103 Stat. 183, 313–314 (1989).

IV. Request for Comment

Comments are sought on all aspects of this proposed rulemaking.

V. Paperwork Reduction Act

The OTS invites comments on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the OTS, 1700 G Street, NW., Washington, D.C. 20552.

The recordkeeping requirements contained in this notice of proposed rulemaking are found at 12 CFR 566.4. The information is needed by the OTS in order to ensure that associations comply with a statutory liquidity requirement. The likely recordkeepers are OTS-regulated savings associations.

Estimated number of recordkeepers: 1,372.

Estimated average annual burden hours per recordkeeper: 2.

Estimated total annual recordkeeping burden: 2,744.

Start-up costs to recordkeepers: None.

Records are to be maintained in accordance with basic business practices, but not less than a period of three years.

VI. Executive Order 12866

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

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), the OTS certifies that this regulation will not have a significant economic impact on a substantial number of small entities. It reduces the liquidity requirement from 5 percent to 4 percent, which should increase all savings associations' abilities to manage their assets. Additionally, the proposed regulation should ease the administrative burden of calculating compliance with liquidity requirements for all savings associations, including small savings associations.

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule reduces regulatory burden. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to § 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 566, chapter V, title 12, Code of Federal Regulations, as set forth below:

PART 566—LIQUIDITY

1. The authority section for part 566 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

2. Section 566.1 is amended by revising paragraphs (d) and (g)(8), by adding paragraphs (g)(12) and (g)(13), and by removing paragraph (h) to read as follows:

§ 566.1 Definitions.

* * * * *

(d) *Net withdrawable accounts.* The term *net withdrawable accounts* means withdrawable accounts having unexpired maturities not exceeding one year, less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, or U.S. Time Deposit Open Accounts.

* * * * *

(g) * * *

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), (g)(9), (g)(12), and (g)(13) of this section.

* * * * *

(12) Mortgage-related securities as described in 12 U.S.C. 1465(b)(1)(C)(vi).

(13) Mortgage loans on the security of a first lien on residential real property as described in 12 U.S.C. 1465(b)(1)(C)(vii).

3. Section 566.2 is amended by removing paragraphs (b), (c), and (e), by redesignating paragraph (a) as paragraph (b) and paragraph (d) as paragraph (c), by adding a new paragraph (a), by revising newly designated paragraph (b), and by removing the phrase ''paragraph (a)'' where it appears in newly designated paragraph (c) and adding in lieu thereof the phrase ''paragraph (b)'' to read as follows:

§ 566.2 Requirements.

(a) *Safety and soundness.* Each savings association must maintain sufficient liquidity to ensure its safe and sound operation.

(b) *Liquidity.* Except as otherwise provided in paragraph (c) of this section, each savings association shall maintain liquid assets of not less than 4 percent of the amount of its liquidity base at the end of the preceding calendar quarter.

* * * * *

Dated: May 7, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–12574 Filed 5–13–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–141; Notice No. SC–97–3–NM]

Special Conditions: Boeing Model 737–600/–700/–800; High Intensity Radiated Fields (HIRF)/Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 737–600/–700/–800 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: Comments must be received on or before (June 30, 1997.)

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–141, 1601 Lind Avenue SW., Renton, Washington, 98055–4506; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–141. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–141.'' The postcard will be date stamped and returned to the commenter.

Background

On February 4, 1993, Boeing submitted an application for an amendment to Type Certificate A16WE to include the next generation 737 family of airplanes. Two of these airplanes will have the same length as the present 737–300 and 737–500. The third version will be the existing 737–400, stretched to add two additional passenger rows. In addition, all models will have increased wing size, higher thrust engines, and body structure modifications due to increased design weights and higher wing and tail loads. The maximum operating altitude is to be increased from 37,000 ft. to 41,000 ft. The long range cruise speed is increased to 0.78 Mach or better. The range is increased to be transcontinental of approximately 2,950 nmi. There is only one engine type being offered, which is a derivative of the existing CFM56 referred to as the CFM56–7. The proposed modification includes the installation of digital avionics, including Air Data Inertial Reference System (ADIRS) and Common Display System (CDS), which are vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Boeing must show that the Model 737–600/–700/–800 airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate A16WE, or the applicable regulations in effect on the date of application for the change to the Model 737. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The proposed certification basis for the Model 737–600/–700/–800 airplanes includes 14 CFR part 25, as amended by Amendments 25–1 through 25–77, except as indicate below:

Section	Title	At Amdt. 25–
25.365	Pressurized Compartment Loads	0
25.561	Emergency Landing Conditions—General	0
25.562	Emergency Landing Dynamic Conditions	*64
25.571	Damage-tolerance and Fatigue Evaluation of Structure.	**0,77
25.607	Fasteners	**0,77
25.631	Bird Strike Damage	**0,77
25.699	Lift and Drag Device Indicator	**0,77
25.783(f)	Doors	**15,77
25.807(c)(3)	Emergency Exits	15
25.813	Emergency Exit Access	45
25.832	Cabin Ozone Concentration	**0,77
25.1309	Equipment, Systems and Installations	**0,77
25.1419(c)	Ice Protection	**23,77

Boeing has also elected to comply with Amendments 25–78 and 25–80 and portions of Amendments 25–79, 25–84, and 25–86.

*Flight attendant seats will be qualified to Technical Standard Order C127. Passenger and flight deck seats will comply with 14 CFR §§ 25.562 (a), (b), ((c), (1), (2), (3), (4), (7), and (8)).

**Applicable to new and significantly modified structure and systems and portions of the airplane affected by these changes. Where two amendment levels are shown for the same paragraph, the number without the asterisk (*) applies to structures, systems, and portions of the airplane which are not new or significantly modified. The structure, systems, and components which comply with the later amendment will be identified in Boeing document D010A001, approved by the FAA and JAA, and referenced on the type certificate data sheet.

***Boeing provides FAA approved data (Document number D6–49779) to 737 operators to enable the operators to show ozone compliance per 14 CFR § 121.578 for their specific route structures.

Amendment level ''0'' is the original published version of Part 25 (February 1, 1965).

In addition, the certification basis will be upgraded to include the Part 25 complement to any Part 121 amendments adopted prior to the certification date and having impact on transport category airplane type designs, and the special conditions proposed in this notice.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–600/–700/–800 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 737–600/–700/–800 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by 14 CFR §§ 11.28 and 11.29, and become part of the type certification basis in accordance with 15 CFR § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 737–600/–700/–800 airplanes will incorporate new avionic/electronic systems, such as the Air Data Inertial Reference System (ADIRS) and Common Display System (CDS), that perform critical functions. These systems may be vulnerable to HIRF external to the airplane. In addition, the CFM56–7B engine proposed for the Boeing 737–700 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to ''sudden engine stoppage.''

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Boeing Model 737–600/–700/–800, which require that new electrical and electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

For the CFM56–7B engine proposed for the 737–600/–700/–800 airplanes, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned in 14 CFR § 25.361(b) when the engine seizure requirement was first adopted.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards.

The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine loads resulting from structural failures. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing 737–600/–700/–800 airplanes.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

Limit Engine Torque Loads for Sudden Engine Stoppage

in order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. The proposed special condition would distinguish between the more common events and those rare events resulting from structural failures in the engine. For these more rare but severe events, the proposed criteria would allow deformation in the engine supporting structure in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying an additional factor on these loads.

Applicability

As discussed above, these special conditions are applicable to the Model 737–600/–700/–800 airplanes. Should Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing Model 737–600/–700/–800 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 737–600/–700/–800 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

2. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following special condition is proposed:

(b) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (b)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on May 2, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12575 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes. This proposal would require repetitive inspections of the structure associated with the engine nacelle fairing that is attached to the left and right flaps of the wings for damage, and repair of any damage found. This proposed AD would also require drilling a new drain hole in each engine nacelle fairing and applying a sealant to the gap between the wing flap and engine nacelle fairing. This proposal is prompted by reports indicating that fatigue cracks were found in the structure that attaches the engine nacelle fairing to the wing flaps on the affected airplanes. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in the engine nacelle fairing partially or completely separating from the wing flap, and consequent additional structural damage to the airframe and/or reduced controllability of the airplane.

DATES: Comments must be received by June 23, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–214–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Jetstream Model 4101 airplanes. The CAA advises it has received reports of cracks in the fairing attachment angles of the engine nacelle and in the wing flap skins associated with the engine nacelle fairing attached to the left and right flap of the wings. In one of these incidents, a loose fairing caused vibration of the wing and fuselage. Investigation revealed that the cause of such cracks was attributed to structural fatigue induced by repetitive loads from the wake of the propeller. Such fatigue cracking, if not detected and corrected in a timely manner, could result in the engine nacelle fairing partially or completely separating from the wing flap, and consequent additional structural failure of the airframe and/or reduced controllability of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41–A57–015, dated May 27, 1996, which describes the following procedures:

—Performing repetitive visual inspections of the structure associated with the engine nacelle fairing that is attached to the left and right flaps of the wings for damage;
—Drilling a new drain hole in each engine nacelle fairing;
—Applying a new sealant to the gap between the wing flap and engine nacelle fairing; and
—Repairing any damaged fairing.

The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 006–05–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections of the structure associated with the engine nacelle fairing that is attached to the left and right flaps of the wings for damage, and repair of any damage found. The proposed AD also would require drilling a new drain hole in each fairing and applying a sealant to the gap between the wing flap and engine nacelle fairing. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

The FAA estimates that 51 Jetstream Model 4101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed initial inspection, and that the average labor rate is $60 per work hour. (The FAA has no way of determining how many repetitive inspections the owners/operators would incur over the life of the affected airplanes.) Required parts (sealant) would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,180, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Jetstream Aircraft Limited: Docket 96–NM–214–AD.

Applicability: All Model 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes 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 (b) 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 detect and correct fatigue cracking in the structure associated with the engine nacelle fairings attached to the left and right flaps of the wings, which could result in the engine nacelle fairing partially or completely separating from the wing flap, and consequent additional structural damage to the airframe and/or reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 1,500 hours time-in-service (TIS), or within 60 days after the effective date of this AD, whichever occurs later, visually inspect the structure associated with the engine nacelle fairing that is attached to the left and right flaps of the wings for damage; drill a new drain hole in each engine nacelle fairing; and apply a sealant to the gap between the wing flap and engine nacelle fairing; in accordance with Jetstream Alert Service Bulletin J41–A57–015, dated May 27, 1996. Repeat the visual inspection thereafter at intervals not to exceed 1,500 hours TIS.

(1) If any damage is found and the damage is within the limits specified in the alert service bulletin, prior to further flight, repair it in accordance with the alert service bulletin.

(2) If any damage is found and the damage is outside the limits specified in the alert service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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 airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12681 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–11]

Proposed Establishment of Class E Airspace; Sebastian, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Sebastian, FL. A GPS RWY 4 Standard Instrument Approach Procedure (SIAP) has been developed for Sebastian Municipal Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Sebastian Municipal Airport. The operating status of the airport will change for VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comments must be received on or before June 29, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–11, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief

Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

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 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–ASO–11.'' 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 light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 at Sebastian, FL. A GPS RWY 4 SIAP has been developed for Sebastian Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Sebastian Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more 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. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 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 above the surface of the earth.

* * * * *

ASO FL E5—Sebastian, FL [New]

Sebastian Municipal Airport, FL
(Lat. 27°48′46″ N, long. 80°29′44″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sebastian Municipal Airport, excluding that airspace within the Vero Beach, FL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on May 2, 1997.

Benny L. McGlamery,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–12576 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 135–97]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5), (8) and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is the ''Immigration and Naturalization Service (INS), Law Enforcement Support Center (LESC) Database, JUSTICE/INS–023.'' Information in this system relates to inquiries via criminal justice agencies of immigrants who have the status of legal permanent resident and/or United States citizen and who are either the subject of an investigation, or have been arrested, charged and/or convicted for criminal or civil offenses which could render them deportable or excludable under the provisions of immigration and nationality laws. The exemptions are necessary to avoid interference with law enforcement operations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory or other law enforcement process such as, deportation/expulsion proceedings.

DATE: Submit any comments by June 13, 1997.

ADDRESSES: Address all comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC. 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely—202–616–0178.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the Department of Justice provides a description of the ''Law Enforcement Support Center (LESC) Database, JUSTICE/INS–023.''

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: April 28, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend part 16 of Title 28 of the Code of Federal Regulations as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.99 by adding paragraphs (i) and (j) to read follows: [1]

§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.

* * * * *

(i) The Law Enforcement Support Center Database (LESC) (Justice/INS–023) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), (5), (8) and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a (k) (2) from subsections (c)(3); (d); (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(j) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) from reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation or other law enforcement operation such as deportation or exclusion. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement in that it could compromise the existence of a confidential investigation.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

[1] Proposed paragraphs (g) and (h) were published in the **Federal Register** on March 7, 1997 (62 FR 10495).

[FR Doc. 97–12570 Filed 5–13 –97; 8:45 am]
BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–13–1–7080b; FRL–5822–4]

State of Oklahoma; Approval of State Implementation Plan (SIP) Revision; Oklahoma Cotton Gin Emissions Control SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve the SIP revisions submitted by the State of Oklahoma on May 16, 1994, to satisfy the Federal Clean Air Act requirements of section 110. The May 16, 1994, submittal adopts opacity rules for cotton gin operations in Oklahoma to control particulate matter and visible emissions. In the Rules and Regulation section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The 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 the 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. 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.

DATES: Comments on this proposed rule must be received on or before June 13, 1997.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 4545 N. Lincoln, Suite 250, Oklahoma City, Oklahoma 73105–5220.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6686.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 24, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–12552 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–023–1023(b); FRL–5823–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of meeting the requirements of the EPA's general conformity rule. In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. An explanation for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the 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 this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 13, 1997.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 9, 1997.

Michael Sanderson,

Acting Regional Administrator.

[FR Doc. 97–12554 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 12–2–0039; FRL–5825–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution District and South Coast Air Quality Management District State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from facilities that load organic liquids into tank trucks, trailers, or railroad tank cars and the control of emissions during the transfer of organic liquids between storage units and delivery vessels.

The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rulemaking document will incorporate these rules into the federally approved SIP. EPA has evaluated the rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before June 13, 1997.

ADDRESSES: Comments may be mailed to: Christine Vineyard, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Fresno, CA 93721.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP include: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 463.3, Organic Liquid Loading, and South Coast Air Quality Management District (SCAQMD) Rule 462, Organic Liquid Loading. These rules were submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992 and October 13, 1995, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin (LA Basin) and the San Joaquin Area that encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] King County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964; 40 CFR 81.305. The San Joaquin Valley Air Basin which includes all the above eight

[1] At that time, Kern County included portions of two-air basins: The San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified, see 40 CFR 81.305 (1991).

counties except for the Southeast Desert Air Basin portion of Kern County. Because these areas were unable to meet this statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that SJVUAPCD and SCAQMD portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Joaquin Valley Air Basin is classified as serious and the LA Basin is classified as extreme;[4] therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on January 28, 1992 and October 13, 1995, including the rules being acted on in this document. This document addresses EPA's proposed action for SJVUAPCD Rule 463.3, Organic Liquid Loading, adopted on September 19, 1991 and SCAQMD Rule 462, Organic Liquid Loading, adopted on June 9, 1995. These submitted rules were found to be complete on April 3, 1992 and November 28, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V[5] and are being proposed for limited approval and limited disapproval.

SJVUAPCD Rule 463.3 controls VOC emissions from facilities that load liquids into tank trucks or railroad tank cars. SCAQMD Rule 462 controls emissions of VOC during the transfer of organic liquids between storage units and delivery vessels. VOCs contribute to the production of ground level ozone and smog. SJVUAPCD Rule 463.3 and SCAQMD Rule 462 were originally adopted as part of the districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SJVUAPCD's Rule 463.3 and SCAQMD's Rule 462.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTGs applicable to SCAQMD Rule 462 are entitled, ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,'' EPA–450/2–77–026; ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and vapor Collection Systems,'' EPA 4450/2–78–0521; and Control of Volatile Organic Emissions from Bulk Gasoline Plants,'' EPA–450/2–77–035. The CTG applicable to SJVUAPCD Rule 463.3 is entitled, ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,'' EPA–450/2–77–026. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's submitted Rule 462, Organic Liquid Loading, includes the following revisions from the current SIP rule:[6]

- The definition of ''facility vapor leak'' was revised to require measurement at a distance of 2 centimeters from the source according to EPA Method 21. As explained below, EPA has identified this revision as a deficiency.
- New and revised definitions were added for rule clarity.
- The Executive Officer determination of an equivalent test method was removed.
- A test method was added to determine compliance with the vapor emission limit.
- The requirements section was updated and revised. The leak inspection requirements were added to include monthly sight, sound, and smell detection methods; and quarterly inspections if using an organic vapor analyzer (OVA).
- The compliance schedule, compliance determination/test methods, recordkeeping, distribution of responsibilities, and exemptions sections were updated and/or revised.

SJVUAPCD's submitted Rule 463.3, Organic Liquid Loading, will replace rules from the eight individual counties making up the SJVUAPCD (Fresno, Kern, King, Madera, Merced, San Joaquin, Stanislaus, and Tulare). The major differences between Rule 463.3 and the existing SIP rules include:

[2] This extension was not requested for the following counties: Kern, Kings, Madera, Merced and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] SCAQMD and SJVUAPCD retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[5] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[6] A previous version of SCAQMD Rule 462 was submitted to EPA on May 13, 1991, and EPA proposed a limited approval/ limited disapproval on March 21, 1994 (59 FR 11958).

- The applicability of the rule has been broadened to include organic liquid facilities which load 4,000 gallons or more in any one day.
- The stringency of the emission limit and vapor control efficiency have been increased.
- Definitions have been added to improve rule clarity.
- Recordkeeping and test method provisions have been added to determine compliance with the rule.

EPA has evaluated SCAQMD submitted Rule 462 and SJVUAPCD submitted Rule 463.3 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of more stringent emission limits and a broader applicability in submitted SJVUAPCD Rule 463.3 should lead to more emission reductions.

Although SCAQMD's Rule 462 and SJVUAPCD's Rule 463.3 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. SCAQMD Rule 462 contains the following deficiency: The definition of ''facility vapor leak'' includes a measurement distance of 2 centimeters from the source according to procedures listed in EPA Test Method 21. This 2 centimeter distance is inconsistent with EPA Test Method 21, which requires measurement at the surface of the source or 1 centimeter for moving parts. A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 462 (March 12, 1997), which is available from the U.S. EPA, Region 9 office.

SJVUAPCD Rule 463.3 contains the following test method deficiencies:

- Rule 463.3 references a test method for initial compliance determination that has not been reviewed and approved by EPA;
- The rule references a vapor pressure testing procedure when the storage temperature is above 100 degrees. This procedure is vague and should be submitted to EPA for review and approval; and
- The rule references a test method for the measurement of true vapor pressure of crude oil that has not been reviewed and approved.

A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 463.3 (April 16, 1997), which is available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Also, because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD's submitted Rule 462 and SJVUAPCD's Rule 463.3 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted by the SCAQMD and SJVUAPCD and are currently in effect in the districts. EPA's final limited disapproval action will not prevent SCAQMD, SJVUAPCD or EPA from enforcing these rules.

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

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

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 30l, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 2, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–12627 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH104–1b; FRL–5822–6]

Approval and Promulgation of Implementation Plans; Ohio Ozone Maintenance Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Ohio on July 9, 1996, and January 31, 1997, which would provide greater flexibility for the State of Ohio in selecting a volatile organic compound emission reduction measure or measures to address a future ozone standard violation. In the Final Rules section of this **Federal Register**, USEPA is approving this SIP revision as a direct final rule without prior proposal because the agency views this as a noncontroversial revision 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 this proposed rule, no further activity is contemplated in relation to this rule. However, if the USEPA receives significant adverse comments which have not been previously addressed, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA does not plan a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 13, 1997.

ADDRESSES: Copies of the revision request are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 Office.) Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, at (312) 886-6084.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 23, 1997.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–12632 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5824–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Southside Sanitary Landfill Superfund Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Southside Sanitary Landfill Site (the Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Indiana (the State), has determined that no further response actions are appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before June 13, 1997.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the Site is available at U.S. EPA's Region V office and at the local information repository located at: Indianapolis Public Library, 40 East St. Clair Street, Indianapolis, IN 46204 and the Indiana Department of Environmental Management (IDEM), Office of Environmental Response, 2525 North Shadeland Avenue, (2nd Floor), Indianapolis, IN 46219. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, 312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Dave Novak (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9840.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Southside Sanitary Landfill Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the Site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management. The Site can be restored to the NPL, if at anytime a significant release from the Site poses a threat to the surrounding environment or human health.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announces the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Southside Sanitary Landfill (the Site) is located on the west bank of the White River, where it joins with Eagle Creek, one-half mile south of the intersection of Kentucky Avenue and Warman Road located in Indianapolis, IN. Landfill operations at this site began in 1971. The initial operation was based on a cut and fill procedure. A trench, approximately 100 feet wide and 8 feet deep, was excavated, filled with solid waste, and then covered. After trenching was found to expose sand and/or gravel pockets, a compacted soil liner was placed under the fill. In 1981, operations switched to the area method of filling, which consists of dumping, spreading, and covering.

Groundwater monitoring for contamination at the landfill began in 1973 when the United States Geological Survey installed 224 wells around the portion of the landfill permitted to accept waste. In 1984, U.S. EPA contractors conducted a site inspection at the facility to acquire the data needed for a Hazard Ranking System scoring. On-site wells sampled indicated the presence of heavy metals in the groundwater at the facility. The groundwater sampling conducted at the Site can be divided into two major categories for the purpose of groundwater quality analyzed: (1.) The routine parameter analysis conducted from 1973–1984, which included only a few inorganic and organic parameters, and (2.) Expansion of the routine parameter analysis by the State agency monitoring programs to include additional inorganic and organic parameters. These monitoring programs served as an independent check on the landfill's quarterly water data. The metal analyses from all wells sampled in 1984 were below Maximum Contaminant Levels (MCLs). Only the iron and manganese results exceeded secondary MCLs in both upgradient and downgradient wells.

In 1985, the operators signed an Agreed Order with the Indiana State Board of Health to correct drainage problems identified on the landfill surface. The Agreed Order, which also permitted vertical expansion of the facility, served as the operating permit for the Site until a Solid Waste Facility Permit FP #49–1 was issued by the State in July 1996. The Site was scored and nominated for the NPL in 1986, and finalized on the NPL in March 1989.

The first public meeting was conducted at the beginning of the Remedial Investigation (RI) process in September 1992, at the Indiana Government Center South located in Indianapolis. The final public meeting was conducted in June 1995, after completion of the RI and development of a Proposed Plan for Remedial Action. Before the public meeting, IDEM prepared Fact Sheets describing site activities which were mailed to the local residents, officials and media for information. IDEM as the lead agency in consultation with U.S. EPA, set a public comment period from June 19, to July 19, 1995. This comment period included a public meeting where U.S. EPA and IDEM discussed the RI report findings, the Proposed Plan, answered any questions, and received formal comments.

The Record of Decision (ROD) was signed by IDEM's Commissioner on September 14, 1995. The selected remedy for this site is no further action. The Site operators had previously untaken specific remedial measures in an attempt to decrease any threat of release of contaminants from the Site. The measures included installation of a hydraulic cut-off barrier and leachate collection system.

These actions were undertaken to comply with the requirements of an Agreed Order (AO) signed between the South Side Landfill, Inc., under Cause

No. N–243, approved on November 25, 1986. The AO provided for construction and installation of a hydraulic cut-off barrier and leachate collection system. Additionally the AO required the following: a performance monitoring system, cover and grading requirements, operating procedures, meeting closure and post-closure procedures and requirements, and the establishment of both closure and post-closure funds. This site is currently regulated under a State issued permit (FP #49-1). The remedial action requirements as stated in the Agreed Order (dated February 1990) have been incorporated into the current permit, which requires regular inspections and monitoring schedules for a 30-year post-closure period of the landfill. The permit (FP #49–1) was issued under the state authority IC 13–15–7.

The Remedial Investigation results and risk assessment evaluation established that the chemical contamination discovered at the Site, with current remedial measures in place, does not pose an unacceptable risk to the environment and human health. However, as waste was left in place and contained, a 5-year review of site status which includes a physical inspection of the Site and a review of monitoring data is recommended.

EPA, with concurrence from the State of Indiana, has determined that all appropriate Fund-financed responses under CERCLA at the Southside Sanitary Landfill Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the Site from the NPL.

Dated: May 1, 1997.

Michelle D. Jordan,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 97–12375 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–98; DA 97–894]

Amendment of Rules and Policies Governing Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time period.

SUMMARY: The Cable Services Bureau, released an *Order* which denied in part and granted in part, the Motion for Extension of Time filed by AEP Service Corporation, Commonwealth Edison Company, Duke Power Company, Florida Power and Light Company and Northern States Power Company in Amendment of Rules and Policies Governing Pole Attachments, 62 FR 18074 (April 14, 1997) (''Notice of Proposed Rulemaking''). The Bureau found that good cause existed to grant a 45-day extension of time to file initial comments.

DATES: Comments are now due on or before June 27, 1997 and Reply Comments are now due on or before July 28, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth W. Beaty, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Cable Services Bureau's *Order,* CS Docket No. 97–98, DA 97–894, adopted April 28, 1997 and released April 29, 1997, in the Notice of Proposed Rulemaking. The full 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 may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554. For copies in alternative formats, such as braille, audio cassette, or large print, please contact Sheila Ray at International Transcription Service.

Synopsis of the Order

1. On March 14, 1997, the Commission commenced a rulemaking proceeding to propose modifications to the Commission's rules relating to the maximum just and reasonable rates utilities may charge for attachments to a pole, duct, conduit or right-of-way. Comments are due May 12, 1997, and reply comments are due June 12, 1997.

2. On April 4, 1997, AEP Service Corporation, Commonwealth Edison Company, Duke Power Company, Florida Power and Light Company and Northern States Power Company (''Utilities'') filed a Motion for Extension of Time (''Motion'') to file comments and reply comments. The Utilities request that the Commission grant a 60-day extension to file initial comments and request that the reply period be increased from 30 to 45 days. The Utilities contend that the rulemaking addresses a complex subject matter which affects not only utilities, but telecommunications carriers and cable operators, and that an extensive review of the accounting systems used to compute a reasonable pole attachment rate may be necessary.

3. It is the policy of the Commission that extensions of time are not routinely granted. In view of the complexity of the issues presented, and in order to facilitate the development of a complete record in this proceeding, we find that good cause exists to grant an extension of time. We do not agree, however, that a 60-day extension of time to file initial comments and an increase from 30 to 45 days to file reply comments is warranted. Thus, we will grant a 45-day extension of time in which to file initial comments and will adjust the due date for reply comments accordingly, but we will not increase the length of the reply comment period. Thus, initial comments are due by June 27, 1997, and reply comments are due by July 28, 1997.

Ordering Clauses

4. Accordingly, *it is Ordered,* pursuant to Sections 0.321 and 1.46 of the Commission's rules, 47 CFR §§ 0.321 and 1.46, that the Motion for Extension of Time filed by AEP Service Corporation, Commonwealth Edison Company, Duke Power Company, Florida Power and Light Company and Northern States Power Company is *Granted* to the extent indicated herein and is *Denied* in all other respects.

5. *It is further Ordered* that all interested parties may file comments on the matters discussed in the Commission's Notice of Proposed Rulemaking by June 27, 1997, and reply comments by July 28, 1997.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Communications common carriers, Investigations, Lawyers, Penalties, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Meredith J. Jones,

Chief, Cable Services Bureau.

[FR Doc. 97–12598 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–129; RM–9076]

Radio Broadcasting Services; New Martinsville, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Seven Ranges Radio Company, Inc., proposing the allotment of Channel 222A at New Martinsville, West Virginia, as potentially the community's third local FM transmission service. Channel 222A can be allotted to New Martinsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) south to avoid a short-spacing to the licensed site of Station WWHC(FM), Channel 222A, Oakland, Maryland. The coordinates for Channel 222A at New Martinsville are North Latitude 39–34–38 and West Longitude 80–51–16. Since New Martinsville is located within 320 kilometers (200 miles) of the United States-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before June 30, 1997, and reply comments on or before July 15, 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: Thomas P. Taggart, Esq., P.O. Box 374, St. Marys, West Virginia 26170 (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, MM Docket No. 97–129, adopted April 30, 1997, and released May 9, 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.

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. 97–12603 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 97–030; Notice 1]

RIN 2127–AG47

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on lighting to permit white reflex reflectors designed to be mounted horizontally in trailer and truck tractor conspicuity treatments to be mounted vertically in upper rear corner locations if they comply with photometric requirements when tested horizontally. This action implements the grant of a rulemaking petition from James King & Co, and will have the benefit of simplifying compliance with the standard.

DATES: Comments are due June 30, 1997. The amendments would become effective 45 days after publication of the final rule.

ADDRESSES: Comments should refer to the docket number and notice number, and must be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5275; FAX 202–366–4329).

SUPPLEMENTARY INFORMATION: Paragraph S5.7 of Motor Vehicle Safety Standard No. 108 specifies conspicuity system requirements for truck tractors, and trailers of 80 or more inches overall width and a gross vehicle weight rating of more than 10,000 pounds. Part of the conspicuity treatment consists of two pairs of white material applied horizontally and vertically to the right and left upper contours of the body. This material may be either white retroreflective sheeting, or white reflex reflectors.

This agency has received a petition for rulemaking concerning white reflectors. Paragraph S5.7.2.1(c) requires white reflex reflectors to ''provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.'' A petition from James King & Co. states that white reflectors designed to give the required performance at 30 and 45 degree right and left entrance angles when mounted horizontally cannot do so in the right and left directions when tested in the vertical position. Consequently, when white reflex reflectors are molded in bars of multiple reflectors, the reflector bars required for the two upper rear vertical positions must be different from the reflector bars that are used in horizontal positions to fulfill conspicuity requirements. King has asked NHTSA for rulemaking to allow use of horizontal bars meeting S5.7.2.1(c) in vertical positions.

The agency has granted this petition. The white upper material is part of the rear conspicuity treatment to improve the distance perception of a driver of a faster, overtaking vehicle in the same lane. In this circumstance, the usual view of the truck tractor or trailer by the driver is close to orthogonal. Since the upper rear corner material is meant to provide a two dimensional image to vehicles approaching in the same lane, it does not operate at the high light-entrance angles typical of views of the sides of vehicles. A conspicuity-grade reflex reflector bar, regardless of its mounting orientation, will provide excellent retroreflective performance at the low light entrance angles typical of upper rear corner material. The fact that a different reflex reflector bar has had to be used for the vertical portion of the upper rear treatment is an unintended consequence of the agency's rulemaking activities.

NHTSA tentatively agrees with the petitioner that reflex reflector bars designed for horizontal mounting should be permitted to be mounted vertically in the rear upper corners. As the petitioner pointed out, a corner treatment composed of two identical reflector bars mounted at right angles maximizes the total range of light entrance angles at which at least part of the upper treatment can reflect at full brightness. The agency is therefore proposing that Standard No. 108 be amended to add new paragraph S5.7.2.2(c) allowing reflex reflectors meeting the requirements of paragraph S5.7.2.1(c) when installed horizontally to be installed in all orientations required at the rear upper locations on truck tractors and trailers subject to the conspicuity requirements. Such an action will simplify compliance and should encourage the retrofitting of vehicles in service not subject to the conspicuity requirements.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

Since the final rule would not impose any additional burden and is intended to afford an alternative to existing requirements, it is hereby tentatively found that an effective date earlier than 180 days after issuance of the final rule is in the public interest. The final rule would be effective 45 days after its publication in the **Federal Register**.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to allow the same white reflex reflector bars to be used for vertical and horizontal locations on the rear of truck tractors and trailers, rather than two different types of bars. The final rule would not impose any additional burden upon any person. A final rule based on such an action would reduce costs both to manufacturers and consumers. Impacts of the rule are so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected since the price of new motor vehicles should not be impacted. As noted above, the cost impacts per vehicle are relatively minor. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on ''Federalism.'' It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment as it does not affect the present method of manufacturing reflex reflectors.

Civil Justice Reform

This rulemaking action would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Under 49 U.S.C. 30163, a procedure is set forth for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended by adding new paragraph S7.5.2.2(c) to read as set forth below:

S7.5.2.2 * * *

(c) If white reflex reflectors comply with paragraph S7.5.2.1(c) when installed horizontally, they may be installed in all orientations specified for rear upper locations in paragraph S5.7.1.4.1(b) or paragraph S5.7.1.4.3(b).

Issued on: April 29, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–12585 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 62, No. 93

Wednesday, May 14, 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

Submission for OMB Review; Comment Request

May 9, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: June Agricultural Survey.

OMB Control Number: 0535–0089.

Summary: The June Agricultural Survey collects information on planted acreage for major crops, livestock inventories, and on-farm grain stocks. The June crops data establishes the base for estimating crop production and value for remainder of the crop year.

Need and Use of the Information: Indications from this survey are used to estimate the major crops grown, livestock inventories, on-farm grain stocks and agricultural land values and rents. Estimates are used throughout government and agriculture in policy, production, and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 82,700.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 14,908.

Expedited clearance has been requested by May 31, 1997.

National Agricultural Statistics Service

Title: List Sampling Frame Survey.

OMB Control Number: 0535–0140.

Summary: Information is collected from farm operators on acres of crops and livestock inventory.

Need and Use of the Information: The information is used to build and maintain a list of farm operators. The list is used for drawing stratified samples for agricultural surveys.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 220,000.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 18,333.

Animal and Plant Health Inspection Services

Title: Prohibited and Restricted Importation of Meats, Animal Byproducts, Poultry, Organisms and Vectors into the U.S.

OMB Control Number: 0579–0015.

Summary: Information collection includes various certification statements, agreements, and product labeling requirements.

Need and Use of the Information: The information and requirements are designed to protect the United States against incursions of exotic diseases that could cause significant harm to U.S. livestock and poultry populations.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 8,961.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 47,118.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–12623 Filed 5–13–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after May 15, 1997. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kristine M. Lee; Regional Appeals and Litigation Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.
Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.
Regional Forester decisions in North Dakota: Bismarck Tribune.
Regional Forester decisions in South Dakota: Rapid City Journal.
Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana), Bismarck Tribune (North Dakota), Rapid City Journal (South Dakota)
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but timeframes/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: May 7, 1997.

Kathleen A. McCallister,

Deputy Regional Forester.

[FR Doc. 97–12609 Filed 5–13–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Intent To Request Approval of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Census Evaluation Survey.

DATES: Comments on this notice must be received by July 18, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Census Evaluation Survey.

Type of Request: To obtain approval to conduct an information collection.

Abstract: The Census Evaluation Survey estimates errors in the 1997 Census of Agriculture mail list and in farm classification that can lead to an undercount or overcount of farms. Results from the survey will provide the measures necessary to evaluate total coverage and identify procedures contributing to incomplete or erroneous data. The NASS June Agricultural Survey (0535–0089), will be used as the area sample to provide an independent check on census counts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 24 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 20,000.

Estimated Total Annual Burden on Respondents: 7,200 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., April 29, 1997.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 97–12670 Filed 5–13–97; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bear Creek Watershed, Tennessee and Kentucky

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 Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (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 the Bear Creek watershed, Scott County, Tennessee; McCreary County, Kentucky.

FOR FURTHER INFORMATION CONTACT: James W. Ford, State Conservationist, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 736–5471.

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, James W. Ford, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Bear Creek Watershed, Tennessee and Kentucky; Notice of a Finding of No Significant Impact

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement include treatment of acid mine drainage and sedimentation from abandoned mine lands and treatment of eroding forestland. Federal financial assistance will be provided to accelerate financial and technical assistance for water quality improvement.

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 James W. Ford.

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)

Dated: May 2, 1997.

James W. Ford,

State Conservationist.

[FR Doc. 97–12564 Filed 5–13–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, Export Materials, Inc. and Thane-Coat International, Ltd

In the matters of: Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477; Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 7707 Augustine Drive, Houston, Texas 77036; Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 8903 Bonhomme Road, Houston, Texas 77074; Export Materials, Inc., 3727 Greenbriar Drive, No. 108, Stafford, Texas 77477, and Thane-Coat International, Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F–40775, Freeport, The Bahamas, Respondents.

Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), pursuant to the provisions of Section 766.24 of the Export Administration Regulations (61 Federal Regulation 12734–13041, March 25, 1996, to be codified at 15 CFR Parts 730–774) (hereinafter the ''Regulations''), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. § § 2401–2420 (1991 & Supp. 1997) (hereinafter the ''Act''),[1] has asked the Acting Assistant Secretary for Export Enforcement to issue an order temporarily denying all United States export privileges to Thane-Coat, Inc.; Jerry Vernon Ford, president, Thane-Coat, Inc.; Preston John Engebretson, vice-president, Thane-Coat, Inc.; Export Materials, Inc.; and Thane-Coat International, Ltd. (hereinafter collectively referred to as ''respondents'').

In its request, BXA states that, as a result of an ongoing investigation, it has reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, Thane-Coat International, Ltd. and Export Materials, Inc., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and part to the Dong Ah Consortium in Benghazi, Libya. These items were for use in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project. BXA's investigation gives it reason to believe that the respondents employed a scheme to export U.S.-origin products from the United States, through the United Kingdom or Italy, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations required under U.S. law and regulations, including the Regulations.

In light of these events, BXA believes that the violations respondents are suspected of having committed were significant, deliberate and covert and are likely to occur again unless a temporary denial order naming respondents is issued. In addition, BXA believes that a temporary denial order is necessary to give notice to companies in the United States and abroad that they should cease dealing with respondents in export-related transactions involving U.S.-origin goods.

Based on the showing made by BXA, I find that an order temporarily denying the export privileges of each respondent is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in items subject to the Act and the Regulations, in order to reduce the substantial likelihood that respondents will continue to engage in activities that are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing, based on BXA's showing that expedited action is required.

Accordingly, it is therefore ordered: First, that Thane-Coat, Inc. 12725 Royal Drive, Stafford, Texas 77477, and all of its successors or assigns, and officers, representatives, agents, and employees when acting on its behalf; Jerry Vernon Ford, president, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 7707 Augustine Drive, Houston, Texas 77036; Preston John Engebretson, vice-president, Thane-Coat, Inc. 12725 Royal Drive, Stafford, Texas 77477, and with an address at 8903 Bonhomme Road, Houston, Texas 77074; Export Materials, Inc., 3727 Greenbriar Drive, No. 108, Stafford, Texas 77477, and all of its successors or assigns, and officers, representatives, agents, and employees when acting on its behalf; and Thane-Coat International, Ltd., Suite C, Regent Centre, Exployers Way, P.O. Box F–40775, Freeport, The Banamas, and all of its successors or assigns, and officers, representatives, agents, and employees when acting on its behalf, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any of the denied persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by any of the denied persons of the

[1] The Act expired on August 20, 1997. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)) and August 14, 1996 (61 Federal Regulations 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. § § 1701–1706 (1991 & Supp. 1997)).

ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any of the denied persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the any of the denied persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from any of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by any of the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by any of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any of the denied persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are foreign-produced direct product of U.S.-origin technology.

Fifth, that, in accordance with the provisions of Section 766.24(e) of the Regulations, any respondent may, at any time, appeal this Order by filing with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022, a full written statement in support of the appeal.

Sixth, that this Order is effective immediately and shall remain in effect for 180 days.

Seventh, that, in accordance with the provisions of Section 766.24(d) of the Regulations, BXA may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this Order.

A copy of this Order shall be served on each respondent. This Order shall be published in the **Federal Register.**

Dated: May 5, 1997.

Frank Deliberti,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 97–12573 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length Carbon Steel Plate From Mexico; Notice of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On September 17, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 48882) a notice announcing the initiation of an administrative review of the antidumping duty order on certain cut-to length carbon steel plate from Mexico, covering the period August 1, 1995 through July 31, 1996, and one manufacturer/exporter of the subject merchandise, Altos Hornos de México, S.A. de C.V. This review has now been terminated as a result of the withdrawal of the request for administrative review by the interested parties.

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, AD/CVD Enforcement, Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1996, Altos Hornos de Mexico, S.A. de C.V. (AHMSA) requested a review of its U.S. sales of subject merchandise. On August 30, 1996, petitioners Bethlehem Steel Corporation, Geneva Steel, Gulf Lakes Steel Inc. of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation), also requested a review of AHMSA's sales of subject merchandise. On September 17, 1996, in accordance with 19 CFR 353.22(c), we initiated the administrative review of this order for the period August 1, 1995 through July 31, 1996 (61 FR 48882). On October 21, 1996, respondent AHMSA withdrew its request for review. On April 23, 1997, petitioners also withdrew their request.

Termination of Review

The Department's regulations, at 19 CFR 353.22(a)(5)(1994), provide that the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. This regulation also provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. Because no significant work has been completed on this review, the parties' withdrawals of their requests do not unduly burden the Department. Therefore, we have determined that it is reasonable, in the circumstances present in this review, to waive the 90-day requirement with respect to the petitioners' withdrawal. Accordingly, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with 19 CFR 353.22(a)(5).

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–12648 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–805]

Certain Cut-to-Length Carbon Steel Plate from Sweden: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1995 through July 31, 1996. SSAB failed to submit a response to our questionnaire. As a result, we have preliminarily determined to use facts otherwise available for cash deposit and appraisement purposes.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Steve Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44168) the antidumping duty order on certain cut-to-length carbon steel plate from Sweden. On August 30, 1996, Bethlehem Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Inland Steel Industries Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company, petitioners, requested a review for SSAB Svenskt Stål AB (SSAB). On September 3, 1996, SSAB also requested a review for its exports of subject merchandise. On September 17, 1996, in accordance with 19 C.F.R. 353.22(c), we initiated the administrative review of this order for the period August 1, 1995, through July 31, 1996 (61 FR 48882). The Department is now conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Certain cut-to-length plate includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (POR) is August 1, 1995, through July 31, 1996.

Use of Facts Otherwise Available

Following the initiation of this review, the Department sent respondent a questionnaire seeking information necessary to conduct a review of any shipments that firm may have made to the United States during the POR. SSAB did not respond to the questionnaire. Because necessary information is not available on the record for the POR as a result of SSAB withholding the requested information, we must make our preliminary determination based on facts otherwise available (section 776(a) of the Act).

On October 21, 1996, the due date for section A of the Department's questionnaire, SSAB made a timely withdrawal of its request for a review of this POR. However, because petitioners had also requested an administrative review, the review is still in progress. Additionally, SSAB stated it would not be participating in the review and requested assignment, as facts available, of the first administrative review margin, 8.28 percent. SSAB also failed to respond to sections B, C and D of the questionnaire, which were due November 4, 1996.

On January 8, 1997, petitioners requested that the Department assign to SSAB as facts available, 34 percent, the highest rate from the antidumping petition. Petitioners argued that this rate was more appropriate than the average petition rate, 24.23 percent, which was also used as the best information available in the final determination of the less than fair value (LTFV) investigation. Because the LTFV rate had not induced SSAB to cooperate, petitioners argue the Department should use alternative sources of facts available rates or the respondent could be in a position to manipulate the administrative review process by refusing to cooperate when its actual margin of dumping may exceed the LTFV investigation margin. See Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 55964, 55967–68, (October 30, 1996) (Steel Wire Rope). See Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42835 (August 19, 1996). See Certain Malleable Cast Iron Pipe Fittings from Brazil: Final Results of Antidumping Duty Administrative Review, 60 FR 41876, 41878 (August 14, 1995). Accordingly, petitioners proposed that the Department use as facts available the highest rate from the petition which is a rate of 34 percent.

On January 16, 1997, respondent submitted a rebuttal to petitioners' submission. Noting that on September 4, 1996, in the second administrative review of this order, the Department had preliminarily determined to apply facts available to SSAB, and that this decision was based on SSAB's failure to reconcile its cost response to its audited financial statements, respondent argued that it is precluded from participating in future administrative reviews until the Department reconsiders the cost verification standard it applied to SSAB in the second administrative review, or until the company revises its cost accounting system to conform to the Department's thinking as to how the company should maintain its audited financial statements. Respondent asserted that its withdrawal from participation in the third review does not stem from an intentional failure to cooperate or a desire to ''control the review process'' or ''practice injurious price discrimination to a greater degree than at the time of the LTFV investigation.'' Rather, respondent argued that the cost accounting system for SSOX, one of SSAB's two plants producing subject merchandise, has been rejected by the Department in a prior administrative review and that SSOX has no alternative method for reporting costs in the current review. Respondent argued that because the relevant period for the third administrative review already expired before SSAB was made aware that the SSOX cost accounting system and reported costs would be rejected, SSAB had no choice but to withdraw from participating in the third administrative review. Therefore, respondent maintains that the Department should reject the petitioners' request for a 34 percent facts available margin.

Respondent's voluntary withdrawal from this, the third administrative review, followed the Department's preliminary facts available determination in the second administrative review, but preceded the final results of that review. SSAB made no attempt in the third review to contact the Department to discuss how it should proceed in responding to section D, the cost of production section of the questionnaire, nor did it respond to any other section of the questionnaire. Thus, the Department finds that, in not responding to the questionnaire, SSAB failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, pursuant to section 776(b) of the Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on record. We agree with petitioners that the 24.23 percent margin has not induced SSAB to cooperate in this review and a higher margin is warranted. Our decision to use a rate higher than the LTFV rate is consistent with our decision in the previous segment of the proceeding in which we assigned the LTFV rate as total adverse facts available because ''* * * while SSAB did not act to the best of its ability in responding to our cost information requests, it did cooperate with respect to certain aspects of this review.'' See Certain Cut-to-Length Carbon Steel Plate from Sweden, Preliminary Results of Antidumping Duty Administrative Review, 61 FR 51898, 51900 (October 4, 1996); see, also, Certain Cut-to-Length Carbon Steel Plate from Sweden, Final Results of Antidumping Duty Administrative Review, 62 FR 18396, 18401 (April 15, 1997). Accordingly, in this case, because SSAB has not cooperated with any aspects of this review, we preliminarily assign to SSAB a more adverse margin of 34 percent, the highest margin from the original petition in the LTFV investigation.

Section 776(b) authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Section 776(c) provides that the Department shall, to the extent practicable, corroborate ''secondary information'' by reviewing independent sources reasonably at its disposal. The SAA, at 870, makes it clear that ''secondary information'' includes information from the petition in the less-than-fair-value (LTFV) investigation and information from a previous section 751 review of the subject merchandise. The SAA also provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id*.

As noted above, the Department used an average of the petition rates as total adverse facts available in the previous segment of this proceeding. The Department explained in that review that it had corroborated the petition information. For the purposes of these preliminary results, we continue to regard the petition information as corroborated, though we intend to consider further, for purposes of the final results of review, whether or not further corroboration, based on updated information, is both appropriate and possible.

Duty Absorption

On October 7, 1996, petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR. On October 8, 1996, respondent opposed petitioners' request stating this review is ineligible for an absorption inquiry because the review was initiated three years, not two or four years, after publication of the antidumping duty order. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, i.e., orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's proposed antidumping regulations provide that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See Notice of Proposed Rulemaking, 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. Id. at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in applying section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). Because the order on subject merchandise from Sweden has been in effect since 1993, this qualifies as a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding.

In this case, we are unable to calculate a margin based on SSAB's response and have therefore determined its dumping margin entirely on the basis of adverse facts available. We also determined, based on adverse facts available, that there are margins on all sales. Lacking other information, we find duty absorption on all sales.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 34 percent exists for SSAB for the period August 1, 1995 through July 31, 1996. Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of the final results of administrative review for all shipments of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 24.23 percent, the ''all others'' rate established in the final notice of the LTFV investigation (58 FR 37213, July 9, 1993).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12649 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur from Canada: Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of antidumping duty administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the antidumping duty administrative review of the antidumping finding on elemental sulphur from Canada, covering the period December 1, 1994 through November 30, 1995, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Rick Johnson, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, Telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1996, the Department published in the **Federal Register** (61 FR 3670) a notice of initiation of administrative review of the antidumping finding on elemental sulphur from Canada. The review covers the period December 1, 1994 through November 30, 1995.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see* Decision Memorandum to Robert S. LaRussa, dated May 7, 1997, ''Extension of Time Limit for the 1994/95 Antidumping Duty Administrative Review of Elemental Sulphur from Canada''). Therefore, in accordance with that section, the Department is extending the time limit for the final results to July 7, 1997.

Dated: May 7, 1997.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Enforcement III.

[FR Doc. 97–12647 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050597B]

Shark Operations Team; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Shark Operations Team (OT) will hold a meeting on May 21–22, 1997, in Silver Spring, MD.

DATES: The meeting will begin on May 21, 1997, at 1 p.m. and will continue on May 22, 1997, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at Armory Place, 925 Wayne Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, telephone: (301) 713-2347, Fax (301–713–0596).

SUPPLEMENTARY INFORMATION: Potential agenda items include:

(1) 1997 First 6-month shark fishing season.

(2) Recent management measures.

(3) Data collection issues.

This meeting is physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to C. Michael Bailey at (301)–713–2347 at least 5 days prior to the meeting date.

Dated: May 8, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12650 Filed 5–9–97; 2:11 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050597C]

Marine Mammals; Public Display Permit (PHF# 116–1380)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, FL 32821, has applied in due form for a permit to import one beluga whale (*Delphinapterus leucas*), for purposes of public display.

DATES: Written comments must be received on or before June 13, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 5001 West Ocean Blvd., Ste. 4200, Long Beach, CA 90802, (562/980–4001).

Written data or views, or requests for a public hearing on this application, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director, Office of Protected Resources.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import one adult male beluga whale (*Delphinapterus leucas*), identified as ''Nanuq'', from the Vancouver Aquarium in Stanley Park, Vancouver, B.C., Canada, to its San Diego facility for purposes of public display. Both the applicant and Vancouver Aquarium are participants in a North American cooperative breeding program under the auspices of the Taxonomic Advisory Group for beluga whales of the American Zoo and Aquarium Association (AZA). The facility, Sea World of California, 1720 South Shores Road, San Diego, CA 92109, is open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee; offers an educational program based upon the educational standards of the AZA and the Alliance of Marine Mammal Parks and Aquariums; and holds an Exhibitor's License, number 93–C–069, issued by the U.S. Department of Agriculture under the Animal Welfare Act.

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application.

Dated: May 6, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–12531 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 22 May 1997 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Dated in Washington, D.C. on May 6, 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–12558 Filed 5–13–97; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

May 9, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quotas status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Upon the request of the Government of Jamaica, the U.S. Government has agreed to increase the current guaranteed access levels for Categories 338/339/638/639 and 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 67773, published on December 24, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 9, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 18, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on May 16, 1997, you are directed to increase the current guaranteed access levels for the following categories, as provided for in the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Guaranteed Access Level
338/339/638/639	4,500,000 dozen.
352/652	13,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–12680 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

May 8, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing import limits.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The limits for certain categories are being reduced for carryforward used in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58044, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on May 16, 1997, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	1,037,287 kilograms.
619	6,320,362 square meters.
620	6,277,577 square meters.
Sublevels in Group II	
338/339	1,766,945 dozen.
347/348/847	758,118 dozen.
435	52,242 dozen.
442	19,224 dozen.
638/639	2,017,392 dozen.
647/648	994,765 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–12678 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

May 8, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward and recrediting carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68248, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on May 14, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
219	1263,461 square meters.
226/313	2,160,550 square meters.
317	34,854,068 square meters.
326	2,039,563 square meters.
334/634	257,490 dozen.
335/635/835	176,762 dozen.
336/636	213,106 dozen.
338/339	636,859 dozen of which not more than 384,098 dozen shall be in Categories 338–S/339–S [2].
340/640	357,181 dozen.
341/641	345,724 dozen.
342/642	274,657 dozen.
347/348	451,785 dozen of which not more than 225,892 dozen shall be in Categories 347–T/348–T [3].
351/651	197,409 dozen.
352	363,920 dozen.
363	6,798,542 numbers
369–O [4]	680,631 kilograms.
369–S [5]	94,636 kilograms.
638/639	257,490 dozen.
647/648	369,069 dozen.
847	231,741 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–12679 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Consultations with the Government of Nepal

May 8, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 23, 1997, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Government of the United States requested consultations with the Government of Nepal with respect to cotton terry and other pile towels in Category 363, produced or manufactured in Nepal.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Nepal, the Government of the United States may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 363, produced or manufactured in Nepal and exported during the twelve-month period which began on April 23, 1997 and extends through April 22, 1998, at a level of not less than 4,089,480 numbers.

A statement of serious damage, actual threat of serious damage or the exacerbation of serious damage concerning Category 363 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 363 or to comment on domestic production or availability of products included in Category 363 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Nepal.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Category 363. Should such a solution be reached in consultations with the Government of Nepal, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Summary of the Statement in Support of Request for Consultations Under Section 204 of the Agricultural Act of 1956

Cotton Terry and Other Pile Towels—Category 363

April 1997

U.S. imports of cotton terry and other pile towels, Category 363, from Nepal surged to 4,089,480 units in year ending January 1997, 177 percent above the 1,477,450 units imported in year ending January 1996 and more than 30 times the 123,720 units imported in 1994. Imports from Nepal were 2.0 percent of total U.S. imports of Category 363 in the year ending January 1997, and were equivalent to nearly one percent of U.S. production of Category 363 in 1996.

U.S. imports of cotton terry and other pile towels, Category 363 from Nepal, entered the U.S. at an average landed duty-paid value of $0.43 per unit during 1996, 71 percent below the average landed duty-paid value for all cotton terry and other pile towel imports into the U.S., and 72 percent below the average U.S. producers' price for cotton terry and other pile towels.

The sharp increase of low-valued Category 363 imports from Nepal threatens to cause disruption to the U.S. cotton terry and other pile towel market and to the orderly flow of trade in these products. In several instances, Nepal's import level for year ending January 1997 exceeds the trade levels of WTO countries that have quota agreements with the United States.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton pile and other terry towels, Category 363, declined in 1996 falling to an estimated 498,141,000 units, 6 percent below the 1995 production level and 5 percent below the 1994 level. In contrast, imports of Category 363 increased to 208,807,000 units in year ending January 1997, 10 percent above the same period a year earlier and 13 percent above the 1994 level.

The ratio of imports to domestic production increased from 35 percent in 1994 to 41 percent in 1996. Imports' share of the U.S. market for cotton pile and other terry towels increased from 27 percent in 1994 and 1995 to 30 percent in 1996.

[FR Doc. 97–12677 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Consultations with the Government of Pakistan

May 8, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On April 23, 1997, under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Government of Pakistan with respect to cotton yarn in Category 301pt. (HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.26.0000, 5205.27.0000, 5205.28.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000, 5205.46.0000, 5205.47.0000, 5205.48.0000), produced or manufactured in Pakistan.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Pakistan, the Government of the United States reserves its right to establish a twelve-month limit of not less than 2,319,944 kilograms for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 301pt., produced or manufactured in Pakistan.

A summary statement of serious damage, the actual threat of serious damage or the exacerbation of serious damage concerning Category 301pt. follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 301pt. or to comment on domestic production or availability of products included in Category 301pt. is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning

Category 301pt. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Summary of Statement in Support of Request for Consultations Under Article 6 of the ATC—Pakistan

Cotton Yarn—Category 301pt.

April 1997

The USG has determined that the increase in imports of yarn for sale, 85 percent or more by weight combed cotton ring spun, Category 301 Part, has caused serious damage, or actual threat thereof, to the industry in the United States producing like and/or directly competitive yarn for sale.

Imports of the subject yarn from all sources increased by 64 percent from 1994 to 1996, a net increase of 6.2 million kilograms. During this time, domestic shipments dropped substantially, falling by 5.1 million kilograms. Orders lost to imported yarns also resulted in a 1.5 percent reduction in production during this period, and caused inventories to increase sharply, by 50 percent. Increasing low-valued imports forced domestic margins to fall. Mills scrambled to cut prices in the last half of 1995 and 1996 to keep the remaining customers they had not already lost to imports. Despite price cuts, mills continued to lose orders, with unfilled orders dropping 30 percent from 1994 to 1996.

Capacity utilization declined as production and shipments fell, causing severe margin pressure as fixed costs had to be allocated over fewer sales, which cut gross margins. Seventy three percent of the companies reported declining profitability from 1994 to 1996 on the yarn in question. Seven mills fell victim to the margin squeeze and shut down, and production worker employment in the defined industry lost a total of 767 jobs between 1994 and 1996.

The USG concluded that the increase in imports between 1994 and 1996 was the direct cause of serious damage to the industry as reflected in the industry's declining shipments, the substantial increase in inventories, and the significant fall in unfilled orders and employment.

The USG also determined that serious damage to this industry was directly attributable to the sharp and substantial increase in imports of the subject yarn from Pakistan. Imports from Pakistan had increased significantly, both absolutely and relative to domestic production and world imports, thereby increasing Pakistan's share of U.S. imports and the U.S. market. Pakistan's low-valued imports adversely affected U.S. domestic prices.

There were no imports of the subject yarn from Pakistan before 1995. U.S. imports of the subject yarn from Pakistan began in May 1995 and reached 471,758 kilograms by the end of 1995. Imports from Pakistan of the subject yarn surged to 2,319,944 kilograms in year-ending January 1997, an increase of 392 percent above the total level imported during 1995.

The USG further determined that the significant increase in imports of the subject yarn from all sources constituted the actual threat of serious damage or the exacerbation of serious damage to the defined domestic industry producing like and/or directly competitive yarn, and that, based on the sharp and substantial increase in imports of the subject yarn from Pakistan, such threat was attributable to Pakistan.

[FR Doc. 97–12676 Filed 5–13–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Comex Division of the New York Mercantile Exchange Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is granting the petition of the Comex Division of the New York Mercantile Exchange (''Comex'' or ''Exchange'') for exemption from the prohibition against dual trading in its gold and silver futures contracts.

DATES: This Order is effective May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Duane C. Andersen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On October 21, 1993, the Commodity Exchange, Inc., now the Comex Division (''Comex'' or ''Exchange'') of the New York Mercantile Exchange, submitted a Petition for Exemption from the Dual Trading Prohibition for its gold and silver futures contracts. Subsequently, the Exchange submitted a corrected petition, a supplement, and an update on November 30, 1993, January 5, 1994, and January 17, 1997, respectively. Upon consideration of these petitions and other matters of record, including staff review of Exchange audit trail test results to Commission-specified tests, compliance with the order ticket customer identification requirement of Commission Regulation 1.35, dual trading surveillance data required under the Commission's August 12, 1996 Audit Trail Report, and disciplinary and investigatory actions undertaken by the Exchange between January 1995 and December 1996, the Commission hereby finds that Comex meets the standards for granting a dual trading exemption contained in section 4j(a) of the Commodity Exchange Act (''Act'') as interpreted in Commission Regulation 155.5.[1]

Subject to Comex's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds that Comex maintains a trade monitoring system which is capable of detecting and deterring, and is used on a regular basis to detect and to deter, all types of violations attributable to dual trading and, to the full extent feasible, all other violations involving the making of trades and execution of customer orders, as required by section 5a(b) and Commission Regulation 155.5. The Commission further finds that Comex's trade monitoring system includes audit trail and recordkeeping systems that satisfy the Act and regulations.[2]

[1] The record consists of the information, views, and arguments presented in writing in the Comex Division's petition and its attachments, supplements and update thereto, and other relevant information identified by the Commission, which includes the audit trail test conducted by the Exchange in June 1996 and reviewed by the Commission in November 1996, the audit trail re-test conducted by the Commission in December, 1996, and documents submitted by the Exchange as part of a rule enforcement review of the Exchange initiated by the Commission in January 1997.

[2] Sections 4j(a)(3) and 5a(b) of the Commodity Exchange Act and Commission Regulations 155.5 and 1.35, 17 CFR 1.35, 155.5(d). Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading, either unconditionally or on stated conditions, upon finding that the trade monitoring system in place at the contract market satisfies the

With respect to each required component of the trade monitoring system, the Commission finds as follows:

(a) Physical Observation of Trading Areas

Comex's trade monitoring system satisfies the requirement of section 5a(b)(1)(A) in that Comex maintains and executes an adequate program for physical observation of Exchange trading areas and integrates the information obtained from such observation into its compliance programs. The Exchange physically observes trading areas by conducting daily floor surveillance during the open, close, and at random times during each trading day. Comex also performs floor surveillance when warranted by special market conditions, such as exceptional volatility or contract expirations. The Exchange uses information obtained from such surveillance in evaluating audit trail data and otherwise in executing its compliance programs.

(b) Audit Trail System

The Exchange's trade monitoring system satisfies the audit trail standards of section 5a(b)(1) in that it is capable of capturing essential data on the terms, participants, and sequence of transactions. The system obtains relevant data on unmatched trades and outtrades to the level of precision, accuracy, and frequency required by sections 5a(b)(2) and (3) of the Act and Regulation 1.35. The Commission further finds that Comex accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length), and sequence through a means that is unalterable, continual, independent, reliable, and precise, as required by section 5a(b)(3) of the Act. Consistent with the guidelines to Regulation 155.5, the Commission finds that Comex also demonstrated the use of trade timing data in its surveillance systems for dual trading-related and other abuses.

(1) One-Minute Execution Time Accuracy and Sequencing

Comex's manual trade timing system captures a one-minute time for both the buy and sell sides of every trade and sequences all customer and proprietary trades. In two audit trail tests, conducted by the Exchange in January 1996 and by the Commission in October 1996, the accuracy and sequencing rates of Comex's trade times exceeded 90 percent. Separately, the Exchange provided the Commission with four months of 1996 data demonstrating that 90 percent or more of trade times in gold and silver futures were consistent with time and sales data during this time period.

(2) Unalterable, Continual, Independent, Reliable, and Precise Times

The Commission finds that trade records generated by Comex, including order tickets and trading cards, are recorded in nonerasable ink and that alterations are completely recorded. Trade data are, to the extent practicable, absent enhanced electronic means, provided continually to the Exchange at no more than hourly intervals. Trading card collections occur within 15 minutes after each half-hour time bracket, and members must submit trade data by one-half hour after each one-half hour trading period.

Trade times are independently obtained through a reliable means, to the extent practicable, since individual times separately submitted for each side of a trade can be compared to each other, to underlying trade data, and to time and sales. Comex's trade timing system also produces precise sequencing.

(3) Broker Receipt Time

The Commission finds that it is not practicable at this time for Comex to record the time each order is received by a floor broker for execution at Comex. Immediately executable flashed orders, however, are in substantial compliance with the objectives of section 5a(b)(3)(B), as stated previously by the Commission in its Order on flashed orders and broker receipt times.[3]

(c) Recordkeeping System

Comex satisfies the requirements of section 5a(b)(1)(B) by maintaining an adequate recordkeeping system that is able to capture essential data on the terms, participants, and sequence of transactions. The Exchange uses such information and information on violations of such requirements on a consistent basis to bring appropriate disciplinary actions.

Comex conducts monthly trading card and quarterly order ticket reviews for a representative sample of customer orders and uses information from these reviews to generate investigations.

Comex's trade register contains account numbers that identify customers. The Commission's review of a sample of order ticket account identifiers demonstrated in excess of 90 percent compliance with the requirement that the account identification relate back to the ultimate customer account.

(d) Surveillance Systems and Disciplinary Actions

As required by section 5a(b)(1) (C), (D) and (F), Comex uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders. In addition, Comex assesses meaningful penalties against violators and refers appropriate cases to the Commission.

On a daily basis, Comex reviews trade registers and computerized surveillance reports to detect dual trading-related and other trading abuses. All relevant trade data, including account numbers, are included in these reviews. The Exchange reviews its trade register for one randomly selected day each week and surveillance exception reports on a daily basis. The exception reports are designed to identify such suspicious trading activity as trading ahead, trading against, preferential trading (withholding or disclosing orders), accommodation trading, prearranged trading, improper cross trading, and money-passing schemes.[4]

From 1995 to 1996, the Exchange initiated 111 investigations into all types of possible abuses. Based on examination of its computerized surveillance reports, Comex initiated 28 dual trading-related investigations in 1996. Twenty-one such investigations were closed in 1996. In 1996, Comex assessed $75,500 in fines and suspended members for 244 days in five dual trading-related cases involving six members.

(e) Commitment of Resources

The Commission finds that Comex meets the requirements of section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system to be effective in detecting and deterring violations and by maintaining an adequate staff to investigate and to prosecute disciplinary actions. For fiscal year 1996, Comex and Nymex committed 29 personnel to trade practice and audit surveillance and reported its compliance budget in

requirements of section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. Commission Regulation 155.5 requires a contract market to demonstrate that its trade monitoring system is capable of and is used to detect and to deter dual trading abuses and to demonstrate that it meets each element required of the components of such a system.

[3] 60 FR 58049 (Nov. 24, 1995).

[4] For example, Comex's trading ahead review on a recent date identified .004 percent of trades in all futures contracts for further review.

accordance with consistent standards across exchanges as $11,507,951.

Accordingly, on this date, the Commission HEREBY GRANTS Comex's Petition for Exemption from the dual trading prohibition for trading in its gold and silver futures contracts.

For this exemption to remain in effect, Comex must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and based on any other information it may obtain about Comex's program. With respect to this continuing obligation, Comex needs to ensure that it fully integrates floor surveillance into its compliance program and takes appropriate disciplinary actions. Although the Commission has found that Comex meets the standards of independence and continued provision of data to the extent practicable and has found that it is not practicable at this time to capture a broker receipt time, the Commission reserves the ability to reconsider what is practicable as technology for order routing becomes more widely available.

The provisions of this Opinion and Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other Comex contracts become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: May 6, 1997.

By the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–12533 Filed 5–13–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Proposed Collection; Comment Request Entitled Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes. This OMB clearance expires on September 30, 1997.

DATES: Comment Due Date: July 14, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0115 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–40, Notification of Ownership Changes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated at 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100;* responses per respondent, *1;* total annual responses, *100;* preparation hours per response, *1;* and total response burden hours, 100.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100;* hours per recordkeeper, *.25;* and total recordkeeping burden hours, *25.*

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: May, 8, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–12535 Filed 5–13–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Proposed Collection; Comment Request Entitled Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. This OMB clearance expires on September 30, 1997.

DATES: Comment Due Date: July 14, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0133 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

The interim rule requires contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The interim rule expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *6*; responses per respondent, *3*; total annual responses, *18*; preparation hours per response, *100*; and total response burden hours, *1,800*.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0133, in all correspondence.

Dated: May 8, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–12536 Filed 5–13–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense, DoD.

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: June 18–19, 1997 from 0800 to 1700.

Place: Arlington Hilton Hotel, 950 North Stafford Street, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: May 9, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–12589 Filed 5–13–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to amend record systems.

SUMMARY: The Office of the Secretary of Defense proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 13, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: May 9, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 01

SYSTEM NAME:

Teacher Correspondence Files *(February 22, 1993, 58 FR 10239).*

CHANGES

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ‘Recruitment Section, Staffing Branch, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.’

CATEGORIES OF RECORDS IN THE SYSTEM:

After ‘Teacher Recruitment Section’ add ‘containing information such as the individual’s name, home address, and teaching categories or interests.’

* * * * *

PURPOSE:

Delete and replace with ‘The collected information is used by the Recruitment Section to maintain accurate records of correspondence with individuals making inquiry regarding employment.’

* * * * *

SAFEGUARDS:

Delete entry and replace with ‘Records are accessed by authorized personnel with an official need-to-know who have received training in handling Privacy Act information. The office is secured during non-business hours.’

* * * * *

DODDS 01

SYSTEM NAME:

Teacher Correspondence Files.

SYSTEM LOCATION:

Recruitment Section, Staffing Branch, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual with whom or about whom the Teacher Recruitment Section has correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains all correspondence received from and responses to individuals writing the Teacher Recruitment Section, containing information such as the individual's name, home address, and teaching categories or interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 901–907.

PURPOSE(S):

The collected information is used by the Recruitment Section to maintain accurate records of correspondence with individuals making inquiry regarding employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Personnel Management for the purpose of conducting background investigations to determine suitability for employment in the Department of Defense Dependent Schools.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in individual's file folders.

RETRIEVABILITY:

Filed alphabetically by either the last name of the correspondent or the last name of the employee/applicant the correspondence concerns.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have received training in handling Privacy Act information. The office is secured during non-business hours.

RETENTION AND DISPOSAL:

Job applicants files are destroyed 2 months after cutoff. However, if applicant indicates continued interest in the program, file will be brought forward into new recruitment cycle. Transfer, educator career, and reassignment programs are cutoff at completion of the annual cycle and destroyed 1 year later. Recruitment programs are destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment Section, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain full name and address of the individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain full name and address of the individual, and must be signed. For personal visits, the individual should be able to provide some acceptable identification such as driver's license or other identification card.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence initiated by the individual or by others on his or her behalf and replies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DODDS 02

SYSTEM NAME:

Educator Application Files *(February 22, 1993, 58 FR 10239).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Recruitment Section, Personnel Division, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with '*Prospective Teachers:* Files contain all papers and forms relating to the individual's application for employment to include Personal Qualification Statement (SF 171), Supplemental Application for Employment with Department of Defense Dependents Schools (DS Form 5010), Professional Evaluation, DoDDS (DS Form 5011), DoDDS-Application Index (DS Form 5012), interviewer's worksheets, official college transcripts, copies of teaching certificates, copies of birth certificate and correspondence to or concerning the applicant.

Inter-area Transfer Applicants: Files contain all papers and forms relating to the individual's applications. A coded worksheet developed by the area staff is provided to the central personnel office for processing (remainder of material is retained at the area office). Also included are miscellaneous worksheets and correspondence relating to the application.

Educator Career Program Applicants: Files contain all paper and forms relating to the individual's application to include: DoDDS Educator Career Program Application (DS Form 5080), DoDDS Assessment of Potential (DS Form 5081), DoD Education Career Program Rating Sheet (DS Form 5082) and miscellaneous worksheets and correspondence relating to the application.'

*　*　*　*　*

PURPOSE(S):

Delete entry and replace with 'To review types of experience, educational background, evaluation of previous employers, professional credentials, and interviewers' ratings to determine qualifications and make selections of candidates for vacant positions within the DoDDS system, including new teachers, inter-area transfers and Educator Career Program positions.'

*　*　*　*　*

SAFEGUARDS:

Delete entry and replace with 'Hard copy records and electronic media are maintained in the DoDDS personnel office where access is limited to personnel staffing specialists and other authorized personnel. Access to automated data files is controlled by a user ID and password system. The office is secured during non-business hours.'

RETENTION AND DISPOSAL:

Delete entry and replace with '*Prospective Teachers:* Records are retained for recruitment period (no more than 2 years). For non-selected applicants, portions are returned to applicant for future use and portions are destroyed, unless the applicant has indicated a desire to reapply, in which case portions of the file are retained until the next recruitment period. Records of selected applicants are forwarded to the Departments of the Army, Air Force, and Navy, as appropriate for processing.

Inter-area Transfer Applicants: File is retained for 1 year and destroyed.

Career Educator Program Applicants: Applications are retained for 2 years (unless updated by applicant) and destroyed.'

* * * * *

DODDS 02

SYSTEM NAME:

Educator Application Files.

SYSTEM LOCATION:

Recruitment Section, Personnel Division, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective teachers applying for positions within the DoDDS system and current DoDDS teachers and educators applying for either interregional transfers or positions in the DoDDS Educator Career Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Prospective Teachers: Files contain all papers and forms relating to the individual's application for employment to include Personal Qualification Statement (SF 171), Supplemental Application for Employment with Department of Defense Dependents Schools (DS Form 5010), Professional Evaluation, DoDDS (DS Form 5011), DoDDS-Application Index (DS Form 5012), interviewer's worksheets, official college transcripts, copies of teaching certificates, copies of birth certificate and correspondence to or concerning the applicant.

Inter-area Transfer Applicants: Files contain all papers and forms relating to the individual's applications. A coded worksheet developed by the area staff is provided to the central personnel office for processing (remainder of material is retained at the area office). Also included are miscellaneous worksheets and correspondence relating to the application.

Educator Career Program Applicants: Files contain all paper and forms relating to the individual's application to include: DoDDS Educator Career Program Application (DS Form 5080), DoDDS Assessment of Potential (DS Form 5081), DoD Education Career Program Rating Sheet (DS Form 5082) and miscellaneous worksheets and correspondence relating to the application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 902, 903 and 931.

PURPOSE(S):

To review types of experience, educational background, evaluation of previous employers, professional credentials, and interviewers' ratings to determine qualifications and make selections of candidates for vacant positions within the DoDDS system, including new teachers, inter-area transfers and Educator Career Program positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer (electronic) records.

RETRIEVABILITY:

The manual files are filed alphabetically by last name. The automated records are indexed by name or system assigned number (assigned chronologically upon input). Also, any combination of data in the automated file can be used to select individual records. Only authorized individuals (i.e., personnel staffing specialists) are provided user identification numbers and passwords to access the system via terminal.

SAFEGUARDS:

Hard copy records and electronic media re maintained in the DoDDS personnel office where access is limited to personnel staffing specialists and other authorized personnel. Access to automated data files is controlled by a user ID and password system. The office is secured during non-business hours.

RETENTION AND DISPOSAL:

Prospective Teachers: Records are retained for recruitment period (no more than 2 years). For non-selected applicants, portions are returned to applicant for future use and portions are destroyed, unless the applicant has indicated a desire to reapply, in which case portions of the file are retained until the next recruitment period. Records of selected applicants are forwarded to the Departments of the Army, Air Force, and Navy, as appropriate for processing.

Inter-area Transfer Applicants: File is retained for 1 year and destroyed.

Career Educator Program Applicants: Applications are retained for 2 years (unless updated by applicant) and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment Section, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned, current and past employers, and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

DODDS 21

SYSTEM NAME:

Department of Defense Dependents Schools (DoDDS) Grievance Records *(August 9, 1993, 58 FR 42303).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The system contains records relating to grievances filed by DoDDS employees under 5 U.S.C. 2302 and 5 U.S.C. 7121. Case files contain all documents relating to a grievance filed by an individual, such as identification of the individual, the school the individual is affiliated with, statements of witnesses, reports, interviews, hearings, hearing examiner's findings and recommendations, copies of decisions relating to the case, and other relevant correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that DoDDS may establish through negotiations with recognized labor organizations.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 2302, Prohibited Personnel Practices, and 5 U.S.C. 7121, Grievance Procedures.'

PURPOSE(S):

Delete entry and replace with 'To maintain a case file for use by management in resolving litigation associated with an employee grievance.

To generate statistical reports, work force studies, and perform other analytical activities supporting personnel management functions of DoDDS.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access to records is limited to authorized DoDDS employees and servicing civilian personnel office staff. The offices are secured during non-business hours.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed 4 years after the case is closed.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete and replace with 'Information in this system of records is provided by individuals' who have initiated a grievance; by statement or testimony of witnesses; by Agency officials; by labor organization representatives; and, by officials of Federal Labor Relations Authority or Merit Systems Protection Board.'

* * * * *

DODDS 21

SYSTEM NAME:

Department of Defense Dependents Schools (DoDDS) Grievance Records.

SYSTEM LOCATION:

Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees who have submitted grievances in accordance with 5 U.S.C. 2302, and 5 U.S.C. 7121.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by DoDDS employees under 5 U.S.C. 2302 and 5 U.S.C. 7121. Case files contain all documents relating to a grievance filed by an individual, such as identification of the individual, the school the individual is affiliated with, statements of witnesses, reports, interviews, hearings, hearing examiner's findings and recommendations, copies of decisions relating to the case, and other relevant correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that DoDDS may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2302, Prohibited Personnel Practices, and 5 U.S.C. 7121, Grievance Procedures.

PURPOSE(S):

To maintain a case file for use by management in resolving litigation associated with an employee grievance.

To generate statistical reports, work force studies, and perform other analytical activities supporting personnel management functions of DoDDS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom the records are maintained, by case number, and by subject matter of the grievance.

SAFEGUARDS:

Access to records is limited to authorized DoDDS employees and servicing civilian personnel office staff. The offices are secured during non-business hours.

RETENTION AND DISPOSAL:

Records are destroyed 4 years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management Employee Relations Branch, Personnel Division, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Written requests for information should contain the full name and address of the individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals' who have initiated a grievance; by statement or testimony of witnesses; by Agency officials; by labor organization representatives; and, by officials of Federal Labor Relations Authority or Merit Systems Protection Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DODDS 22

SYSTEM NAME:

DoD Dependent Children's School Program Files *(February 16, 1995, 60 FR 9016).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with '*Active Students:* Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Former High School Students: Permanent records (high school transcripts) are retained at the school for four years subsequent to graduation, transfer, or termination, and are then forwarded to the area office for one year where they are compiled and forwarded to the Educational Testing Service, Department of Defense Dependents Schools, P.O. Box 6605, Princeton, NJ 08541–0001, except Panama. Records for the Panama area are retired to Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344–2533.

Former Panama Canal College Students: Permanent records (college transcripts) are retained at the college for ten years and are then retired to East Point Federal Records Center. For a complete list of school locations, write to the *System manager.*'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Current and former students in the DoD-operated overseas dependent schools.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '20 U.S.C. Chapter 25A; DoD Directive 1342.6, Department of Defense Dependents Schools (DoDDS), as amended.'

PURPOSE(S):

Delete the next-to-last sentence and replace with 'Provide academic data within the area and to DoDDS headquarters.'

SAFEGUARDS:

Delete entry and replace with 'Paper records are maintained in locked file cabinets accessible only to authorized personnel.

Computer-produced student records are retained in limited access school offices and/or locked cabinets. Computer disks, tapes, etc., are maintained in limited access areas within the various computer centers, area offices, and/or schools.

Computer facilities and remote terminals are located in schools and area offices throughout the school system. Particular area systems vary; however, the same basic safeguards are employed (in various combinations) in all the systems. Computer hardware disk cards and other materials are secured in locked facilities after normal duty hours or are maintained in secure military computer centers. During school hours, storage media is stored in areas where access can be monitored. Administrative safeguards, including authorized user names and passwords are used to prevent unauthorized access to information in the automated systems.'

RETENTION AND DISPOSAL:

Delete the last paragraph, starting at 'Automated files:' and replace with 'Automated records are retained for the same period as paper records.'

* * * * *

DODDS 22

SYSTEM NAME:

DOD Dependent Children's School Program Files.

SYSTEM LOCATION:

Active Students: Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Former High School Students: Permanent records (high school transcripts) are retained at the school for four years subsequent to graduation, transfer, or termination, and are then forwarded to the area office for one year where they are compiled and forwarded to the Educational Testing Service, Department of Defense Dependents Schools, P.O. Box 6605, Princeton, NJ 08541–0001, except Panama. Records for the Panama area are retired to Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344–2533.

Former Panama Canal College Students: Permanent records (college transcripts) are retained at the college for ten years and are then retired to East Point Federal Records Center. For a complete list of school locations, write to the *System manager.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former students in the DoD-operated overseas dependent schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment files: Documents relating to the admission, registration, and departure of dependent school students. Included are pupil enrollment applications, course preference, admission cards, drop cards, and similar or related documents which contain pupil and sponsor's names, personal and demographic information, as well as pupil's health records.

Daily attendance register files: Documents reflecting the daily attendance of pupils at dependent schools. Included are forms, printouts, bound registers and similar or related documents which contain pupil and sponsor's names, personal and demographic information, as well as pupil's health records.

Elementary school academic records: Documents reflecting the standardized achievement, mental ability, yearly grade average, attendance of each student and the teacher's comments. Included are forms, notes, and similar or related documents.

Elementary school report card files: Documents reflecting grades, personality traits, and promotion or failure. Included are report cards and similar or related documents.

Elementary school teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic grades and averages, absence and tardiness data.

Elementary school student files: Documents pertaining to individual elementary school students. Included in each folder are reading and health records; individual education plans; intelligence quotient; achievement, aptitude, and similar test results; notes related to pupils progress and characteristics; and similar matters used by counselors and successive teachers.

Secondary school absentee files: Documents reflecting absence of students. Included are homeroom teacher's registers, secondary school daily attendance records of absentees reported by teachers, tardy slips for admission of students to classroom, transfer slips notifying teachers of new class or homeroom assignment, notices of change by school principal to teacher upon change of classroom, student applications for permission to be absent, student pass slips, and similar or related documents.

Secondary school academic record files: Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

Secondary school report card files: Documents reflecting scholastic grades, personality traits, and promotion or failure. Included are report cards and related documents.

Secondary school teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and tardiness, and withdrawal data. Included are class registers and similar or related documents.

Secondary school class reporting files: Documents reflecting teacher reports to principals and used as source documents for preparing secondary school academic record cards. Included are forms, correspondence, and similar or related documents.

Credit transfer certificate files: Documents reflecting secondary school scholastic credits earned. Included are certificates and similar or related documents.

Secondary school student files: Documents pertaining to individual secondary school students. Included in each folder are student health records; individual education plans; absence reports and correspondence with parents pertaining to absence; records of achievement and aptitude tests; notes concerning participation in extracurricular activities, hobbies, and other special interests or activities of the student; and miscellaneous memorandums used by student counselors.

College absence, withdrawal, and add files: Student applications for permission to be absent from final exams. Student drop and add class records and administrative withdrawal letter.

College academic record files: Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

College report card files: Documents reflecting scholastic grades and promotion or failure. Included are report cards and related documents.

College teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and withdrawal data. Included are class registers and similar or related documents.

College class reporting files: Documents reflecting teacher reports to Registrar and used as source documents for preparing college transcripts. Included are forms, correspondence, and similar or related documents.

Credit transfer certificate files: Documents reflecting college scholastic credits earned. Included are certificates and similar or related documents.

College student files: Documents pertaining to individual college students. Included in each folder are absence reports, records of achievement, and aptitude tests.

Automated support files: Automated data files are composed of records containing any of the above information in addition to (varies by regional system): Student registration data--student identification number, student name, sex, grade level, bus number, date of enrollment, date of birth, course numbers and names, teachers, credit, grades received, dates of absences, and sponsor's name, status, rank, date of rotation, organization, location of unit, local address, emergency address, permanent address, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. Chapter 25A; DoD Directive 1342.6, Department of Defense Dependents Schools (DoDDS), as amended.

PURPOSE(S):

Dependent children's school program files (general):

1. Records of students attending DoD operated overseas dependent schools are used by school officials, including teachers, to: a. Determine the eligibility of children to attend these schools; b. Schedule children for transportation; c. Record daily and/or class attendance of students and date(s) of withdrawal; d. Determine tuition paying students and record status of payments; e. Determine students located in areas not serviced by dependents schools so that alternative arrangements for education can be made and payment made, as required; f. Monitor special education services required by and received by the student; and, g. Used to develop and maintain reading and health records, including school related medical needs.

2. Records may also be released to other officials of the Department of Defense requiring information for operation of the Department (including defense investigative agencies and recruiting officials).

Dependent children's school program files (elementary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for elementary students by school personnel cited above.

2. Used in the following manner to record: a. Teacher or standardized test data; b. Attendance, absences, and/or tardiness of each student; c. Recommendations for promotion or retention including teacher comments; d. Daily, weekly, semester, or annual grades; and, e. Notes related to the individual pupil's progress and learning characteristics useful to professional school personnel in counseling the student and in the determination of his/her proper placement.

Dependent children's school program files (secondary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for secondary students.

2. Documents are used by school personnel cited above in the following manner to: a. Record teacher and/or standardized test data; b. Record attendance, absences, and/or tardiness of each student; c. Form the basis for a decision on a student request for permission to be absent from a class or classes; d. Determine proper class or grade placement or graduation; e. Determine scholastic grades and/or grade point average; f. Form the basis for school recommendations for student financial aid for post-secondary education; g. Form the basis for preparing the secondary school transcript; h. Determine secondary school academic credits earned; and, i. Note special interest or hobbies of the student.

3. Used by DoD recruiting officials to determine eligibility for military service.

Dependent children's school program files (college):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for college students.

2. Documents are used by school personnel cited above in the following manner to: a. Record teacher and/or standardized test data; b. Record

attendance and absences of each student; c. Form the basis for a decision on a student request for permission to be absent from a class or classes; d. Determine proper class or grade placement or graduation; e. Determine scholastic grades and/or grade point average; f. Form the basis for school recommendations for student financial aid for college education; g. Form the basis for preparing the college transcript; and h. Determine college academic credits earned.

3. Used by DoD recruiting officials to determine eligibility for military service.

Automated support is used by school and area officials (where applicable) to:

1. Provide academic data to each student upon request, provide report cards, etc., at the end of each grading period, provide transcripts upon request, and provide hard copy for manual files.

2. Provide academic data within the area and to DoDDS headquarters.

3. Provide data within the Department of Defense on a need-to-know basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records concerning sponsor's names, rank, and branch of service may be released to former students for the purpose of organizing reunion activities.

Academic data of transferring, withdrawing, or graduating students may be provided to other educational institutions and employers or prospective employers in accordance with current policies and procedures.

Academic achievements and data may be provided to the public, via distribution of information within the school and through various media sources, for positive reinforcement purposes. This information will not be distributed for commercial uses.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, disks, and magnetic tape.

RETRIEVABILITY:

Elementary school academic records and secondary school and college academic records (transcripts) are filed alphabetically by school, school year, and last name of student.

Remaining dependent school student files are filed by school, school year, and last name of student.

The automated files are indexed by a variety of data, depending upon the region and school involved (some have regionally assigned student identification numbers, others are by last name of student). Also, any combination of data in the file can be used to select individual records. Only authorized personnel have required information to access the system or process jobs.

SAFEGUARDS:

Paper records are maintained in locked file cabinets accessible only to authorized personnel.

Computer-produced student records are retained in limited access school offices and/or locked cabinets. Computer disks, tapes, etc., are maintained in limited access areas within the various computer centers, area offices, and/or schools.

Computer facilities and remote terminals are located in schools and area offices throughout the school system. Particular area systems vary; however, the same basic safeguards are employed (in various combinations) in all the systems. Computer hardware disk cards and other materials are secured in locked facilities after normal duty hours or are maintained in secure military computer centers. During school hours, storage media is stored in areas where access can be monitored. Administrative safeguards, including authorized user names and passwords are used to prevent unauthorized access to information in the automated systems.

RETENTION AND DISPOSAL:

Enrollment files: Maintained at the respective school for one year after graduation, withdrawal, transfer, or death of the student, then destroyed.

Daily attendance register files: Destroyed after reviewing attendance registers for the next school year.

Elementary school academic records files: When a student transfers to another school, this file is forwarded by mail to officials of the receiving school on request in accordance with current regulations, or destroyed at the school five years after graduation, withdrawal, or death of the student.

Elementary school report card files: Documents reflecting grades, personality traits, and promotion or failure. Included are report cards and similar or related documents.

Elementary school teacher class register files: Destroyed at the school concerned after five years.

Elementary school student files:

1. When a student transfers to another school, the reading and health records are released to the parent/guardian for hand-carrying to the receiving school.

2. Remaining documents pertaining to the students are forwarded by mail to the officials of the receiving school or the parent/guardian on request in accordance with current regulations; if not requested, documents are destroyed at the school concerned one year after graduation, withdrawal, or death of the student.

Special Education files: Records pertaining to tests and evaluations of students and documentation of individual needs for special education programs. Included is follow-on correspondence and case files relating to mediation and hearings. Records are cut-off after final decision and retired to Washington National Records Center (WNRC) after 5 years. When 20 years old, the records are destroyed.

Secondary school absentee files: Destroyed at the school after one year.

Secondary school academic record files (high school transcript):

1. Permanent file.

2. When a student transfers to another DoD dependents school, this file (transcript) is forwarded by mail to officials of the receiving school on request.

3. When a student transfers to a non-DOD school, a copy of the transcript is forwarded to the receiving school on request in accordance with current regulations.

4. Files not forwarded to another DoD school are retained at the school concerned for four years, the area office for one year and then retired to the Educational Testing Service (or East Point FARC if in the Panama region) for an additional sixty years.

Secondary school report card files: Released to parents of students or student (if over eighteen years of age) at the end of the school year or on transfer of student.

Secondary school teacher class register files: Retained at the school concerned for five years and then destroyed.

Secondary school class reporting files: Destroyed at the school after one year.

Credit transfer certification files: Destroyed at the school after one year.

Secondary school student files:

1. Retained at the school concerned for two years after graduation, withdrawal or death of the student.

2. When a student transfers to another school: a. A copy of the record may be

released to the parents or student (if over eighteen years of age) for hand-carrying to the receiving school. b. An official copy of the record will be forwarded to the receiving school in accordance with current regulations upon request. (The original record is retained at the school.)

College absentee files: Destroyed at the school after one year.

College academic record files (college transcripts):

1. Permanent file.

2. When a student transfers to another college or university, this file (transcript) is forwarded by mail to officials of the receiving school upon receipt of an authorized request.

3. Original files (transcripts) are retained at the college for ten years then retired to East Point FARC.

College report card files: Released to student at the end of the semester or school year, or on transfer of student.

College teacher class register files: Retained at the school for five years and then destroyed.

College class reporting files: Destroyed at the school after one year.

Credit transfer certificate files: Destroyed at the school after one year.

College student files:

1. Retained at the college for two years.

2. When a student transfers to another college: An official copy of the record will be forwarded to the receiving school upon request pending receipt of authorized request. (The original record is retained at the college.)

Automated records are retained for the same period as paper records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management Employee Relations Branch, Personnel Division, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned and their parents/guardians, teachers and school administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DODDS 23

SYSTEM NAME:

Educator Certification/Recertification Files *(February 22, 1993, 58 FR 10248).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ‘Records are maintained at the schools and the Personnel Center, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.’

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ‘Department of Defense Dependents Schools (DoDDS) teachers, as the term ‘teacher’ is defined in 20 U.S.C. 901.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ‘Records consist of transcripts and/or other documentary evidence needed to substantiate the certification status of a DoDDS educator. Records include correspondence relating to amendment, renewal, correction, maintenance, and revocation of the individual educator’s certification status.’

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the first routine use and replace with ‘The information may be supplied to state or professional organizations, such as the National Association of State Directors of Teacher Education and Certification (NASDTEC), with whom the DoDDS has reciprocal agreements affecting certificates issued or revoked by the respective systems.’

* * * * *

RETRIEVABILITY:

Delete entry and replace with ‘The files are indexed by name and Social Security Number.’

* * * * *

RETENTION AND DISPOSAL:

In the last sentence, after ‘If a teacher leaves the system,’ insert ‘except in the case of an educator who is participating in the DoDDS Administrative Re-employment Rights Program,’.

* * * * *

DODDS 23

SYSTEM NAME:

Educator Certification/Recertification Files.

SYSTEM LOCATION:

Records are maintained at the schools and the Personnel Center, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense Dependents Schools (DoDDS) teachers, as the term ‘teacher’ is defined in 20 U.S.C. 901, and to all DoDDS excepted service and educators classified in the 1710 or related series.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of transcripts and/or other documentary evidence needed to substantiate the certification status of a DoDDS educator. Records include correspondence relating to amendment, renewal, correction, maintenance, and revocation of the individual educator’s certification status.’

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. Chapter 25A; 20 U.S.C. 931; DoD Directive 1342.6, DoD Dependents Schools, as amended; and E.O. 9397 (SSN).

PURPOSE(S):

Department of Defense Dependents Schools administrators use this information to determine the eligibility of applicable employees to be certified/recertified.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be supplied to state or professional organizations, such as the National Association of State Directors of Teacher Education and Certification (NASDTEC), with whom the DoDDS has reciprocal agreements affecting certificates issued or revoked by the respective systems.

Records may be disclosed to educational accrediting institutions and organizations during review of a school or schools.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on disks and magnetic tape.

RETRIEVABILITY:

The files are indexed by name and Social Security Number.

SAFEGUARDS:

Paper records are maintained in files which are accessible only to authorized personnel.Automated records are maintained on disks or magnetic tapes in offices where access can be controlled. The offices are locked after normal duty hours to preclude unauthorized access.Access to automated data files is controlled by a user ID and password system.

RETENTION AND DISPOSAL:

Records are maintained for the current as well as the upcoming certification cycles. Records for an expired certification cycle are retained for 2 years; then, they are destroyed or returned to the employee. If a teacher leaves the system, except in the case of an educator who is participating in the DoDDS Administrative Re-employment Rights Program, the file is maintained for two years following the current expiration date of the certificate and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Division, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

The request should include the educator's full name, Social Security Number, and be signed. Former employees must also include dates and places of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written requests to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

The request should include the educator's full name, Social Security Number, and be signed. Former employees must also include dates and places of employment.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–12588 Filed 5–13–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Aircraft Carrier Ex-MIDWAY (CV 41)

SUMMARY: The Department of the Navy gives notice of the availability for donation, under the authority of 10 U.S.C. section 7306 of the Multi-Purpose Aircraft Carrier ex-MIDWAY (CV 41) located at the Naval Inactive Ship Maintenance Facility, Bremerton, Washington. Eligible recipients include: 1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; 2) the District of Columbia; or 3) any not-for-profit or nonprofit entity. Transfer of a vessel under this law shall be made at no cost to the United States Government. The transferee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial. Prospective transferees must submit a comprehensive, detailed application addressing their plans for managing the significant financial, technical, and environmental responsibilities that accompany ships donated under this program.

Other ships currently available for donation include: Aircraft Carrier ex-FORRESTAL (CVA 59) Philadelphia, PA; Battleship ex-IOWA (BB 61) Philadelphia, PA; Helicopter Carrier ex-GUADALCANAL (LPH 7) Philadelphia, PA; Harbor Tug ex-HOGA (YTM 146), MARAD Suisan Bay, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho, Congressional and Public Affairs Office, Naval Sea Systems Command, NAVSEA 00D1C, 2531 Jefferson Davis Hwy, Arlington, VA 22242–5160, telephone number (703) 602–1575.

Dated: May 5, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liason Officer.

[FR Doc. 97–12561 Filed 5–13–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

Patent Application Serial No. 08/538,432 entitled ''Method for Tuning Fiber Optic Couplers and Multiplexers'' filed August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: May 5, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–12562 Filed 5–13–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Open Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Ship-to-Warfighter Logistics for Small Unit Operations will meet on May 22–23, 1997. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, VA. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on May 22 and May 23, 1997. All sessions of the meeting will be open to the public.

The purpose of the meeting is to identify future science and technology opportunities, and assess technologies associated with Department of the Navy logistics initiatives in order to resupply forward-deployed Small Unit Operations with food, ammunition, water fuel, batteries, medical supplies, etc., with minimum footprint and exposure time, and maintain communications for a period of several days to several weeks.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

Dated: May 5, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–12560 Filed 5–13–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; SDL, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SDL, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government owned inventions described in U.S. Patent No. 4,763,272 entitled ''Automated and Computer Controlled Precision Method of Fused Elongated Optical Fiber Coupler Fabrication,'' issued August 9, 1988, U.S. Patent No. 5,121,453 entitled ''Polarization Independent Narrow Channel Wavelength Division Multiplexing Fiber Coupler and Method for Producing Same,'' issued June 9, 1992, and U.S. Patent Application Serial No. 08/538,432 entitled ''Method for Tuning Fiber Optic Couplers and Multiplexers'' filed August 9, 1995.

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 OOCC, 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 OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone number (703) 696–4001.

Dated: May 5, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–12559 Filed 5–13–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.282A]

Public Charter Schools Program; Notice Inviting Applications for New and Supplemental Awards for Fiscal Year (FY) 1997

Purpose of Program

A major purpose of the Public Charter Schools grant program is to increase understanding of the charter schools model by providing financial assistance for the design and initial implementation of charter schools.

Who May Apply

(a) State educational agencies (SEAs) in States with laws authorizing the establishment of charter schools. The Secretary awards grants to SEAs to enable them to conduct charter schools programs in their States. SEAs use their Public Charter Schools funds to award subgrants to ''eligible applicants,'' as defined in this notice, for planning, program design, and initial implementation of charter schools.

(b) Under certain circumstances, an authorized public chartering agency participating in a partnership with a charter school developer. Such a partnership is eligible to receive funding directly from the U.S. Department of Education if—

(1) The SEA in its State elects not to participate in this competition; or

(2) The SEA in its State does not have an application approved under this program.

If an SEA's application is approved in this competition, applications received from non-SEA eligible applicants in that State will be returned to the applicants. In such a case, the eligible applicant should contact the SEA for information related to its subgrant competition.

Current Grantees

In FY 1997, the Department received a substantial increase in its appropriation for this program. As a result, the average size of awards for this competition is expected to be larger than it has been in previous years, and all ''high quality'' eligible applications are expected to receive some funding. In an effort to bring current grantees up to a comparable level of funding, the Department is also inviting current grantees to apply for supplements to their existing grants by requesting supplemental funds on a noncompetitive basis or by submitting amendments to their approved applications under this competition. A grantee may request either a noncompetitive supplement to its current grant or an amendment to its approved application, or both, depending on the needs of the grantee. The following information and examples are provided to help grantees determine an appropriate course of action.

(a) *Requests for Supplemental Funds:* A current grantee may propose changes to the scope of its charter schools grant by submitting a written request for a supplement to its existing grant. Such request may be submitted to the Department at any time, and will be reviewed by Department staff on a noncompetitive basis. To be assured of consideration, requests for supplemental funds should be submitted to the Department by August 15, 1997. The Department may not have sufficient time in FY 1997 to review and fund requests for supplements submitted after that date.

(b) *Amended Applications:* If a current grantee is seeking additional funding for the purpose of implementing major changes in its charter schools grant that are likely to result in a change in the objectives of the grantee's approved application, the grantee should submit an amendment to its approved application under this competition. Such amendment should provide a detailed description of the changes the grantee proposes to implement in its charter schools grant that justify the increase being requested. Upon evaluating all proposed amended and new applications, a panel of peer reviewers will make recommendations to the Department regarding the applications that should be funded. If an amended application submitted by a current grantee is not approved for funding, the existing grant will continue as originally approved.

(c) *Examples:* (i) The approved application of a current SEA grantee provides for the establishment of twenty (20) charter schools. A subgrant competition is held, and the SEA receives thirty (30) high quality applications that are eligible for funding. The SEA would like to fund all thirty (30) subgrant applications without changing the objectives of the approved application. The SEA may submit a request to the Department for a supplement to its grant to fund the additional ten (10) charter schools. This request would be reviewed on a noncompetitive basis.

(ii) In its original application, a current grantee requested $200,000 to establish ten (10) charter schools. The Department approved the application but, due to limited funds, awarded a grant in the amount of $150,000. The grantee has implemented its program and has determined that it cannot operate efficiently at the $150,000 funding level. Because the proposed change in the grantee's charter schools program is not likely to result in a change in the objectives of the approved application, the grantee may request a supplement to its grant in the amount of $50,000 (*i.e.*, up to the amount requested in its original application). This request would be reviewed on a noncompetitive basis.

(iii) In its approved application, a current SEA grantee proposed to provide subgrant funding to ten (10) individual charter schools in the State. The SEA now wants to provide subgrant funding to several consortia of two (2) or three (3) charter schools. Because the SEA's proposed change in its charter schools program is likely to result in a change in the objectives of the approved application, the SEA should submit an amended application to the Department as part of this competition.

Note: The following States currently have approved applications under this program: Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Oregon, Puerto Rico, Texas, and Wisconsin. In these States, only the SEA is eligible to receive an award under this competition. Eligible applicants in these States should contact their respective SEAs for information about participation in the State's charter schools subgrant program.

Deadline for Transmittal of Applications: June 30, 1997.

Deadline for Intergovernmental Review: August 29, 1997.

Applications Available: May 16, 1997.

Available Funds: $25,000,000.

Estimated Range of Awards:

State educational agencies: $250,000–$4,000,000 per year.

Other eligible applicants: $25,000–$250,000 per year.

Estimated Average Size of Awards:

State educational agencies: $1,750,000 per year.

Other eligible applicants: $100,000 per year.

Estimated Number of Awards:

State educational agencies: 10–15.

Other eligible applicants: 3–5.

NOTE: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period

State educational agencies: Up to 36 months. Other eligible applicants: Grants awarded by the Secretary directly to non-SEA eligible applicants or subgrants awarded by SEAs to eligible applicants will be awarded for a period of up to 36 months, of which the eligible applicant may use—

(a) Not more than 18 months for planning and program design; and

(b) Not more than two years for the initial implementation of a charter school.

Applicable Regulations and Statute

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (except 75.210), 77, 79, 80, 81, 82, 85, and 86. Title X, Part C, Elementary and Secondary Education Act of 1965, as *amended*, 20 U.S.C. §§ 8061–8067.

SUPPLEMENTARY INFORMATION: As part of wider education reform efforts to strengthen teaching and learning, charter schools can be an innovative approach to improving public education and expanding public school choice. While there is no one model, public charter schools are exempted from most statutory and regulatory requirements in exchange for better student academic achievement. They replace rules-based governance with performance-based accountability, thereby stimulating the creativity and commitment of teachers, parents, students, and citizens.

Information regarding the required contents of applications, diversity of projects, and waivers are provided in the application package for this program.

The following definitions, selection criteria, and allowable activities are taken from the public charter schools statute, in Title X, Part C, of the Elementary and Secondary Education Act of 1965, as amended. They are being repeated in this application notice for the convenience of the applicant.

Definitions

The following definitions apply to this program:

(a) *Charter school* means a public school that—

(1) In accordance with an enabling State statute, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(8) Admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(10) Meets all applicable Federal, State, and local health and safety requirements; and

(11) Operates in accordance with State law.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with this program.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

Selection Criteria for SEAs

The maximum possible score for all of the criteria in this section is 100 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an SEA, the Secretary considers the following criteria:

(a) The contribution that the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State content standards, State student performance standards, and, in general, a State's education improvement plan (20 points).

(b) The degree of flexibility afforded by the SEA to charter schools under the State's charter schools law (20 points).

(c) The ambitiousness of the objectives for the State charter schools grant program (20 points).

(d) The quality of the strategy for assessing achievement of those objectives (20 points).

(e) The likelihood that the charter schools grant program will meet those objectives and improve educational results for students (20 points).

Selection Criteria for Non-SEA Eligible Applicants

The maximum possible score for all of the criteria in this section is 120 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an eligible applicant other than an SEA the Secretary considers the following criteria:

(a) The quality of the proposed curriculum and instructional practices (20 points).

(b) The degree of flexibility afforded by the SEA and, if applicable, the local educational agency to the charter school (20 points).

(c) The extent of community support for the application (20 points).

(d) The ambitiousness of the objectives for the charter school (20 points).

(e) The quality of the strategy for assessing achievement of those objectives (20 points).

(f) The likelihood that the charter school will meet those objectives and improve educational results for students (20 points).

Allowable Activities

An eligible applicant receiving a grant or subgrant under this program may use the grant or subgrant funds for only—

(a) Post-award planning and design of the educational program, which may include—

(1) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(2) Professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include—

(1) Informing the community about the school;

(2) Acquiring necessary equipment and educational materials and supplies;

(3) Acquiring or developing curriculum materials; and

(4) Other initial operating costs that cannot be met from State or local sources.

FOR APPLICATIONS OR INFORMATION CONTACT: John Fiegel, U.S. Department of Education, 600 Independence Avenue, SW., Room 4512, Portals Building, Washington, DC 20202–6140. Telephone (202) 260–2671. Internet address: John__Fiegel@ed.gov. 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://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**.

Authority: 20 U.S.C. 8061–8067.

Dated: May 9, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–12618 Filed 5–13–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Center on Education Statistics (NCES); Meeting

AGENCY: Department of Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 15–16, 1997.

TIMES: May 15, 1997—Full Council, 9:00 a.m.–10:15 a.m., (open); Management Committee, 10:15 a.m.–5:00 p.m., (open); Statistics Committee, 10:15 a.m.–5:00 p.m., (closed from 1:15 p.m.–5:00 p.m.); Strategy/Policy Committee, 10:15 a.m.–5:00 p.m., (closed from 10:15 a.m.–11:15 a.m.). May 16, 1997—Full Council, 10:30 a.m. to 3:30 p.m. (open); Statistics Committee, Strategy/Policy Committee, and Management Committee, 9:00 a.m. to 10:30 a.m. (open).

LOCATION: The Washington Plaza Hotel, 10 Thomas Circle, NW., Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center for Education Statistics, 555 New Jersey Ave., NW., Room 400j, Washington, DC 20208–5530.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Educational Progress (NAEP). The meeting of the Council is open to the public.

The proposed agenda includes the following:

- A status report from the NCES Commissioner on major Center initiatives;
- New member swearing-in;
- The presentation of Committee reports;
- A discussion on the development of an NCES periodical; and
- A discussion of a synthesis of ''customer'' evaluations on NCES activities.

Individual meetings of the three ACES committees will focus on specific topics:

- The agenda for the Management Committee includes a discussion of the results from the 1996 Customer Service Survey, review of NCES' performance indicators, and plans for future targeted customer surveys.

• The agenda for the Statistics Committee includes a discussion of emerging statistical issues in the National Assessment of Educational Progress (NAEP) such as those reflected in the National Academy of Education's Capstone Report, and the upcoming NAEP procurement. Further, the Statistics Committee will discuss issues surrounding the use of background variables; a preliminary report which links NAEP and data from the Third International Mathematics and Science Study; the results of the 1996 NAEP Science Assessment; and alternative strategies for setting achievement levels. Because part of the agenda involves reporting on the embargoed 1996 NAEP science achievement levels, ACES is precluded from discussing this information in a public meeting. The premature release of this information would result in the disclosure of information that would be likely to significantly frustrate implementation of the agency's proposed action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

• The agenda for the Strategy/Policy Committee includes a discussion of: major NCES budget issues; a new NCES budgeting and planning tool; NCES's longitudinal surveys; and plans for a redesign of the Schools and Staffing Survey. Because the discussion on budget issues will include information on planned procurements and cost estimates, the public disclosure of this information would be likely to significantly frustrate the implementation of planned agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

Due to complexities in setting the agenda for this meeting, the public is being given less than 15 days notice. A summary of the activities and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within 14 days after the meetings. Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW., Room 400J, Washington, DC 20208–7575.

Dated: May 7, 1997.

Ramon C. Cortines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–12528 Filed 5–13–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, May 27, 1997: 1:00 p.m.–5:00 p.m.

ADDRESS: Amarillo Association of Realtors, 5601 Enterprise Circle,Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:00 p.m. Welcome—Agenda Review—Approval of Minutes
1:10 p.m. Co-Chair Comments
1:20 p.m. Task Force Reports
—Environmental Restoration
—Site Development

1:50 p.m. Subcommittee Reports
—Policy & Personnel
—Nominations & Membership
—Budget and Finance
2:30 p.m. Ex-Officio Reports
3:00 p.m. Break
3:15 p.m. Transition Discussion
3:45 p.m. Pantex Project Budget Overview
4:30 p.m. Updates—Occurrence Reports—DOE
5:00 p.m. Closing Remarks/Adjourn

Public Participation

The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m., Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on May 9, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–12642 Filed 5–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Health and Environmental Research Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Health and Environmental Research Advisory Committee.

DATES: Wednesday, June 11, 1997, 8:30 a.m. to 5:30 p.m.; and Thursday, June 12, 1997, 8:00 a.m. to 12:00 p.m.

ADDRESS: American Geophysical Union, 2000 Florida Avenue, N.W., Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Barnhart or Ms. Shirley Derflinger, Designated Federal Officers, Health and Environmental Research Advisory Committee, U.S. Department of Energy, ER–70, GTN, 19901 Germantown Road, Germantown, Maryland 20874–1290, Telephone Number: 301–903–3683, 301–903–0044, E-mail: benjamin.barnhart@oer.doe.gov, shirley.derflinger@oer.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental research program.

Tentative Agenda

Wednesday, June 11, 1997, and Thursday, June 12, 1997:

Welcome Remarks
Opening of Meeting
Status of the Biological and Environmental Research Program
Global Change News
Environmental Management Science Program Update
Review of Genome Research Activities
Review of Subcommittee Activities
New Business
Public Comment (10-minute rule)

Public Participation

The day and a half meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Benjamin Barnhart or Shirley Derflinger at the address or telephone number listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on May 9, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–12643 Filed 5–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–63–004]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

May 8, 1997.

Take notice that on May 5, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC gas Tariff, First Revised Volume No. 1 tariff, Substitute Sheet Nos. 229A, 229B, 229C, 241A and Substitute Second Revised Sheet No. 280 to be effective May 1, 1997.

CIG states the tariff sheets are filed in compliance with Order No. 587, and the order issued April 18, 1997 in Docket No. RP97–63–001 et al., as well as Section 154.203 of the Commission's regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12543 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–5–000]

Humble Gas Pipeline Company; Notice of Petition for Rate Approval

May 8, 1997.

Take notice that on February 28, 1997, Humble Gas Pipeline Company (Humble), filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate structure with a maximum rate of $.05327 per MMBtu for all volumes transported upstream of the King Ranch Gas Plant and $0.01528 for all volumes transported through Humble's header downstream of the King Ranch Gas Plant. Additionally, Humble is proposing a system-wide 1.0% retainage for fuel and loss plus a Gas Research Institute (GRI) surcharge (if GRI's current proposal in Docket No. RP97–149–000 is approved by FERC) for transportation service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Humble affirms that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA. It owns and operates an intrastate pipeline system which is located entirely within the state of Texas and is comprised of 276 miles of pipe located in south Texas in the vicinity of Kingsville, Texas. Humble proposes to make its new section 311 rate structure effective as of March 1, 1997.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 23, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12539 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–365–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 8, 1997.

Take notice that on May 2, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed below, to become effective June 1, 1997:

Eighteenth Revised Sheet No. 20
1st Rev Sixteenth Revised Sheet No. 21
1st Rev Seventeenth Revised Sheet No. 22
Nineteenth Revised Sheet No. 24

Koch states that the above referenced tariff sheets reflect the elimination of Koch's Account No. 191 surcharge as a result of Koch's expectation to complete its recovery of costs related to this surcharge.

Koch also states that it has served copies of this filing upon each affected customer, state commission, and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by 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. 97–12544 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–7–000]

Overland Trail Transmission Company; Notice of Petition for Rate Approval

May 8, 1977.

Take notice that on March 24, 1997, Overland Trail Transmission Company (Overland) filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.2817 per MMBtu for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA), to be effective March 31, 1997. Overland's mailing address is 801 Cherry Street, M.S. 3200, Fort Worth, TX 76102.

Overland's petition states it is a Wyoming intrastate pipeline which provides transportation service pursuant to Section 311 of the NGPA. Overland states this petition is filed pursuant to the Commission's June 29, 1995, letter order in Docket No. PR94–12–000, which required Overland to file this application on or before March 31, 1997, to restate its current system-wide rate or propose such other rate as it deems appropriate.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before May 23, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12540 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–1–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–10–000]

Red River Pipeline, L.P.; Notice of Petition for Rate Approval

May 8, 1997.

Take notice that on April 29, 1997, Red River Pipeline, L.P. (Red River) filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a system-wide maximum rate of $0.2616 per MMBtu for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Red River is not seeking a change in its currently effective system-wide fuel and system loss rate of 2.5 percent. Red River requests an effective date of June 1,1997. Red River's mailing address is 370 Van Gordon Street, P.O. Box 281304, Lakewood, CO 80228–8304.

Red River's petition states it is a limited partnership authorized to do business in the state of Texas, and an intrastate pipeline within the meaning of section 2(16) of the NGPA. Red River provides transportation in Texas pursuant to section 311 of the NGPA. Red River states this petition is filed pursuant to the Commission's order in Docket No. PR94–6–000, which required Red River to file by March 1, 1997, to justify its current system-wide rate or establish a new system-wide rate.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before May 23, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12541 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–62–004]

Wyoming Interstate Company Ltd.; Notice of Tariff Compliance Filing

May 8, 1997.

Take notice that on May 5, 1997, Wyoming Interstate Company Ltd. (WIC), tendered for filing to become part of its FERC gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2 tariffs, the substitute tariff sheets listed on Appendix A to the filing, to be effective May 1, 1997.

WIC states the tariff sheets are filed in compliance with Order No. 587, and the order issued April 21, 1997, in Docket No. RP97–62–001 et al., as well as Section 154.203 of the Commission's regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12542 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2653–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

May 7, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER97–2653–000]

Take notice that on April 23, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with the Bonneville Power Administration for Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888, and a Notice of Cancellation of Service Agreement Nos. 76, 77, 78, 79, 80, and 81 under FERC Electric Tariff, Original Volume No. 4.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission Regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of April 25, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Atlantic City Electric Company

[Docket No. ER97–2656–000]

Take notice that on April 23, 1997, Atlantic City Electric Company (Atlantic Electric) tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to American Energy Solutions, Inc. under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement be accepted to become effective on April 24, 1997.

Atlantic Electric states that a copy of the filing has been served on American Energy Solutions, Inc.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota Company)

[Docket No. ER97–2657–000]

Take notice that on April 23, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing the following two agreements:

- Letter Agreement between the Kenyon Municipal Utilities and Northern States Power Company; and
- Operation and Maintenance Agreement for Kenyon Substation Transmission Line Transfer Trip Relaying between the Kenyon Municipal Utilities and Northern States Power Company.

NSP requests the agreements be accepted for filing effective April 24, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER97–2658–000]

Take notice that on April 23, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with MP Energy, as Transmission Customer. A copy of the filing was served upon MP Energy.

The Service Agreement is for firm point-to-point transmission service.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Energy, Inc.

[Docket No. ER97–2659–000]

Take notice that on April 23, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service (Service Agreement) with British Columbia Power Exchange Corporation (Powerex), as Transmission Customer. A copy of the filing was served upon Powerex.

The Service Agreement is for non-firm point-to-point transmission service.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER97–2660–000]

Take notice that on April 23, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service (Service Agreement) with the Washington Water Power Company (WWP), as Transmission Customer. A copy of the filing was served upon WWP.

The Service Agreement is for non-firm point-to-point transmission Service.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER97–2661–000]

Take notice that on April 23, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service (Service Agreement) with the Bonneville Power Administration (Bonneville), as Transmission Customer. A copy of the filing was served upon Bonneville.

The Service Agreement is for non-firm point-to-point transmission service.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Washington Water Power Company

[Docket No. ER97–2663–000]

Take notice that on April 23, 1997, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission a proposed revision to the standard form of a Non-Firm Point-to-Point Transmission Service Agreement under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Original Volume No. 8.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER97–2665–000]

Take notice that on April 24, 1997, Duke Power Company (Duke), tendered for filing with the Commission Supplement No. 10 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). Supplement No. 10 changes Duke's monthly transmission capacity rate under the Interchange Agreement from $1.0758 per KW per month to $1.0983 per KW per month.

Duke has proposed an effective date of July 1, 1997, for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER97–2666–000]

Take notice that on April 24, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Engage Energy US, LP. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Engage Energy US, LP.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER97–2667–000]

Take notice that on April 24, 1997, Interstate Power Company (IPW), tendered for filing a Power Sales Service Agreement between IPW and Federal Energy Sales, Inc. Under the Agreement, IPW, will sell Capacity & Energy to Federal Energy Sales, Inc. as agreed to by both companies.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Interstate Power Company

[Docket No. ER97–2668–000]

Take notice that on April 24, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Vitol Gas & Electric LLC. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Vitol Gas & Electric LLC.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. American Electric Power Service Corporation

[Docket No. ER97–2669–000]

Take notice that on April 24, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after March 31, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power and Light Company

[Docket No. ER97–2670–000]

Take notice that on April 24, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing CMS Marketing, Services and Trading as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 31, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12537 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696–004]

Niagara Mohawk Power Corporation; Notice of Availability of Environmental Assessment

May 8, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a license surrender application for the Stuyvesant Falls Project, No. 2696–004. The Stuyvesant Falls Project is located on Kinderhook Creek in Columbia County, New York. The licensee is applying for a surrender of the license due to leaks in the pipelines that are uneconomical to repair for safe and effective operation of the project. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 1C–1, 888 First Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2696–004 to all comments. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12538 Filed 5–13–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5825–7]

Renewal of Agency Information Collection Activities

Comment Request; Notification of Continuous Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), EPA ICR number 1445; OMB control number 2050–0086, expiring September 30, 1997. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 14, 1997.

ADDRESSES: U.S. Environmental Protection Agency, Office of Emergency and Remedial Response (5204G), 401 M Street SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in Public Docket No. 102RQ–CR. This docket is located at 1235 Jefferson Davis Highway (ground floor), Arlington, VA. Dockets may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epamail.epa.gov. Note that questions, but not comments, will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those persons in charge of a facility or vessel from which there is a hazardous substance release that is ''continuous'' and ''stable in quantity and rate.'' Because the usage and release of hazardous substances are pervasive throughout industry, a number of industrial categories have reported continuous hazardous substance releases. No one industry sector or group of sectors is disproportionately affected by this rule.

Title: Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), EPA ICR number 1445; OMB control number 2050–0086, expiring September 30, 1997.

Abstract: This ICR addresses the reporting and recordkeeping activities required to comply with the continuous release reporting regulation (CRRR; 40 CFR 302.8) specified in section 103(f)(2) of CERCLA. The CRRR was developed as a reporting burden reduction regulation; the CRRR provides relief from the per-occurrence notification requirements of CERCLA section 103(a) for hazardous substance releases that are ''continuous,'' ''stable in quantity and rate,'' and for which notification has been given ''for a period sufficient to establish the continuity, quantity, and regularity'' of the release. Notification of qualifying releases must be provided ''annually, or at such time as there is any statistically significant increase'' in the quantity of the release. The information collection requirements of the CRRR are necessary to determine if a response action is needed to control or mitigate any potential adverse effects associated with a reported hazardous substance release. EPA expects the anticipated burden associated with compliance with the CRRR, estimated in this ICR, to be more than offset by a reduction in burden for facilities associated with per-occurrence notification (e.g., providing notification each day), which would otherwise be required in the absence of reporting a continuous release.

This ICR renews the collection activity previously approved under OMB No. 2050–0086 and applies to the period October 1, 1997 through September 30, 2000. Estimates of the burden placed on industry to comply with the release notification requirements are presented on an annual basis.

To ensure that government authorities receive timely and sufficient information to evaluate potentially dangerous hazardous substance releases reported under CERCLA section 103(f)(2), the CRRR requires five types of notification activities:

- One or more initial telephone calls to the National Response Center (NRC);
- An initial written report to the EPA Region;
- A follow-up written report to the EPA Region one year after submission of the initial written report;
- Notification to the EPA Region of any changes in release information previously submitted (including either a change in composition, source, or quantity, or another type of change); and
- Immediate notification to the NRC of any statistically significant increase (SSI) in the quantity of the release.

Initial Telephone Notification

The initial telephone calls serve to notify government authorities of the facility's intent to report a hazardous substance release under CERCLA section 103(f)(2). All such releases must be released in a continuous and stable manner. The information provided in the initial telephone notification consists of:

(1) The name and location of the facility or vessel; and

(2) The names and identities of the hazardous substances being released.

Initial Written Report and Follow-Up Written Report

The initial written report and the follow-up written report provide a full description of the release which serves as the basis for a comprehensive evaluation of the hazards posed by the release. Based on this comprehensive evaluation, government authorities determine if a response action is necessary to prevent or mitigate any adverse effects. The initial written report includes preliminary information based on readily available data because the facility must submit the initial written report within 30 days of the initial telephone call. The follow-up written report, due one year after submission of the initial written report, serves to update/refine the initial report based on release data gathered during the previous operating year. Although the follow-up written report is required only in the second year of reporting, facilities are required to conduct and document an annual assessment of their continuous releases to identify any changes that may have occurred in the release situation. The follow-up written report and the annual evaluation ensure that the information used to evaluate the hazards posed by the release is the most updated and accurate information available.

The data elements requested in the initial written and follow-up report are identical and consist of the following.

(1) The name of the facility or vessel; the location, including the longitude and latitude; the case number assigned by the NRC or EPA; the Dun and Bradstreet number of the facility (if available); the port of registration of the vessel (if applicable); and the name and telephone number of the person in charge of the facility or vessel.

(2) The population density within a one-mile radius of the facility or vessel.

(3) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, wetlands).

In addition to the preceding facility-specific information, facilities must provide the following substance-specific information for each ''continuous'' release.

(4) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available).

(5) The upper and lower bounds of the normal range of the release over the previous year.

(6) The source(s) of the release.

(7) The frequency of the release, the fraction of the release from each release source, and the period over which it occurs.

(8) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(9) An estimate of the total annual amount of the hazardous substance released in the previous year.

(10) The environmental media affected by the release.

(11) A signed statement that the hazardous substance release described is continuous and stable in quantity and rate under the definitions of 40 CFR 302.8(b) and that all reported information is accurate and current to the best knowledge of the person in charge.

Changes in Composition, Source, or Quantity (Reporting a ''New'' Release)

If there is any change in the composition or sources of the release, the release is considered a ''new'' release and must be qualified for reporting under the CRRR by the submission of an initial telephone notification and initial written notification as soon as there is a sufficient basis for asserting that the release is continuous and stable in quantity and rate. For facilities experiencing a change in the normal range, so that the quantity of the release exceeds the stated upper bound on a regular basis, the person in charge of a facility or vessel may modify the normal range by reporting at least one SSI. Within 30 days of the initial telephone notification submit written notification to the appropriate EPA Region describing the new range, the reason for the change, and the basis for stating that the release in the increased amount is continuous and stable in quantity and rate.

Changed Release Reports

Facilities or vessels experiencing other types of changes in their ''continuous'' release (other than a change in composition, source, or quantity) that invalidates information previously submitted, must notify the appropriate EPA Region by letter within 30 days. The letter of changed information should explicitly identify the new (or changed) information and include an explanation for the change. Letters of changed information also must include a statement certifying that, under the changed circumstances, the release is still ''continuous'' and ''stable in quantity and rate.''

Statistically Significant Increase Reports

The continuous release final rule defines an SSI as any release of a hazardous substance that exceeds the upper bound of the reported normal range of releases. The normal range of releases includes all the releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions (that is, normal conditions that prevail during the period establishing the continuity, quantity, and regularity of the release) during the preceding year. The SSI release is an episodic release because it is a release above the reportable quantity (RQ) that has not been previously reported or evaluated and must be immediately reported to the NRC by telephone pursuant to the notification requirements of CERCLA section 103(a). The information collected by the NRC in an SSI report includes the same information supplied when reporting any other episodic release (e.g., quantity of the release, source of the release, and a description of any response actions taken). It is important to note that the person in charge may modify the previously established normal range as an alternative to reporting multiple SSIs.

Recordkeeping

Facilities maintain a log or some other record of each hazardous substance release reported under CERCLA section 103(f)(2). The information documented in the record is necessary to demonstrate compliance with the provisions of the CRRR, including the requirement to demonstrate the continuity and stability of the release and the requirement to conduct an annual evaluation of the release. Additionally, facilities may find it useful to document daily release quantities for use in substantiating and modifying the normal range of the release.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. For this ICR, EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Exhibit I presents the burden hours estimated to be incurred by a typical respondent in completing each of the information provision activities that may be required to report a ''continuous'' release. A ''typical'' respondent is assumed to file one continuous release report and to experience one change in the release (e.g., a change in facility ownership or address) requiring submittal of a letter of changed information to the EPA Region. This assumption is intended to ensure that the burden incurred by a ''typical'' facility is not underestimated. No other conditional activities (i.e., SSI reporting, reporting a ''new'' release, or other activities) are assumed to be required of the typical respondent; the inclusion of burden estimates associated with any additional conditional activities, other than reporting a change in release, may result in a significant overestimation of the burden incurred by a typical facility. It is important to note that, even though there is an annual burden associated with reporting continuous releases under the CRRR, this burden is significantly lower than if facilities were required to report the continuous releases as individual episodic releases to the NRC.

As described in the existing ICR for the CRRR, which was prepared in 1994, much of the information required for the initial written report is readily available to the facility, but some information may require more extensive coordination and analysis. A certain amount of time is necessary to organize and format the required information into a report suitable for submission to the government. Many facilities were expected to use EPA's prepared report format to minimize report organization and formatting efforts. Preparation of the initial written report was estimated to require three hours of managerial time, three hours of technical time, and one hour of clerical time.

EXHIBIT 1.—BURDEN HOURS PER RESPONDENT ACTIVITY AND ANNUAL BURDEN HOURS INCURRED BY A TYPICAL RESPONDENT

Collection activity	Probability of collection activity/year (percent)	First year burden hours				Subsequent year burden hours			
		Mgt.	Tech.	Clerical	Total	Mgt.	Tech.	Clerical	Total
Providing Initial Telephone Notification	100	1.0	2.0	0.0	3.0	NA	NA	NA	NA
Preparing Initial Written Report	100	3.0	4.0	1.0	8.0	NA	NA	NA	NA
Preparing Follow-up Written Report/Conducting Annual Evaluations	100	NA	NA	NA	NA	3.0	1.0	1.0	5.0
Recordkeeping	100	0.0	4.0	0.0	4.0	0.0	4.0	0.0	4.0
Reporting a Change in the Release	10	1.0	1.0	0.5	2.5	1.0	1.0	0.5	2.5
Total Annual Burden Hours for a Typical Facility [1]	NA	5.0	11.0	1.5	17.5	4.0	6.0	1.5	11.5
Reporting a ''New'' Release	5	4.0	4.0	1.0	9.0	4.0	4.0	1.0	9.0
Reporting an SSI	5	1.0	1.0	0.0	2.0	1.0	1.0	0.0	2.0
Other Activities:									
—Additional Information	30	4.0	0.0	0.0	4.0	4.0	0.0	0.0	4.0
—Site Inspection	1	4.0	4.0	4.0	8.0	4.0	4.0	0.0	8.0

[1] In order to sufficiently account for the burden associated with conditional activities whose probability of occurring is less than 100% (i.e., reporting a change in the release, reporting a new release, reporting an SSI, and other activities) in addition to the burden associated with the notification and recordkeeping activities that must be performed for each hazardous substance release reported under the CRRR (i.e., those collection activities for which the probability of occurrence is 100%), the total annual burden hours for a typical facility include an assumption that each facility will spend time on one typical conditional event. Therefore, within the totals, the typical facility is assumed to report one change in its ''continuous'' release during each year of reporting.

Subsequent conversations with EPA regional staff have suggested that a number of facilities did not use EPA's prepared report format initially, and those facilities spent additional time revising their reports to put them in a suitable form. To account for the additional burden experienced by some facilities, EPA has changed the estimated technical time in this 1997 ICR renewal to four hours. If EPA's prepared report format is incorporated into a future revision of 40 CFR 302.8, then the estimated burden will be reduced accordingly.

The estimated cost to industry of completing the various continuous release reports is a function of the time expended by industrial personnel and the hourly rates for the appropriate labor categories. The unit cost estimates for each category of activities are based upon a managerial wage rate of $38.72 per hour, a technical wage rate of $28.37 per hour, and a clerical wage rate of $17.48 per hour. These wage rates, from the Bureau of Labor Statistics, are the same as those used in the notice for renewal of the Spill Prevention Control and Countermeasure (SPCC) ICR (61 FR 15246, April 5, 1996). They include wages and salaries, benefit costs including paid leave, supplemental pay, insurance, retirement and savings, legally required benefits, severance pay, and supplemental unemployment benefits and overhead costs, calculated in December 1995 dollars. Unit costs are shown in Exhibit 2.

EXHIBIT 2.—UNIT COST OF RESPONDENT ACTIVITIES AND ANNUAL COSTS FOR A TYPICAL RESPONDENT

Collection activity	Probability of collection activity/year (percent)	Burden hours			Unit costs	
		Mgt.	Tech.	Clerical	First year	Each subsequent year
Providing Initial Telephone Notification	100	1.0	2.0	0.0	$95.46	NA
Preparing Initial Written Report	100	3.0	4.0	1.0	247.12	NA

EXHIBIT 2.—UNIT COST OF RESPONDENT ACTIVITIES AND ANNUAL COSTS FOR A TYPICAL RESPONDENT—Continued

Collection activity	Probability of collection activity/year (percent)	Burden hours			Unit costs	
		Mgt.	Tech.	Clerical	First year	Each subsequent year
Preparing Follow-up Written Report/Conducting Annual Evaluations	100	3.0	1.0	1.0	NA	$162.01
Recordkeeping	100	0.0	4.0	0.0	113.48	113.48
Reporting a Change in the Release	10	1.0	1.0	0.5	75.83	75.83
Total Annual Cost for a Typical Facility[1]	NA	5.0	11.0	1.5	531.89	351.32
Reporting a ''New'' Release	5	4.0	4.0	1.0	285.84	285.84
Reporting an SSI	5	1.0	1.0	0.0	67.09	67.09
Other Activities:						
—Additional Information	30	4.0	0.0	0.0	164.88	154.88
—Site Inspection	1	4.0	4.0	0.0	268.36	268.36

[1] In order to sufficiently account for the burden associated with conditional activities whose probability of occurring is less than 100% (i.e., reporting a change in the release, reporting a new release, reporting an SSI, and other activities), in addition to the burden associated with the notification and recordkeeping activities that must be performed for each hazardous substance release reported under the CRRR (i.e., those collection activities for which the probability of occurrence is 100%), the total annual burden hours for a typical facility include an assumption that each facility will spend time on one typical conditional event. Therefore, within the totals, the typical facility is assumed to report one change in its ''continuous'' release during each year of reporting.

As shown in Exhibit 3, an estimated 2,000 facilities had reported continuous releases under the CR–ERNS program as of the end of 1996. This number was computed using different sources: the actual number of Continuous Release-Emergency Response Notification System (CR–ERNS) reports filed; an estimate of the number of reports filed; and the number of telephone calls to the NRC from facilities reporting continuous releases. The number of reports to be filed in the next three years is computed as a percentage of the total number of reports already filed and reflects the number of annual reports in recent years.

EXHIBIT 3.—ESTIMATED NUMBER OF FACILITIES AND HAZARDOUS SUBSTANCE RELEASES AFFECTED BY THE CONTINUOUS RELEASE FINAL RULE

Expected CRRR compliance under CR–ERNS	Total estimated number of facilities	Estimated number of reportable hazardous substance releases
Region 1	100	800
Region 2	100	800
Region 3	150	1,200
Region 4	450	3,600
Region 5	350	2,800
Region 6	350	2,800
Region 7	250	2,000
Region 8	100	800
Region 9	100	800
Region 10	100	800
Minus Change Reports	200	1,600
Total	1,850	14,800
Estimated New Releases Over Next Three Years	492	3,936
Total Over Next Three Years	2,342	18,736

Recent data have suggested that the estimated number of reportable hazardous substance releases per report was underestimated at 4.4 releases per report in the current ICR. The average number of releases in a typical report tended to be higher, at approximately 10 releases. However, a number of the releases reported by facilities are not required by the CRRR (e.g., they are below an RQ, they are not a CERCLA hazardous substance). To account for the greater number of releases, while taking into consideration the reporting of unnecessary substances, EPA has changed the estimated number of releases per report to 8.0. Exhibit 3 summarizes the estimated number of facilities and hazardous substance releases affected by the CRRR. The total estimated burden hours and costs incurred by industry are presented in Exhibit 4.

EXHIBIT 4.—ESTIMATED BURDEN HOURS AND COSTS INCURRED BY INDUSTRY

Collection activity	Probability of collection activity/year (percent)	Number of reported releases estimated to require the collection activity[1]	Unit burden hours[2]	Unit costs[3]	Burden hours		Annual cost[4 5]	
					First year	Each subsequent year	First year	Each subsequent year
Providing Initial Telephone Notification	100	3,936	3.0	$95.46	11,808	NA	$375,731	NA
Preparing Initial Written Report	100	3,936	8.0	247.12	31,488	NA	972,664	NA
Preparing Follow-up Written Report/Conducting Annual Evaluations	100	18,736	5.0	162.01	74,000	94,680	2,397,748	$3,035,419
Recordkeeping	100	18,736	4.0	113.48	74,944	74,944	2,126,161	2,126,161
Reporting a Change in the Release	10	1,874	2.5	75.83	4,684	4,684	142,075	142,075
Total					196,924	173,308	6,014,379	5,303,656
Average (over three years)						181,180		(1) 5,540,564
Reporting a "New" Release.								
Reporting an SSI	5	937	2.0	67.09	1,874	1,874	62,850	62,850
Other Activities:								
—Additional Information	30	5,621	4.0	154.88	22,483	22,483	870,550	870,550
—Site Inspection	1	187	8.0	268.36	1,499	1,499	50,280	50,280

[1] Derived from Exhibit 3.
[2] Derived from Exhibit 1.
[3] Derived from Exhibit 2.
[4] Costs are rounded to the nearest $100.
[5] Burden and costs are annualized over a three year period. Costs are annualized at a discount rate of 7%.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR Part 9.

Send comments regarding these matters, or any other aspects of the information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this Notice.

Dated: May 8, 1997.

Larry Reed,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 97–12625 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5825–9]

Microbial and Disinfectants/Disinfection Byproducts Advisory Committee: Notice of Open Meeting

Under Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that a meeting of the Microbial and Disinfectants/Disinfection Byproducts MD/DBP Advisory Committee will be held on June 3, 1997 from 9:00 a.m. until 5:30 p.m. and on June 4, 1997, from 9:00 a.m. until 4:30 p.m. at the Washington Plaza Hotel, 10 Thomas Circle, Northwest Washington, D.C. 20037. The phone number at the hotel is (202) 842–1300. The Committee was established earlier this year (on February 21, 1997, at 62 FR 8012) to assist the Environmental Protection Agency (EPA) in the development of regulations, guidance and policies to address microorganisms and disinfectants/disinfection by-products in drinking water.

The purpose of the meeting is to discuss issues related to the development of an Interim Enhanced Surface Water Treatment Rule (IESWTR) and a Stage 1 Disinfectants/Disinfection Byproducts (D/DBP) rule. The agenda for the meeting will include continued discussions as needed regarding information and data related to microbial and disinfection byproducts issues developed by the Committee's technical working group. The agenda will also include discussion and evaluation of options to be considered for inclusion in EPA's Notice of Data Availability for the IESWTR and Stage 1 D/DBP rule, with particular focus on turbidity; predisinfection, a microbial backstop, and a log removal requirement for cryptosporidium. In addition the Committee may have further discussion on Maximum Contaminant Levels and enhanced coagulation. It may also continue consideration of other issues, including but not limited to sanitary surveys; and watershed controls.

The meeting will be open to the public. Members of the public may attend the meeting, make oral statements at the meeting to the extent time permits and/or file written statements with the Committee for its consideration.

Members of the public who would like more information or who would like to present an oral statement or submit a written statement are requested to contact the Committee's Designated Federal Officer, Steve Potts, at the Office of Ground Water and Drinking Water, U.S. EPA, mail Code 4607, 401 M Street, SW, Washington, D.C. 20460. Mr. Potts may also be reached by telephone at (202) 260–5015 or contacted by e-mail at Potts.Steve@EPAMAIL.EPA.GOV.

Dated: May 9, 1997.

William R. Diamond,

Acting Director; Office of Ground Water and Drinking Water.

[FR Doc. 97–12626 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5825–4]

National Advisory Council for Environmental Policy and Technology—Total Maximum Daily Load Committee: Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDL and water related issues.

DATES: The three day public meeting will be held on June 11–13, 1997, in Milwaukee, Wisconsin, at the Park East Hotel, 916 E. State Street, Milwaukee, Wisconsin. The full Committee meeting begins on Wednesday, June 11, 1997, at 9:00 a.m. with adjournment scheduled for 5:30 p.m. The meeting on Thursday, June 12, 1997, will reconvene at 8:00 a.m. and is scheduled to adjourn at 3:00 p.m. On Friday, June 13, 1997, the Committee begins deliberations at 9:00 a.m. and is scheduled to conclude at 2:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting in the same location. The first will occur on June 11, 1997, from 7:30–9:00 p.m. The second will occur on June 12, 1997, from 3:30–5:00 p.m.

FUTURE MEETING DATES: The Committee has scheduled additional meetings for the following dates and locations:

September 3–5, 1997 in Portland, Oregon

January 21–23, 1998 in Salt Lake City, Utah

ADDRESSES: Materials or written comments may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Officer, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Corinne S. Wellish, Designated Federal Officer for the Total Maximum Daily Load Committee at 202–260–0740.

Dated: April 28, 1997.

Corinne S. Wellish,

Designated Federal Officer.

[FR Doc. 97–12653 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–944]

Procedures for Non-U.S. Satellite Filings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On April 16, 1997, the International Bureau released a public notice announcing procedures for foreign satellites to be considered in future satellite processing rounds. Pursuant to the World Trade Organization Basic Telecommunications Services Agreement reached in February 1997, the International Bureau will be opening future satellite system processing rounds to space stations that are licensed by, or coordinated internationally under the ITU Radio Regulations by foreign Administrations. The Bureau issued the Public Notice to provide procedural guidance to those entities wishing to participate in future satellite processing rounds and to request comment on the procedures. This process will serve as a means to ensure appropriate opportunities for non-U.S. licensed entities to participate in the U.S. satellite services market. The Commission is seeking emergency approval for this information collection by July 1, 1997, under the provisions of 5 CFR 1320.13.

DATES: Comments on the information collection being submitted for emergency approval should be submitted no later than June 23, 1997. Comments on the regular information collection submission should be submitted no later than July 14, 1997.

ADDRESSES: In addition to filing comments with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For information on the Public Notice, contact Virginia Marshall at (202) 418–0778 or Kathleen Campbell at (202) 418–0753 of the International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch. For additional information or copies of the information collection, contact Judy Boley at 202–418–0214 or via the internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burden, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on emergency 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 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and 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. While the Commission is seeking emergency approval for this collection, following the statutory 60-day comment period, the Commission will submit a request for regular OMB approval for this information collection and will publish a notice of such submission.

The following is a summary of Public Notice, Report No. SPB–80 (released April 16, 1997):

1. Pursuant to the World Trade Organization Basic Telecommunications Services Agreement reached in February 1997, the International Bureau will be

opening future satellite system processing rounds to space stations that are licensed by, or coordinated internationally under the ITU Radio Regulations by foreign Administrations. The Bureau is issuing this Public Notice to provide procedural guidance to those entities wishing to participate in future satellite processing rounds. This process will serve as a means to ensure appropriate opportunities for non-U.S. licensed entities to participate in the U.S. satellite services market.

2. Specifically, the Bureau intends to require entities seeking to provide satellite service within the United States using non-U.S. licensed satellites to file a letter of intent to do so, along with the information required in § 25.114 of the Commission's rules, 47 CFR 25.114, for space station applications. This information includes a concrete, comprehensive description of the space station, providing in detail all pertinent technical, operational and ownership aspects of the system and a demonstration of the ability to proceed expeditiously with construction, launch, and operation. The Bureau also intends to require entities operating or seeking to use foreign-licensed space stations to file, as an exhibit to their filings, a description of the space station authorization process used by the relevant coordinating Administration and the status of that process.

3. The Bureau will evaluate these filings in accordance with all applicable Commission rules, policies, and statutory requirements. The Bureau will not, however, issue U.S. licenses for foreign-licensed space stations seeking to serve the U.S. market. The foreign-licensed satellite will continue to fall under the jurisdiction of the licensing or coordinating Administration, subject to any conditions the Commission may impose on the space station operator with respect to the provision of service within the United States. The mechanism for assigning spectrum or orbital locations for non-U.S. licensed space station operators or earth station operators utilizing non-U.S. licensed space stations may be addressed in a rulemaking for that particular service. At a later point, the Bureau will issue licenses, as appropriate, to entities that request U.S. earth station or service authorizations. It is the Bureau's intent that this procedure will apply to entities wishing to participate in a specific processing round as well as to entities that seek to have a processing round initiated.

4. This action constitutes a new information collection under the Paperwork Reduction Act of 1995, Public Law 104–13. Accordingly, the Office of Management and Budget must approve this collection before it can go into effect. The OMB approval process may take up to 120 days.

5. Once OMB approval is granted, the Bureau intends to issue Public Notices establishing cut-off dates for satellite space stations in both the 2 GHz frequency band and the 40 GHz frequency band. *See* Amendment of § 2.106 of the Commission's rules to Allocate Spectrum at 2 GHz for Mobile Satellite Service, *First Report and Order and Further Notice of Proposed Rulemaking,* ET Docket No. 95–18, 62 FR 19509 (April 22, 1997) (*First Report and Order*) and 62 FR 19538 (April 22, 1997) (*Further Notice of Proposed Rulemaking*), and Allocation and Designation of Spectrum in the 37.5–38.5 GHz, 40.5–42.5 GHz, 48.2–50.2 GHz, 46.9–47.0 GHz, and 37.0–38.0 GHz Frequency Bands, *Notice of Proposed Rulemaking,* FCC 97–85, 62 FR 16129 (April 4, 1997), respectively. The Bureau expects it will require applicants to file applications, including letters of intent where appropriate, within 30 days after each Public Notice is issued.

6. This Public Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Public Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

7. This Public Notice contains a new or modified collection and has been submitted to the Office of Management and Budget for emergency review and will be submitted for regular review under section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Judy Boley at (202) 418–0214. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, AMD-Performance Evaluation and Records Management Branch, Room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 418–0210.

OMB Approval No.: None—3060–xxxx.

Title: Non-U.S. Satellite Filing Procedures pursuant to the World Trade Organization Basic Telecommunications Services Agreement.

Form No.: n/a.

Type of Review: Emergency submission.

Respondents: Businesses or other for profit, including small businesses, foreign government agencies.

Number of Respondents: 10.

Estimated Time Per Response: The Commission estimates respondents will hire an attorney or legal assistant to complete the submission. The time to retain these services is 2 hours per respondent.

Total Annual Burden: 20 hours.

Estimated Costs Per Respondent: This includes the charges for hiring an attorney, legal assistant, or engineer at $150 an hour to complete the submissions. The estimated average time to complete space station submissions is 22 hours per response. Estimated cost of space station submissions: $3,300.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in evaluating spectrum availability for all entities seeking authority to provide service in the United States in accordance with part 25 of the Commission's rules and the World Trade Organization Basic Telecommunications Services Agreement. The information will be used to determine the legal, technical, and financial ability of the non-U.S. satellite entities to provide satellite services and will assist the Commission in determining whether proposed operations are in the public interest.

Federal Communications Commission.

Thomas S. Tycz,

Chief, Satellite and Radiocommunication Division, International Bureau.

[FR Doc. 97–12526 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 7, 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 Commissions 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 June 13, 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 Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990—CC Docket No. 90–571.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for profit.

Number of Respondents: 72.

Estimate Hour Per Response: 112.6 hours per response (avg.) Total Annual Burden: 8110 hours.

Needs and Uses: 47 CFR Part 64, Subpart F implements certain provisions of the ADA of 1990. Section 64.605 establishes procedures for filing complaints. Information will be used to determine whether a state's program is certifiable according to federal requirements and to determine the merits of complaints filed. Those affected are states seeking certification of their programs and any member of the public who wants to file a complaint against specific carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–12525 Filed 5–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 20, 1997 at 10:00 A.M.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 22, 1997 at 10:00 A.M.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1997–05: Paul B. O'Kelly, General Counsel on behalf of the Chicago Mercantile Exchange. (IT WILL NOT BE CONCLUDED ON MAY 15, 1997.)

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–12752 Filed 5–12–97; 11:54 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

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 June 6, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bancorp of New Glarus, Inc., New Glarus, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of New Glarus, New Glarus, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Bridgeport Bancorp, Inc., Bridgeport, Illinois, and thereby indirectly acquire First National Bank of Bridgeport, Bridgeport, Illinois.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Financial Services of St. Croix Falls, St. Croix Falls, Wisconsin; to acquire 100 percent of the voting shares of State Bank of Dennison, Dennison, Minnesota.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. PBT Bancshares, Inc., McPherson, Kansas; to acquire 100 percent of the voting shares of Yoder Bankshares, Inc., Yoder, Kansas, and thereby indirectly acquire Farmers State Bank, Yoder, Kansas.

Board of Governors of the Federal Reserve System, May 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12534 Filed 5–13–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041497 AND 042597

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Insync Int'l Corp., Viad Corp., Premier Cruise Lines Ltd	97–1717	04/14/97
Lehman Brothers Holdings Inc., L-Com Corporation (Newco), L-Com Corporation (Newco)	97–1691	04/15/97
Lockheed Martin Corporation, L-Com Corporation (Newco), L-Com Corporation (Newco)	97–1692	04/15/97
Ripplewood Partners, L.P., Sieben, Inc., Sieben, Inc	97–1694	04/15/97
Kelso Investment Associates V, L.P., America's Best Contacts and Eyeglasses, Ltd. Partnership, America's Best Contacts and Eyeglasses, Ltd. Partnership	97–1701	04/15/97
Linsalata Capital Partners Fund II, L.P., Okabena Partnership V–8 Hartzell Manufacturing, Inc	97–1706	04/15/97
J.W. Childs Equity Partners, L.P., PepsiCo., Inc., Chevys, Inc	97–1711	04/15/97
Adventist Health System Sunbelt Healthcare Corporation, Hinsdale Health System, Hinsdale Health System	97–1721	04/15/97
Energy Ventures, Inc., GulfMark International, Inc., GulfMark International, Inc. (''GulfMark Retained'')	97–1723	04/15/97
Lehman Brothers Holdings Inc., Energy Ventures, Inc., Energy Ventures, Inc	97–1724	04/15/97
GenCorp Inc., Technographics, Inc., Technographics, Inc.	97–1725	04/15/97
Golder, Thoma, Cressey, Rauner Fund V, L.P., Albert J. Latner, Dynacare, Inc. (a Canadian company)	97–1729	04/15/97
United Auto Group, Inc., John A. Staluppi, Amity Auto Plaza Ltd., Massapequa Imports Ltd., Westbur	97–1730	04/15/97
DB Companies, Inc., Dairy Mart Convenience Stores, Inc., Dairy Mart Convenience Stores, Inc.	97–1732	04/15/97
Michael F. Mansfield, John E. Mansfield, Sr., Kangaroo, Inc	97–1734	04/15/97
Frontier Insurance Group, Inc., Mercury Finance Company, Lyndon Property Insurance Company	97–1735	04/15/97
Samuel G. Swope, Republic Industries, Inc., Republic Industries, Inc	97–1738	04/15/97
Republic Industries, Inc., Samuel G. Swope, Courtesy Auto Group, Inc	97–1739	04/15/97
Republic Industries, Inc., Bledsoe Dodge, Inc., Bledsoe Dodge, Inc	97–1740	04/15/97
Brunswick Corporation, Bell Sports Corp., American Recreation Company, Inc	97–1742	04/15/97
Brambles Industries Limited, Morton A. Freedman, David Freedman, Inc	97–1744	04/15/97
Aegis Group plc, Andrew Butcher (''Butcher''), International Communication Group, Inc. (''ICG'')	97–1746	04/15/97
LAM Research Corporation, OnTrak Systems, Inc., OnTrak Systems, Inc	97–1748	04/15/97
Chas. Kurz & Co., Inc, Tosco Corporation, SS Sierra Madre	97–1752	04/15/97
Dimeling, Schreiber and Park, Business Express, Inc., debtor-in-possession, Business Express, Inc	97–1757	04/15/97
Bagel Store Development Funding, L.L.C., Bagel Store Development Funding, L.L.C., Alamo Bagels, L.P.; Liberty Foods, L.L.C.; BCE West	97–1759	04/15/97
Lawrence J. Ellison, Empire of Carolina, Inc., Empire of Carolina, Inc	97–1760	04/15/97
Ameritech Corporation, Eckhart G. Grohmann, Central Control Alarm Corporation	97–1762	04/15/97
Florida Progress Corporation, The Dow Chemical Company, Tiger Bay Limited Partnership	97–1763	04/15/97
SierraPine Limited, Sierra-Pacific Holding Company, Sierra-Pacific Industries	97–1764	04/15/97
Republic Industries, Inc., James G. Bankston, W.O. Bankston Enterprises, Inc	97–1772	04/15/97
James G. Bankston, Republic Industries, Inc., Republic Industries, Inc	97–1773	04/15/97
ConAgra, Inc., Itochu Corporation, a Japanese company, Consolidated Grain & Barge Co	97–1784	04/15/97
ConAgra, Inc., ZEN–NOH, Consolidated Grain & Barge Co	97–1785	04/15/97
WHX Corporation, Dynamics Corporation of America, Dynamics Corporation of America	97–1708	04/16/97
Sterling Commerce, Inc., N.V. Verenigd Bezit VNU, Automated Catalogue Services L.P	97–1771	04/16/97
Superior Services Inc., Browning-Ferris Industries, Inc., Browning-Ferris Industries, Inc.; M&N Disposal, Inc.; H	97–1367	04/18/97
Becton, Dickinson and Company, Difco Laboratories Incorporated, Difco Laboratories Incorporated	97–1602	04/18/97
Republic Industries, Inc., Harold W. Shad, III and Jennie S. Shad, Shad Management Company, Shad General Partner, Inc	97–1648	04/18/97
ALLTEL Corporation, Georgia Telephone Corporation, Georgia Telephone Corporation	97–1741	04/18/97
Ameritech Corporation, Charles M. Kiven, Norman Securities Systems, Inc	97–1758	04/18/97
Peter H. Howard, Engineered Data Products, Inc., Engineered Data Products, Inc	97–1768	04/18/97
Chiquita Brands International, Inc., Owatonna Canning Company, Inc., Owatonna Canning Company, Inc	97–1769	04/18/97
DNL Partners Limited Partnership, Unilever N.V., a Netherlands Company, Conopco, Inc	97–1775	04/18/97
Dr. Prem Reddy, Dr. Nitin Doshi and Dr. Leena Doshi, Alliance Health Care Management Group, Inc	97–1776	04/18/97
General Motors Corporation, Harbourton Holdings, L.P., Harbourton Mortgage & Co., L.P	97–1778	04/18/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041497 AND 042597—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
State Street Boston Corporation, Fleet Financial Group, Inc., Fleet National Bank; Fleet Bank; Fleet Bank-NH; Fleet	97–1780	04/18/97
IDX Systems Corporation, PHAMIS, Inc., PHAMIS, Inc	97–1786	04/18/97
Code, Hennessy & Simmons II, L.P., ALLTEL Corporation, HWC Distribution Corporation	97–1799	04/18/97
St. Jude Medical, Inc., Ventritex, Inc., Ventritex, Inc	97–0243	04/21/97
Valero Energy Corporation, Salomon Inc., Basis Petroleum, Inc	97–1662	04/21/97
Salomon Inc., Valero Energy Corporation, Valero Energy Corporation	97–1663	04/21/97
Tomen Corporation, ZENECA Group PLC, ZENECA Inc. and Zeneca Limited	97–1686	04/21/97
Vestar Equity Partners, L.P., Paul M. Kalmbach, Kalmbach Feed Ingredients, Inc	97–1767	04/21/97
The Thomas B. Crowley Marital Trust, Tosco Corporation, Tosco Corporation	97–1779	04/21/97
Brooks Fiber Properties, Inc., Century Telephone Enterprises, Inc., Metro Access Networks, Inc	97–1790	04/21/97
Century Telephone Enterprises, Inc., Brooks Fiber Properties, Inc., Brooks Fiber Properties, Inc	97–1791	04/21/97
Kvaerner ASA (a Norwegian company), NCL Holding ASA (a Norwegian company), NCL Cruises Ltd	97–1792	04/21/97
NCL Holding ASA (a Norwegian company), Kvaerner ASA (a Norwegian company), Compania Naviera	97–1793	04/21/97
Winterthur Swiss Insurance Company, UniHealth, CareAmerica Compensation Holdings, Inc., CareAmerica	97–1803	04/21/97
Snyder Communications, Inc., American List Company, American List Company	97–1806	04/21/97
Core Laboratories, N.V., Saybolt International B.V., Saybolt International B.V	97–1807	04/21/97
Roger S. Penske, Roger S. Penske, Detroit Diesel Corporation	97–1809	04/21/97
Greater Rochester Health System, Inc., Myers Community Hospital Foundation, Inc., Myers Community Hospital Foundation, Inc	97–1811	04/21/97
Wizards of the Coast, Inc., Lorraine D. Williams, TSR, Inc	97–1814	04/21/97
The Allstate Corporation, Gordon A. Walker, Hollinee Corporation	97–1821	04/21/97
Ingram Industries, Inc., Thomas B. Murphy, Spring Arbor Distribution Company	97–1823	04/21/97
Gaither Family Voting Trust, Sam M. Winston Separate Property Trust, Oliver & Winston, Inc	97–1824	04/21/97
Transhumance Employee Stock Ownership Trust, Alan S. Bressler, Boston Lamb & Veal Co., Inc.	97–1839	04/21/97
Stichting Administratiekantoor van aandelen *(con't), Estate of Cornelius A. Suarez, deceased, Specialty Food Distributors, Inc.; Bud Suarez, Inc.	97–1850	04/21/97
Republic Industries, Inc., Marshall R. Chesrown, Chesrown Chevrolet, Inc., Chesrown Ford, Inc., Southwest	97–1699	04/22/97
Marshall R. Chesrown, Republic Industries, Inc., Republic Industries, Inc.	97–1700	04/22/97
HCC Insurance Holdings, Inc., Jack G. Folmar, Interworld Corporation	97–1794	04/22/97
W. David Sykes, IPL Systems, Inc., IPL Systems, Inc.	97–1812	04/22/97
George Soros, Oscar and Zlata Foundation, Indigo, N.V.	97–1818	04/22/97
Mr. George Fiegl, VEBA AG, MEMC Electronic Materials, Inc.	97–1825	04/22/97
U.S. Office Products Company, Robert P. Dunlop, MTA, Inc.	97–1833	04/22/97
U.S. Office Products Company, Michael J. Rainen, Rainen Business Interiors, Inc.	97–1841	04/22/97
Michael J. Rainen, U.S. Office Products Company, U.S. Office Products Company	97–1842	04/22/97
Aon Corporation, The St. Paul Companies, Inc., Minet Holdings, Inc.	97–1848	04/22/97
NOVA Informations Systems, Inc., Crestar Bank, Crestar Financial Corporation	97–1851	04/22/97
U.S. Office Products Company, Robert M. Fishbein, United Envelope Co., Inc; Rex Envelope Co.	97–1861	04/22/97
U.S. Office Products Company, Richard M. Schlanger, United Envelope Co., Inc.; Rex Envelope Co.	97–1862	04/22/97
Robert M. Fishbein, U.S. Office Products Company, U.S. Office Products Company	97–1863	04/22/97
Richard M. Schlanger, U.S. Office Products Company, U.S. Office Products Company	97–1864	04/22/97
AmeriTruck Distribution Corp., Allways Services, Inc., Trans-Star, Inc.	97–1751	04/23/97
Cortec Group Fund II, L.P., Glenn E. Holtz, Gemeinhardt Company, Incorporated	97–1753	04/23/97
BellSouth Corporation, Telephone and Data Systems, Inc. Voting Trust, United States Cellular Corp.	97–1787	04/23/97
Telephone and Data Systems Inc. Voting Trust, BellSouth Corporation, Westel-Milwaukee Company, Inc.	97–1788	04/23/97
BellSouth Corporation, BellSouth Corporation, Baton Rouge MSA Limited Partnership	97–1789	04/23/97
Apollo Investment Fund III, L.P., Weyerhaeuser Company, Weyerhaeuser Mortgage Company	97–1698	04/24/97
R.P. Scherer Corporation, Oxycal laboratories, Inc., Oxycal Laboratories, Inc	97–1705	04/24/97
Apollo Investment Fund III, L.P., WMC Acquisition Co., WMC Acquisition Co	97–1713	04/24/97
Petroleos de Venezuela, S.A., Unocal Corporation, The UNO-VEN Company	97–1726	04/24/97
Unocal Corporation, Unocal Corporation, The UNO-VEN Company	97–1727	04/24/97
PartnerRe Ltd., Swiss Reinsurance Company, Societe Anonyme Francaise de Reassurances	97–1756	04/24/97
Triarc Companies, Inc., The Quaker Oats Company, Snapple Beverage Corp	97–1781	04/24/97
Windy Hill Pet Food Company LLC, Elizabeth Anna Confer Trust No. 2, Armour Corporation	97–1829	04/24/97
Fortis AG S.A., Fortis AMEV N.V., First Fortis Life Insurance Company	97–1832	04/24/97
Marcus Cable Company, L.P., Harron Communications Corp., Harron Cablevision of Texas, Inc	97–1754	04/25/97
Atlantic Health System, Inc., Healthcare Continuum, Inc., Healthcare Continuum, Inc	97–1830	04/25/97
L'Air Liquide, S.A., Texas Instruments Incorporated, Texas Instruments, Incorporated, Semiconductor Group	97–1831	04/25/97
Jack P. Cook, Jr., Settsu Corporation, Uarco Incorporated	97–1840	04/25/97
CORE Industries, Inc., Dominic Persichini, Air Gage Company	97–1846	04/25/97

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–12579 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 952–3331]

America Online, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the respondent, an Internet service provider, 1), when offering a ''free trial'' with automatic membership enrollment or renewal, to disclose clearly and prominently any obligation to cancel to avoid charges and to provide at least one reasonable means of canceling; 2) to obtain consumers' authorization before debiting their accounts; ad 3) to run a consumer education program about electronic payment systems. The consent agreement also prohibits AOL from misrepresenting either the fees assessed for its services or the terms of electronic transfers from consumer accounts. The complaint accompanying the consent agreement alleges that AOL's ''free trial'' offers resulted in unexpected charges for many consumers, because the offers did not make clear that consumers had an affirmative obligation to cancel before the trial period ended. As a result, consumers who failed to cancel were automatically enrolled as members and began incurring monthly charges. The complaint also alleges that AOL failed to obtain appropriate authorization before making electronic withdrawals from the accounts of consumers and failed to inform consumers that 15 seconds of connect time was added to each online session, resulting in additional undisclosed charges.

DATES: Comments must be received on or before [60 days after **Federal Register** publication date].

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:
David Medine, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3025
Lucy Morris, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3295
Steven Silverman, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–2460

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules and Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for May 1, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from America Online, Inc. (''America Online'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that America Online's advertisements and statements online to consumers violated the Federal Trade Commission Act (''FTC Act''). Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information. *See* 15 U.S.C. §§ 45–58, as amended. The complaint also alleges that America Online's billing practices violated the Electronic Fund Transfer Act (''EFTA'') and its implementing Regulation E. Sections 907(a) of the EFTA and 205.10(b) of Regulation E permit preauthorized electronic transfers from consumer accounts only if such transfers are authorized by consumers in writings that are signed or similarly authenticated. *See* 15 U.S.C. § 1693e(a); 12 CFR § 205.10(b). Sections 907(b) of the EFTA and 205.10(d) of Regulation E require advance written notice to consumers of preauthorized transfers varying in amount from previous preauthorized transfers. *See* 15 U.S.C. § 1693e(b); 12 CFR § 205.10(d).

The complaint alleges that America Online represented that consumers who participate in its free trial offer will not be charged, provided only that they use the ten hours of allotted trial time within thirty days of their initial sign-on and do not exceed ten hours of online use. This representation is false, according to the complaint, because consumers who participate in America Online's free trial offer and use less than ten hours of online time during the thirty days following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. The complaint also alleges that America Online failed to disclose adequately to consumers that, upon completion of ten hours of online use or thirty days from the date of initial sign-on, whichever is earlier, consumers who fail to cancel their trial memberships are automatically enrolled as members of America Online and are charged a monthly membership fee plus applicable hourly fees. These fees continue until the consumers affirmatively cancel their memberships. These practices, according to the complaint, constitute deceptive practices in violation of Section 5 of the FTC Act.

The complaint also alleges that America Online represented that it calculates online connect time at the rate of $2.95 per hour, prorated by one-minute increments, for time spent online beyond the five hours of monthly connect time that it provides to its members (America Online rounds up portions of a minute to the next highest whole minute; thus, an online session lasting 2 minutes and 46 seconds, for example, would be billed as 3 minutes). This representation is false, according to the complaint, because America Online adds 15 seconds of connect time to each online session for connection charges incurred at the beginning and end of the session. When online usage consists of a whole minute plus 46–59 seconds, the additional 15 seconds causes the total connect time to exceed the next whole minute (for example, an online session of 2 minutes and 46 seconds, with the 15 second supplement, totals 3 minutes and 1 second and is billed as 4 minutes). In addition, the complaint alleges that America Online failed to disclose adequately to consumers its practice of adding 15 seconds of connect time to each online session. These practices, according to the complaint, are deceptive in violation of Section 5 of the FTC Act.

The American Online complaint further alleges that the company represented online that it would not debit consumers' checking accounts before it received from them authorized forms permitting it to do so. This representation is false, according to the complaint, because America Online regularly debited consumers' checking accounts before receiving their authorization forms or without ever receiving such forms. The complaint alleges that this practice is false or misleading in violation of Section 5 of the FTC Act.

The complaint also alleges that, because America Online in many instances debited consumers' checking accounts before receiving their authorization forms or without ever receiving such forms, it violated Sections 907(a) of the EFTA and 205.10(b) of Regulation E. In addition, the complaint alleges that America Online often failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers, thereby violating Section 907(b) of the EFTA and 205.10(d) of Regulation E.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent America Online from engaging in similar acts and practices in the future. Specifically, Paragraph I of the proposed order prohibits America Online, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any trial offer of such online service.

Paragraph II of the proposed consent order prohibits America Online, in connection with advertising, promoting, selling, or distributing any online service, from representing that the online service is ''free,'' ''without risk,'' ''without charge,'' ''without further obligation,'' or words of similar effect unless America Online discloses, ''clearly and prominently,'' any obligation to cancel or take other affirmative action to avoid charges for use of the online service.

Paragraph II also contains two provisos that set out the requirements of a ''clear and prominent'' disclosure. First, with respect to covered representation made by America Online in detailed instructional materials distributed to consumers (e.g., starter kits and guidebooks), the disclosure must be in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it. Second, as to representations made through other media, America Online must provide a statement directing consumers to a location where the required disclosure will be available (e.g., ''For conditions and membership details,'' followed by: ''load up trial software'' or ''see registration process'' or words of similar effect). Audio statements shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend them. Video statements shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend them. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Paragraph III prohibits America Online, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the fees or charges assessed for such online service.

Paragraph IV complements Paragraph III and supplements Paragraph II. It provides that America Online, in connection with advertising, promoting, selling, or distributing any online service, shall disclose, ''clearly and prominently,'' during the final registration process, and prior to consumers incurring any financial obligation or liability, the terms of all mandatory financial obligations that will be incurred by consumers as a result of using such online service. Specifically, subparagraph IV.A. requires America Online to disclose the financial terms and conditions of any plan (e.g., trial offer) by which consumers enroll in or renew enrollment in the online service. Moreover, if such plan exists, America Online must disclose, ''clearly and prominently,'' any obligation to cancel or take other affirmative action to avoid charges and provide at least one reasonable means by which consumers may effectively cancel their enrollment. Subparagraph IV.B. requires America Online to disclose any mandatory membership, enrollment, or usage fees (e.g., monthly or hourly usage charges) and, pursuant to subparagraph IV.C., the manner in which such fees or changes are assessed and calculated. America Online may satisfy subparagraph IV.C. by disclosing: (1) that additional charges might apply; (2) that information about assessing and calculating fees or charges can be found online; and (3) the exact location where consumers can find detailed information about assessing and calculating fees or charges.

For purposes of Paragraph IV, a disclosure is ''clearly and prominently'' made if it is of size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. The disclosure shall not be avoidable by consumers.

Paragraph V prohibits America Online, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any electronic fund transfer from a consumer's account.

Paragraph VI requires America Online, in connection with an electronic fund transfer from a consumer account, to obtain authorization for the transfer, as required by Section 907(a) of the EFTA and Section 205.10(b) of Regulation E. In addition, America Online must provide advance notice of electronic fund transfers from consumer accounts that vary in amount from previous transfers, as required by Section 907(b) of the EFTA and Section 205.10(d) of Regulation E.

Paragraphs VII through XI contain provisions generally found in Commission consent orders, including record-keeping requirements, distribution requirements, notice requirements, and a requirement that America Online submit a report setting forth the manner in which it has complied with the consent order.

Paragraph XII requires America Online to implement a consumer education program concerning the use of electronic payment systems. Specifically, subparagraph XII.A. provides that the program may be established jointly with, or under the control of, an appropriate trade association or other consumer education program. Subparagraph XII.B. requires that the program last at least one year from the date of implementation and, pursuant to subparagraph XII.C., the program must be of a scope and employ the means necessary to reach a wide group of consumers. Such means must include: (1) Providing at least 50,000 color brochures directly to consumers and organizations with direct access to consumers likely to use electronic payments systems; (2) providing content on the Internet; (3) referencing such content on America Online's service; and (4) providing a direct link to the Internet from America Online's service. Subparagraph XII.D. requires that the content of the education program includes information about: (1) The various types of electronic payment systems available to consumers; (2) the obligations of consumers, merchants, and financial institutions in using such systems; (3) the methods by which such payment systems are used, including how consumers may attempt to prevent the fraudulent use of those systems; (4) the legal protections available to consumers; and (5) the organizations, including law enforcement agencies, from which consumers may obtain further information or assistance. The consumer education program must be approved by the Commission's Associate Director for Credit Practices.

Finally, Paragraph XIII contains a provision terminating the order, under ordinary circumstances, twenty years from the date of its issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Roscoe B. Starek, III, Concurring in Part and Dissenting in Part in America Online, Inc., File No. 952–3331

Although I have voted to accept for public comment the consent agreement with America Online, Inc. (''AOL''), the extensive consumer education remedy contained in paragraph XII of the proposed order is far too broad. Once again, a majority of the Commission is willing to use a negotiated settlement to compel speech that it would have virtually no chance of persuading a court to require.

The proposed consumer education program is an extremely comprehensive endeavor that no doubt will provide valuable information to consumers of online services about the use of electronic payment systems. Further, it is more closely related to the violations alleged in the complaint than the sunscreen advertising ''consumer education'' remedy in the proposed consent agreement with Schering-Plough Healthcare Products, Inc. accepted for comment two months ago.[1] Nonetheless, as a fencing-in remedy it is too broad to be reasonably related to AOL's alleged law violations.

The complaint alleges that AOL misrepresented and deceptively failed to disclose material information about its billing practices, misrepresented the terms of its checking account debiting program, and violated provisions of the Electronic Fund Transfer Act and its implementing Regulation E pertaining to consumer authorization of electronic payments. As fencing-in relief, the order requires AOL to establish and implement a program lasting at least one year to educate consumers about the use of electronic payment systems.[2] The program must ''be of a scope and employ media reasonably necessary to reach a wide audience of Consumers [of online services], including but not limited to'' 50,000 color brochures, the Internet, and AOL's online service. Proposed order, ¶XII(C) (emphasis added).

The order also requires that the program include, but not be limited to, information about: various types of electronic payment systems available to Consumers; obligations of Consumers, merchants, and Financial Institutions in using such systems; how such payment systems are used, including the means by which Consumers may attempt to prevent the fraudulent use of those systems; various legal protections available to Consumers under each system; and organizations, including law enforcement agencies, from which Consumers may obtain further information or assistance. Proposed order, ¶XII(D) (emphasis added).

Although some form of consumer education program may well be warranted as fencing-in relief, this program goes too far. AOL is not so likely to engage in a whole host of future law violations that it should be required to educate consumers about how to use ''various types of electronic payment systems'' and how to attempt to prevent fraudulent use of those systems. Nor do I think that it is reasonable in scope to require AOL to inform consumers about their own obligations and the obligations of merchants and financial institutions generally in using electronic payment systems. Similarly, requiring AOL to educate consumers about ''various legal protections'' for consumers using electronic payment systems is too broad to be reasonably related to the prevention of future deception like or related to that alleged in the complaint. That the alleged deception here involves the use of electronic payment systems is not enough of a nexus to justify a consumer education program covering all risks, obligations, and law violations involving electronic payment systems. Following that logic, information about driving a car and traffic laws would be reasonably related to a violation of the Commission's Used Car Rule.[3]

Finally, the consumer education provision would require content and dissemination ''not limited to'' what is stated in the order. Although it is not clear how the Commission could enforce content and dissemination requirements not described in the order, it makes little sense to accept language indicating that even the extensive dissemination measures and speech described in the proposed order may not be enough to comply with the basic requirement to establish a program to educate consumers about the use of electronic payment systems.

If this relief were sought in litigation, rather than obtained through a consent agreement, it would not withstand scrutiny under the First Amendment. The information that the order specifically requires AOL to disseminate is far more extensive than necessary to prevent future violations by AOL, and the boundaries of the ''not limited to'' language are unclear. Even if a respondent waives its First Amendment rights in a consent agreement, the Commission—as a government agency acting in the public interest—should not compel speech through negotiation that it has no colorable chance of obtaining in litigation.

[FR Doc. 97–12581 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

[1] See Schering-Plough Healthcare Products, Inc., File No. 942–3341 (separate statements of Commissioner Azcuenaga and Commissioner Starek concurring in part and dissenting in part).

[2] Within 90 days of the order's issuance, AOL must submit, for review and approval by the Associate Director of the Bureau of Consumer Protection's Division of Credit Practices, a draft plan for the program and drafts of any materials to be disseminated. Proposed order, ¶XII.

[3] See Used Motor Vehicle Trade Regulation Rule, 16 CFR Part 455.

FEDERAL TRADE COMMISSION

[File No. 962–3096]

CompuServe, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the respondent, an Internet service provider, when offering a ''free trial'' with automatic membership enrollment or renewal, to disclose clearly and prominently any obligation to cancel to avoid charges, to provide at least one reasonable means of canceling, and to obtain consumers' authorization before debiting their accounts. The complaint

accompanying the consent agreement alleges that CompuServe's ''free trial'' offers resulted in unexpected charges for many consumers, because the offers did not make clear that consumers had an affirmative obligation to cancel before the trial period ended. As a result, consumers who failed to cancel were automatically enrolled as members and began incurring monthly charges. The complaint also alleges that CompuServe failed to obtain appropriate authorization before making electronic withdrawals from the accounts of consumers.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

David Medine, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3025
Lucy Morris, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3295
Steven Silverman, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–2460.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for May 1, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from CompuServe, Inc. (''CompuServe'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that CompuServe's advertisements and statements online to consumers violated the Federal Trade Commission Act (''FTC Act''). Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information. *See* 15 U.S.C. §§ 45–58, as amended. The complaint also alleges that CompuServe's billing practices violated the Electronic Fund Transfer Act (''EFTA'') and its implementing Regulation E. Sections 907(a) of the EFTA and 205.10(b) of Regulation E permit preauthorized electronic transfers from consumer accounts only if such transfers are authorized by consumers in writing that are signed or similarly authenticated. *See* 15 U.S.C. § 1693(a); 12 CFR § 205.10(b). Sections 907(b) of the EFTA and 205.10(d) of Regulation E require advance written notice to consumers of preauthorized transfers varying in amount from previous preauthorized transfers. *See* 15 U.S.C. § 1693e(b); 12 CFR § 205.10(d).

The complaint alleges that CompuServe represented that consumers who participate in its free trial offer will not be charged, provided only that they use the ten hours of allotted trial time within one month of their initial sign-on and do not exceed ten hours of online use. This representation is false, according to the complaint, because consumers who participate in CompuServe's free trial offer and use less than ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. The complaint also alleges that CompuServe failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to cancel are treated as members of CompuServe and are charged a monthly membership fee plus applicable hourly fees. These fees continue until the consumers affirmatively cancel their memberships. These practices, according to the complaint, constitute deceptive practices in violation of Section 5 of the FTC Act.

The complaint also alleges that, because CompuServe has debited consumers' accounts via their debit cards without their authorization, it violated Sections 907(a) of the EFTA and 205.10(b) of Regulation E. In addition, the complaint alleges that CompuServe failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers, thereby violating Sections 907(b) of the EFTA and 205.10(d) of Regulation E.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent CompuServe from engaging in similar acts and practices in the future. Specifically, Paragraph I of the proposed order prohibits CompuServe, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any trial offer of such online service.

Paragraph II of the proposed consent order prohibits CompuServe, in connection with advertising, promoting, selling, or distributing any online service, from representing that the online service is ''free,'' ''without risk,'' ''without charge,'' ''without further obligation,'' or words of similar effect unless CompuServe discloses, ''clearly and prominently,'' any obligation to cancel or take other affirmative action to avoid charges for use of the Online Service.

Paragraph II also contains two provisos that set out the requirements of a ''clear and prominent'' disclosure. First, with respect to a covered representation made by CompuServe in detailed instructional materials distributed to consumers (*e.g.*, starter kits and guidebooks), the disclosure must be in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it. Second, as to representations made through other media, CompuServe must provide a statement directing consumers to a location where the required disclosure will be available (*e.g.*, ''For conditions and membership details,'' followed by: ''load up trial software'' or ''see registration process'' or words of similar effect). Audio statements shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend them. Video statements shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend them. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Paragraph III supplements Paragraph II. It provides that CompuServe, in connection with advertising, promoting, selling, or distributing any online service, shall disclose, ''clearly and prominently,'' during the final registration process, and prior to consumers incurring any financial obligation or liability, the terms of all mandatory financial obligations that will be incurred by consumers as a result of using such online service. Specifically, subparagraph III.A. requires CompuServe to disclose the financial terms and conditions of any plan (*e.g.*, trial offer) by which consumers enroll in or renew enrollment in the online service. Moreover, if such plan exists, CompuServe must disclose, ''clearly and prominently,'' any obligation to cancel or take other affirmative action to avoid charges and provide at least one reasonable means by which consumers may effectively cancel their enrollment. Subparagraph III.B. requires CompuServe to disclose any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges).

For purposes of Paragraph III, a disclosure is ''clearly and prominently'' made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. The disclosure shall not be avoidable by consumers.

Paragraph IV requires CompuServe, in connection with an electronic fund transfer from a consumer account, to obtain authorization for the transfer, as required by Section 907(a) of the EFTA and Section 205.10(b) of Regulation E. In addition, CompuServe must provide advance notice of electronic fund transfers from consumer accounts that vary in amount from previous transfers, as required by Section 907(b) of the EFTA and Section 205.10(d) of Regulation E.

Paragraphs V through IX contain provisions generally found in Commission consent orders, including record-keeping requirements, distribution requirements, notice requirements, and a requirement that CompuServe submit a report setting forth the manner in which it has complied with the consent order.

Finally, Paragraph X contains a provision terminating the order, under ordinary circumstances, twenty years from the date of its issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–12582 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 952–3332]

Prodigy Services Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair method of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the respondent, an Internet service provider, when offering a ''free trial'' with automatic membership enrollment or renewal, to disclose clearly and prominently any obligation to cancel to avoid charges, to provide at least one reasonable means of canceling, and to obtain consumers' authorization before debiting their accounts. The complaint accompaning the consent agreement alleges that Prodigy's ''free trial'' offers resulted in unexpected charges for many consumers, because the offers did not make clear that consumers had an affirmative obligation to cancel before the trial period ended. As a result, consumers who failed to cancel were automatically enrolled as members and began incurring monthly charges. The complaint also alleges that Prodigy failed to obtain appropriate authorization before making electronic withdrawals from the accounts of consumers.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326–3025. Lucy Morris, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., Washington, DC 20580. (202) 326–3295.

Steven Silverman, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326–2460.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for May 1, 1997), on the World Wide Webb, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Prodigy Services Corporation (''Prodigy'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Prodigy's advertisements and statements online to consumers violated the Federal Trade Commission Act (''FTC'' Act). Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information. See 15 U.S.C. §§ 45–58, as amended. The complaint also alleges that

Prodigy's billing practices violated the Electronic Fund Transfer Act (''EFTA'') and its implementing Regulation E. Sections 907(a) of the EFTA and 205.10(b) of Regulation E permit preauthorized electronic transfers from consumer accounts only if such transfers are authorized by consumers in writing that are signed or similarly authenticated. See 15 U.S.C. § 1693e(b); 12 C.F.R § 205.10(d).

The complaint alleges that Prodigy represented that consumers who participate in its free trial offer will not be charged, provided only that they use the ten hours of allotted trial time within one month of their initial sign-on and do not exceed ten hours of online use. This representation is false, according to the complaint, because consumers who participate in Prodigy's free trial offer and use less than ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. The complaint also alleges that Prodigy failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to cancel are treated as members of Prodigy and are charged a monthly membership fee plus applicable usage fees. These fees continue until the consumers affirmatively cancel their memberships. These practices, according to the complaint constitute deceptive practices in violation of Section 5 of the FTC Act.

The complaint also alleges that, because Prodigy has debited consumers' accounts via their debit cards without their authorization, it violated Sections 907(a) of the EFTA and 205.10(b) of Regulation E. In addition, the complaint alleges that Prodigy failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers, thereby violating Sections 907(b) of the EFTA and 205.10(d) of Regulation E.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Prodigy from engaging in similar acts and practices in the future. Specifically, Paragraph I of the proposed order prohibits Prodigy, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any trial offer of such online service.

Paragraph II of the proposed consent order prohibits Prodigy, in connection with advertising, promoting, selling, or distributing any online service, from representing that the online service is ''free,'' ''without risk,'' ''without charge,'' ''without further obligation,'' or words of similar effect unless Prodigy discloses, ''clearly and prominently,'' any obligation to cancel or take other affirmative action to avoid charges for use of the Online Service.

Paragraph II also contains two provisos that set out the requirements of a ''clear and prominent'' disclosure. First, with respect to a covered representation made by Prodigy in detailed instructional materials distributed to consumers (*e.g.*, starter kits and guidebooks), the disclosure must be in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it. Second, as to representations made though other media, Prodigy must provide a statement directing consumers to a location where the required disclosure will be available (*e.g.*, ''For conditions and membership details,'' followed by: ''load up trial software'' or ''see registration process'' or words of similar effect). Audio statements shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend them. Video statements shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend them. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Paragraph III supplements Paragraph II. It provides that Prodigy, in connection with advertising, promoting, selling, or distributing any online service, shall disclose, ''clearly and prominently,'' during the final registration process, and prior to consumers incurring any financial obligation or liability, the terms of all mandatory financial obligations that will be incurred by consumers as a result of using such online service. Specifically, subparagraph III.A. requires Prodigy to disclose the financial terms and conditions of any plan (*e.g.*, trial offer) by which consumers enroll in or renew enrollment in the online service. Moreover, if such plan exists, Prodigy must disclose, ''clearly and prominently,'' any obligation to cancel or take other affirmative action to avoid charges and provide at least one reasonable means by which consumers may effectively cancel their enrollment. Subparagraph III.B. requires Prodigy to disclose any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges).

For purposes of Paragraph III, a disclosure is ''clearly and prominently'' made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. The disclosure shall not be avoidable by consumers.

Paragraph IV requires Prodigy, in connection with an electronic fund transfer from a consumer account, to obtain authorization for the transfer, as required by Section 907(a) of the EFTA and Section 205.10(b) of Regulation E. In addition, Prodigy must provide advance notice of electronic fund transfers from consumer accounts that vary in amount from previous transfers, as required by Section 907(b) of the EFTA and Section 205.10(d) of Regulation E.

Paragraphs V through IX contain provisions generally found in Commission consent orders, including record-keeping requirements, distribution requirements, notice requirements, and a requirement that Prodigy submit a report setting forth the manner in which it has complied with the consent order.

Finally, Paragraph X contains a provision terminating the order, under ordinary circumstances, twenty years from the date of its issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–12580 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Correction of Notice of Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Correction.

SUMMARY: A Notice beginning on page 22950 in the issue of April 28, 1997, entitled ''Findings of Scientific Misconduct'' is hereby revised to correct the name of the University's organizational unit referenced in the original printing:

Weidong Sun, M.D., Ph.D., was a graduate student in the Department of Anatomy and Neurosciences (not the Department of Physiology), Medical College of Pennsylvania and Hahnemann University, at the time of misconduct.

FOR FURTHER INFORMATION CONTACT:

Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301)– 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–12622 Filed 5–13–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 801]

Cooperative Agreements to Conduct Research and Education Programs on Lyme Disease in the United States

Introduction

The Centers for Disease Control and Prevention (CDC) announces the expected availability of FY 1998 funds for a cooperative agreement program to conduct research on Lyme disease and illnesses caused by other related *Borrelia* species. Topics include: disease surveillance and epidemiologic studies, ecologic studies, and the development, implementation, and evaluation of prevention/control strategies. In addition, funds are available for the development of educational programs. This program's overall objective is to lower the incidence of Lyme disease in hyperendemic states to 5 per 100,000 population or less by the year 2000.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of ''Healthy People 2000,'' see the Section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under Sections 301 and 317(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 241 and 247b(k)(2)).

Smoke-Free Workplace

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

Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies within the United States. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority and/or women-owned, nonprofit businesses are eligible to apply as the principal investigating entities. These United States entities may propose collaborative arrangements with investigators outside the United States, provided the proposal has a direct impact on United States public health.

Participation in proposed activities by scientists, health professionals and educators with expertise and experience in Lyme disease and its associated epidemiologic, environmental and entomological aspects is desirable. In addition, combined program activities involving State and local health departments, universities, colleges, and private nonprofit organizations are encouraged.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Availability of Funds

CDC projects approximately $1,700,000 of the President's budget will be available for FY 1998 for cooperative agreements to conduct research and education programs on Lyme disease in the United States. However, this announcement is made prior to the actual appropriation of fiscal year 1998 funds to allow new and competing continuation applicants sufficient time to prepare applications, and to enable timely award of the cooperative agreements. Approximately 10 to 15 new and competing continuation awards will be made with a median award of $150,000 ranging from $50,000 to $250,000. It is expected that the awards will begin on or about February 15, 1998. Awards will be funded for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and the availability of funds.

Applicants may apply for and receive support for activities under one or more of the three activity areas (A.1., A.2., and/or A.3.) listed in the Recipient Activities section. Approximately 35% of the available funds will be allocated to develop improved disease surveillance and conduct epidemiologic studies; approximately 40% of the available funds will be allocated to conduct ecologic studies and develop and implement strategies for prevention and control; and, approximately 25% of the available funds will be allocated to educate the public and health professionals on the primary and secondary prevention of Lyme disease. Applications may be submitted for any or all of the activities described above (any one or combination of the three subjects areas). Each category will be scored separately.

Recipient Financial Participation

There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. These funds should not supplant existing expenditures in this disease area.

Background

Lyme disease is one of the most important emerging infectious diseases in the United States, accounting for more than 90% of all reported vector-borne illness. The numbers of reported cases have increased steadily, resulting in a thirty-fold rise between 1982 and 1996. More than 16,000 cases were reported by 44 States to the CDC in 1996.

Lyme borreliosis is a potentially serious and debilitating infection that may lead to subacute and chronic disease of the joints, the peripheral and central nervous system, the heart, and the skin. Questions have been raised about microbial persistence and chronic Lyme disease. Although transplacental transmission has been reported, epidemiologic studies have not shown an association between Lyme disease and adverse outcomes of pregnancy.

Lyme disease cases have been reported nationwide; however, the disease is concentrated in three regions: the northeast and mid-Atlantic, the north central, and the Pacific coastal regions. Distribution of cases is principally related to the density of infected tick vectors. *Ixodes scapularis* is the principal vector throughout the northeastern, mid-Atlantic, and north central States, and is the cause of significant peridomestic transmission. *Ixodes pacificus* transmits the disease in Pacific coastal areas. *Ixodes spinipalpis* maintains an enzootic cycle in Colorado and California. The role of the putative vectors in southern regions of the United States, *Ixodes scapularis* and *Amblyomma americanum*, is not clear.

CDC has maintained a system of national surveillance for Lyme disease since 1982. This system depends upon reporting of cases by State health departments to CDC. It provides basic descriptive epidemiologic information, defines trends in established endemic areas, and monitors the emergence of the disease in new areas. The usefulness of these surveillance data is limited by the application among States of different surveillance methods—some active, some passive. In addition, there is considerable lack of detection, under-reporting, and misclassification of cases. The national surveillance system has not provided reliable estimates of the total disease burden, but has given a rough index for monitoring trends of incidences. The emergence of the disease in new areas has been linked with geographic spread and increased density of infected tick vectors, although the dynamics of emergence are poorly understood.

There exists a great need to improve surveillance of human cases, to identify and characterize the cycle of transmission among animal reservoirs and arthropod vectors, to better define the geographic distribution and ecologic determinants of these cycles throughout the United States, and to quantify the risk of transmission to persons under various circumstances of exposure. Epidemiologic and behavioral studies are needed to better define risk factors for human infection so that more effective strategies for prevention and control of disease can be devised and implemented.

Research is needed on primary strategies involving community participation in integrated pest management (suppression of tick vectors, environmental modification, and vertebrate host management), personal protection measures to reduce human contact with infected ticks, the targeting, cost-benefits, and impact of anticipated vaccines, and other specific prevention methods.

Education of the public and health care professionals is a principal goal leading to primary prevention, and to secondary prevention through early detection, diagnosis, and appropriate treatment of infected persons. The effectiveness of education in preventing infection under various circumstances of exposure, such as periresidential, recreational, and occupational, needs to be evaluated or adequately described in terms of health behavior.

Purpose

The purposes of these cooperative agreements are to: (1) Provide assistance in determining the incidence and trends of Lyme disease in various geographic regions of the United States, (2) measure the public health impact of early and late stages of Lyme disease, (3) assess risk factors associated with the transmission of the disease, including behavioral and environmental factors, (4) determine the distribution and density of vector tick species, determine *B. burgdorferi* infection rates of these vectors, and characterize the ecologic factors which result in high infection rates in tick and vertebrate host populations, (5) develop, implement, and evaluate more effective prevention and control strategies using a community intervention approach, and (6) educate health professionals and the public on prevention through personal protection and environmental interventions, and on the need for early and accurate diagnosis, and appropriate treatment.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting selected activities under A.1., A.2., and/or A.3. below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Disease Surveillance and Epidemiologic Studies (Conduct One or More of the Following):

a. Implement, maintain, and evaluate an active Lyme disease surveillance system based on the 1990 (or subsequent) national case definition adopted by the Council of State and Territorial Epidemiologists (CSTE). Determine the utility of laboratory-based surveillance using standardized serologic tests for Lyme disease.

b. Conduct epidemiologic studies, utilizing descriptive, correlative, analytical and seroepidemiologic methods to better understand the epidemiology of the disease and to elucidate risk factors for infection and disease in specific geographic foci.

c. Carry out studies to measure the public health burden of Lyme disease and to determine the efficacy of various intervention strategies for primary and secondary prevention.

d. Conduct studies to identify human populations at high risk of infection and disease, including risks from periresidential, occupational, and recreational exposures, and design studies to measure the costs and benefits of various intervention strategies, including behavior modification, integrated pest management, and vaccine use.

e. Conduct studies to identify and describe the emergence of Lyme disease in previously nonendemic regions.

2. Conduct Ecologic Studies, Develop and Evaluate Prevention/Control Strategies (Conduct One or More of the Following):

a. Initiate ecologic studies that will contribute information for development of a nationwide map of Lyme disease risk based on ecologic, entomologic, and epidemiologic data. Risk factors to be evaluated may include distribution of vector ticks, density of vector ticks, infection rate of vector ticks, efficiency of transmission of Lyme disease spirochetes, reservoir competence of vertebrate hosts of *B. burgdorferi*, density distribution of principal tick maintenance hosts, and contact between infected ticks and humans.

b. Design, implement, and evaluate an Integrated Pest Management (IPM) program that can be used to reduce Lyme disease in residential and/or recreational settings. The proposed methods may include community participation, acaricides in an area-wide or host-targeted applications, alternative acaricides, habitat modification, host management, or biological control. Emphasis should be placed on adapting the use of an IPM program to communities or large scale recreational areas.

c. Evaluate in tick and animal models whether commercial Lyme disease vaccine preparations protect against various strains of *B. burgdorferi* and closely related *Borrelia* species found in common anthropophilic ticks in the United States. Develop anti-tick vaccines that interrupt transmission of *Ixodes scapularis*-borne pathogens.

d. Culture and characterize the newly described spirochete *B. lonestari* found in *Amblyomma americanum* ticks. Determine whether this spirochete infects and causes disease in vertebrates, including humans.

3. Develop and Disseminate Prevention and Control Information on Lyme Disease (Conduct One or More of the Following):

a. Provide information for health care providers and the public on the distribution of Lyme disease in the geographic area being served by the applicant. Update these data annually, showing trends of incidence and other descriptive epidemiologic characteristics of the disease in tabular and map formats.

b. Devise new and innovative methods for disseminating currently developed educational materials to health care providers and the general public on measures to prevent Lyme disease and on the early and appropriate diagnosis and management of Lyme disease.

c. Develop informational materials for specific geographical areas on the ecology, environmental and behavioral risk factors, and prevention of Lyme disease.

d. Develop and publish information outlining practical methods to reduce vector tick densities, based on research in residential areas of high Lyme disease transmission.

e. Devise new and innovative methods to educate physicians, nurses, physician assistants, and other front line health care providers about Lyme disease, especially those that serve populations at high risk because of periresidential, occupational or recreational exposures.

f. Devise new and innovative health communication methods to increase awareness and knowledge of the general public about prevention and control of Lyme disease.

B. CDC Activities

1. Provide technical assistance in the design and conduct of research.
2. Assist in performing selected laboratory tests, as appropriate, depending on the needs of the recipient.
3. Assist in the coordination of research activities among different recipient sites.
4. Assist in the analysis of research data.
5. Assist in reviewing educational materials for medical and scientific accuracy.

Technical Reporting Requirements

Semiannual progress reports are required and must be submitted no later than 30 days after each semiannual reporting period. The semiannual progress reports must include the following for each program, function, or activity involved: (1) A comparison of actual accomplishments to the goal established for the period; (2) the reasons for failure, if established goals were not met; and (3) other pertinent information including, when appropriate, analysis and explanation of performance costs significantly higher than expected. The final progress report is required no later than 90 days after the end of the project period. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement will be submitted with the progress reports.

An annual Financial Status Report (FSR) is required no later than 90 days after the end of each budget period.

An original and two copies of all reports should be submitted to the Grants Management Branch, CDC.

Application Content

Applicants may apply for assistance for projects in one or more of the subject areas as described in the Recipient Activities section. If the applicant is applying under more than one subject area, a separate narrative, budget, and budget justification must be submitted for each subject area. Each application should consist of the following:

1. The abstract should summarize the background, needs, goals, objective and methods of the proposal on one page.
2. The program narrative should include the following sections: background, objectives, methods, plan of operation, and plan of evaluation. List and briefly describe specific, measurable, realistic, and time-phased objectives.
3. A budget justification is required for all budget items and must be submitted with Standard Form 424A, ‘‘Budget Information,’’ as part of PHS 5161–1 (Revised 7/92). The budget should include the total funds requested for the project, with separate budgets and justifications for each recipient activity/component, i.e., surveillance and epidemiological studies; ecologic studies and prevention and control activities; and education (development and dissemination of disease information). For applicants requesting funding for subcontracts, include the name of the person or organization to receive the subcontract, the method of selection, the period of performance, and a description of the subcontracted service requested.
4. If the proposed project involves human subjects, whether or not exempt from Department of Health and Human Services (DHHS) regulations, describe in the narrative adequate procedures for the protection of human subjects.
5. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects by including a description of the composition of the proposed study population (for example, addressing the inclusion of women and members of minority groups and their sub-populations in the section that will describe the research design). The applicant will provide an explanation when the investigator cannot control the race, ethnicity and/or sex of the subjects. See Other Requirements for additional information.

When applicable, letters of support must be included in an appendix if applicants anticipate the participation of other organizations or political subdivisions in conducting proposed activities. Specific roles and responsibilities must be delineated.

Notice of Intent To Apply

In order to assist CDC in planning for and executing the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so no later than June 13, 1997. Notification should include: (1) Name and address of institution, (2) name, address and telephone number of contact person, and (3) which recipient activity(ies) application will be submitted under. Notification may be provided by facsimile or postal mail to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305, facsimile (404) 842–6513.

Required Format for Applications

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application MUST be in the following format.

1. The original and two copies must be UNSTAPLED and UNBOUND.
2. ALL pages must be clearly numbered, and a complete index to the application and its appendices must be included.
3. Begin each separate section on a new page.
4. All materials must be typewritten, single-spaced, using a font no smaller than a size 10, and typed ONLY on 8½″ by 11″ paper.
5. Any reprints, brochures, or other enclosures must be copied onto 8½″ by 11″ paper by the applicant.
6. All pages must be printed on ONE side only, with at least 1″ margins, headers, and footers.
7. The application narrative for each recipient activity subject area (of the three subject areas) must be *limited to 10 pages,* excluding abstract, budget, and appendices.
8. Materials that are part of the basic plan must not be placed in the appendices.
9. If the applicant is applying for assistance for *more than one* of the three

focus areas/components, *a separate narrative and budget* must be submitted for each focus area/component.

Evaluation Criteria

Evaluation Criteria for Proposals for Activity A.1., Disease Surveillance and Epidemiological Studies; Activity A.2., Ecologic Studies and Prevention/Control Strategies

Applications will be reviewed and evaluated according to the following criteria: (Total 100 points).

1. The applicant's understanding of the purpose of the proposed activity and the feasibility of accomplishing the outcomes desired. (5 points)

2. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and technical expertise to conduct the work proposed and has access to stated target populations or other study objects. (10 points)

3. The degree to which the proposed objectives are consistent with the purpose as defined in the ''Purpose'' section of this application and are specific, measurable, and time-phased. (5 points)

4. The degree to which the research plans will enable the applicant to achieve the stated objectives. The plans should specify the who, what, where, how, and timing for the start and completion of each activity. (25 points)

5. The quality of the research methods and instruments to be used. (If the proposal involves human subjects, the degree to which the applicant has met CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research will be evaluated. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.) (25 points)

6. The quality of the proposed methods for evaluating the project. (5 points)

7. The extent to which qualifications (including expertise and experience in relevant work) of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities demonstrate the ability to successfully conduct the proposed work. (10 points)

8. The degree to which the proposal addresses one or more of the priority funding areas:

a. Surveillance and epidemiological studies that target geographic areas of high endemicity/enzooticity and human populations at high risk, and populations in circumstances of emerging risk (5 points);

b. The development, implementation, and evaluation of community-based strategies of primary prevention and control, including methods for vector suppression and personal protection (5 points);

c. Studies that measure the public health impact of Lyme disease, or that estimate the costs and benefits of various strategies of prevention and control, including vaccination (5 points).

9. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. (not scored)

Evaluation Criteria for Proposals for Activity A.3., Development and Dissemination of Disease Information/ Education

Applications will be reviewed and evaluated according to the following criteria: (Total 100 points)

1. The applicant's understanding of the purpose of the proposed educational intervention/activity and the feasibility of accomplishing the outcomes desired. (10 points)

2. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and technical expertise to research, design, develop, and disseminate the proposed educational materials, and to access appropriate target populations. (15 points)

3. The degree to which the proposed objectives are consistent with the defined purpose as defined in the ''Purpose'' section of this application and are specific, measurable, and time-phased. (10 points)

4. The degree to which the educational research, design, development, and dissemination plans demonstrate the ability of the applicant to achieve the stated objectives. The plan will specify the who, what, where, how, and timing for the start and completion of each activity. (20 points)

5. The quality of the educational research, design, development, and dissemination methods and instruments to be used. (If the proposal involves human subjects, the following will be evaluated: the degree to which the applicant has met CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (20 points)

6. The soundness of the proposed methods for measuring changes in behavior and prevention effectiveness of the educational activity/intervention, including the pre-and post-testing of a representative sample of the intended target population. (15 points)

7. The extent to which qualifications (including training and experience in work with Lyme disease) of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities are described. (10 points)

8. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. (not scored)

Funding Priorities

Priority will be given to applications in the areas of surveillance and epidemiologic studies that target geographic areas of high endemicity/ enzooticity and human populations at high risk; to applications that relate to studies of community-based strategies of primary prevention and control, including methods for vector suppression and personal protection; and to applications which focus on education of health care providers and on the evaluation of education effectiveness.

Interested persons are invited to comment on the proposed funding priorities. All comments received on or before June 26, 1997, will be considered before the final funding priorities are established. If any funding priority should change as a result of any comments received, a revised Announcement will be published in the **Federal Register** and revised applications will be accepted prior to the final receipt of applications.

Written comments should be addressed to: Sharron Orum, Grants Management Officer, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305. All comments should reference the Program Announcement Number 801.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.942.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreements will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided which demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its Tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals to Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in CDC-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants will ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947-47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application form PHS 5161–1 (Revised 7–92, OMB number 0937–0189) must be submitted to Sharron Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305, on or before August 1, 1997.

1. *Deadline:* Applications will be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing).

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number. Please refer to Announcement #801. You will receive a complete program description, information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6801. Programmatic technical assistance may be obtained from David Dennis, M.D. or Duane Gubler, Sc.D., Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Fort Collins, CO 80522, telephone (970) 221–6400. You may also obtain this announcement from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov). Other CDC Announcements are also listed on the Internet on the CDC homepage.

Please refer to Announcement Number 801 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 512–1800.

Dated: May 8, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–12607 Filed 5–13–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 800]

Cooperative Agreements To Conduct Research on the Diagnosis and Pathogenesis of Lyme Disease in the United States

Introduction

The Centers for Disease Control and Prevention (CDC) announces the expected availability of Fiscal Year (FY) 1998 funds for a cooperative agreement program to conduct research on Lyme disease and illnesses caused by other related *Borrelia* species. This program's objective is to achieve improved and standardized tools to accurately identify and characterize *B. burgdorferi* infection in humans, including test of cure, and to better understand the natural history of infection and disease caused by *B. burgdorferi* and related *Borrelia* species. These achievements should assist in the development of more effective Lyme disease surveillance, prevention, and control. Topics include: development and evaluation of new and improved diagnostic tests; and studies on the pathogenesis of infection with *Borrelia burgdorferi* and other related *Borrelia* species, including the development of animal models of infection and disease.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of ''Healthy People 2000,'' see the Section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under Sections 301 and 317(k)(2) of the Public Health Service Act, as amended (42 U.S.C 241 and 247b(k)(2)).

Smoke-Free Workplace

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

Eligible Applicants

Applications may be submitted by public and private, nonprofit organizations, and governments and their agencies within the United States. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority and/or women-owned, nonprofit businesses are eligible to apply as the principal investigating entities. These United States entities may propose collaborative arrangements with investigators outside the United States, provided the proposal has a direct impact on United States public health.

Participation in proposed activities by scientists and health professionals with expertise and experience in Lyme disease and its associated microbiologic, immunologic and pathologic aspects are desirable. In addition, combined program activities involving State and local health departments, universities, colleges, and private nonprofit organizations are encouraged.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

CDC anticipates that approximately $1 million of the President's budget will be available for FY 1998 cooperative agreements to conduct research on the diagnosis and pathogenesis of Lyme disease in the United States. However, this announcement is made prior to the appropriation of fiscal year 1998 funds to allow new and competing continuation applicants sufficient time to prepare applications, and to enable timely award of the cooperative agreements. On the basis of the President's budget, it is anticipated that approximately $1 million will be available in FY 1998 to fund approximately five new and competing continuation awards. It is expected that the median award will be $200,000, ranging from $50,000 to $300,000. It is expected that the awards will begin on or about February 15, 1998. Awards will be funded for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and the availability of funds. Funds are allocated to develop and standardize more specific and sensitive diagnostic tests and to study the pathogenesis of infection, including aspects related to the natural history of disease and its immunoprotection.

Recipient Financial Participation

There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. These funds should not supplant existing expenditures in this disease area.

Background

Lyme disease is one of the most important emerging infectious diseases in the United States, accounting for more than 90% of all reported vector-borne illness. The numbers of reported cases have increased steadily, resulting in a thirty-fold rise between 1982 and 1996. More than 16,000 cases were reported by 44 States to the CDC in 1996.

Lyme borreliosis is a potentially serious and debilitating infection that may lead to subacute and chronic disease of the joints, the peripheral and central nervous system, the heart, and the skin. Questions have been raised about microbial persistence and chronic Lyme disease. Although transplacental transmission has been reported, epidemiologic studies have not shown an association between Lyme disease and adverse outcomes of pregnancy.

Lyme disease cases have been reported nationwide; however, the disease is concentrated in three regions: the northeast and mid-Atlantic, the north central, and the Pacific coastal regions. Distribution of cases is principally related to the density of infected tick vectors. *Ixodes scapularis* is the principal vector throughout the northeastern, mid-Atlantic, and north central States, and is the cause of significant peridomestic transmission. *Ixodes pacificus* transmits the disease in Pacific coastal areas. *Ixodes spinipalpis* maintains an enzootic cycle in Colorado and California. The role of the putative vectors in southern regions of the United States, *Ixodes scapularis* and *Amblyomma americanum*, is not clear.

Standardized, more specific and sensitive tests that are rapid and easy to perform are needed for the laboratory diagnosis of Lyme disease. The priority need is for improved test methods to detect antibodies to *B. burgdorferi* antigens in serum and cerebrospinal fluid. There is also a need to develop improved and standardized alternative test methods, such as antigen capture and polymerase chain reaction.

Purpose

The purposes of these cooperative agreements are to: (1) Develop, validate, and standardize diagnostic tests that are more sensitive and specific than those currently available, and (2) better characterize the etiologic agents, the host-parasite relationships, and the pathogenesis of infection, including the development of immunity to infection.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting selected activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

Develop Improved and Standardized Diagnostic Tests, and/or Conduct Studies on the Pathogenesis of Lyme Disease. (Conduct One or More of the Following):

1. Develop more specific and sensitive serologic tests for detection of exposure to *B. burgdorferi* and other closely related *Borrelia* species.
2. Evaluate and standardize the performance of new testing methods, including serologic, polymerase chain reaction or antigen detection methods, which may include field testing.
3. Collect serum and other fluids and tissues to be used in test development from clinically well-characterized patients with objective manifestations of early localized, early disseminated, and late stage Lyme disease (including chronic, refractory disease), and from persons with conditions within the differential diagnosis of Lyme disease. Specimens from patients with bacteriologically confirmed infection are preferred in cases of early Lyme disease.
4. Develop and use animal models of infection and disease to demonstrate the pathogenesis of infection with *B. burgdorferi* and related *Borrelia* species and the natural history of the diseases caused by these agents, and to evaluate approaches to improved diagnosis, immunoprotection and/or treatment of Lyme disease.

B. CDC Activities

1. Provide technical assistance in the design and conduct of research.
2. Assist in performing selected laboratory tests, as appropriate, depending on the needs of the recipient.
3. Assist in the coordination of research activities among different recipient sites.
4. Assist in the analysis of research data.

Technical Reporting Requirements

Semiannual progress reports are required and must be submitted no later than 30 days after each semiannual reporting period. The semiannual progress reports must include the following for each program, function, or activity involved: (1) A comparison of actual accomplishments to the goal established for the period; (2) the reasons for failure, if established goals were not met; and (3) other pertinent information including, when appropriate, analysis and explanation of performance costs significantly higher than expected. The final progress report is required no later than 90 days after the end of the project period. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement will be submitted with the progress reports.

An annual Financial Status Report (FSR) is required no later than 90 days after the end of each budget period. An original and two copies of all reports should be submitted to the Grants Management Branch, CDC.

Application Content

The application should consist of the following:

1. The abstract should summarize the background, needs, goals, objectives and methods of the proposal on one page.
2. The program narrative should include the following sections: background, objectives, methods, plan of operation, and plan of evaluation. List and briefly describe specific, measurable, realistic, and time-phased objectives.
3. A budget justification is required for all budget items and must be submitted with Standard Form 424A, ‘‘Budget Information,’’ as part of PHS 5161–1 (Revised 7/92). The budget should include the total funds requested for the project. For applicants requesting funding for subcontracts, include the name of the person or organization to receive the subcontract, the method of selection, the period of performance, and a description of the subcontracted service requested.
4. If the proposed project involves human subjects, whether or not exempt from Department of Health and Human Services (DHHS) regulations, describe in the narrative adequate procedures for the protection of human subjects.
5. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects by including a description of the composition of the proposed study population (for example, addressing the inclusion of women and members of minority groups and their sub-populations in the section that will describe the research design). The applicant will provide an explanation when the investigator cannot control the race, ethnicity and/or sex of the subjects. See Other Requirements for additional information.

When applicable, letters of support must be included in an appendix if applicants anticipate the participation of other organizations or political subdivisions in conducting proposed activities. Specific roles and responsibilities must be delineated.

Notice of Intent To Apply

In order to assist CDC in planning for and executing the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so no later than June 13, 1997. Notification should include: (1) Name and address of institution; (2) name, address and telephone number of contact person; and (3) which programmatic focus area application will be submitted under. Notification may be provided by facsimile or postal mail to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305, facsimile (404) 842–6513.

Required Format for Applications

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application MUST be in the following format.

1. The original and two copies must be UNSTAPLED and UNBOUND.
2. ALL pages must be clearly numbered, and a complete index to the application and its appendices must be included.
3. Begin each separate section (background, objectives, methods, plan of operation, and plan of evaluation) on a new page.
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5. Any reprints, brochures, or other enclosures must be copied onto 8½’’ by 11’’ paper by the applicant.
6. All pages must be printed on ONE side only, with at least 1’’ margins, headers, and footers.

7. The application narrative must be *limited to 10 pages,* excluding abstract, budget, and appendices.

8. Materials that are part of the basic plan must not be placed in the appendices.

Applications which do not conform to these instructions will not be accepted.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (Total 100 points):

1. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and technical expertise to conduct the work proposed and has access to stated target populations or other study objects. (10 points)

2. The degree to which the proposed objectives are consistent with the purpose as defined in the ''Purpose'' section of this application and are specific, measurable, and time-phased. (20 points)

3. The degree to which the research plans will enable the applicant to achieve the stated objectives. The plans should specify the who, what, where, how, and timing for the start and completion of each activity. (30 points)

4. The quality of the research methods and instruments to be used. (If the proposal involves human subjects, the degree to which the applicant has met CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research will be evaluated. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.) (20 points)

5. The quality of the proposed methods for evaluating the project.(10 points)

6. The extent to which qualifications (including expertise and experience in relevant work) of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities demonstrate the ability to successfully conduct the proposed work. (10 points)

7. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. (not scored)

Funding Priorities

Priority will be given to applications which focus on the development, validation, and standardization of new and improved diagnostic tests; and to conduct research on the pathogenesis of disease, especially as related to the use of animal models to better understand the natural history of infection and disease in humans.

Interested persons are invited to comment on the proposed funding priorities. All comments received on or before June 12, 1997, will be considered before the final funding priorities are established. If any funding priority should change as a result of any comments received, a revised Announcement will be published in the **Federal Register** and revised applications will be accepted prior to the final receipt of applications.

Written comments should be addressed to: Sharron Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305.

All comments should reference the Program Announcement Number 800.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.942.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its Tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

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Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants will ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947-47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application form PHS 5161–1 (Revised 7–92, OMB number 0937–0189) must be submitted to Sharron Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305, on or before July 28, 1997.

1. *Deadline:* Applications will be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing).

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number. Please refer to Announcement #800. You will receive a complete program description, information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6801. Programmatic technical assistance may be obtained from David Dennis, M.D. or Duane Gubler, Sc.D., Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Fort Collins, CO 80522, telephone (970) 221–6400. You may also obtain this announcement from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or the Government Printing Office homepage (including free on-line access to the Federal Register at http://www.access.gpo.gov). Other CDC Announcements are also listed on the Internet on the CDC homepage.

Please refer to Announcement Number 800 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017-001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 8, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–12606 Filed 5–13–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; 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: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., June 10, 1997; 8 a.m.–5 p.m., June 11, 1997.

Place: Embassy Suites Hotel, Meeting Room, 1900 Diagonal Road, Alexandria, Virginia, 22314.

Status: The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Purpose: The Safety and Occupational Health Study Section will review, discuss and evaluate grant applications in response to NIOSH's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation of the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will enable the philosophy of NIOSH as articulated in the Institute's vision statement: Delivering on the Nation's Promise: Safety and Health at Work for All People . . . Through Research and Prevention. Research funded will examine and evaluate current and emerging problems in occupational safety and health in a variety of settings for health and injured workers.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: May 7, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–12610 Filed 5–13–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Collection; Common Request

Proposed Project(s):

Title: ACF Uniform Discretionary Grant Application Form.

OMB No.: 0970–0139.

Description: ACF has more than forty discretionary grant programs. The proposed information collection form would be a uniform discretionary application form usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the Program Narrative requesting the applicant to describe how these objectives will be reached; and certifications. Guidance for the content of information requested in the Program Narrative is found in OMB Circulars A–102 and A–110.

Respondents: Applicants for ACF Discretionary Grant Programs.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application Form	4,127	1	4	16,688
Estimated Total Annual Burden Hours: 16,688.				

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by FAX to (202) 260–3305 or by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title of the information collection.

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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 7, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–12617 Filed 5–13–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS–97–06]

Availability of Financial Assistance To Expand Head Start Enrollment

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of financial assistance to expand Head Start enrollment.

SUMMARY: The Head Start Bureau of the Administration on Children, Youth and Families announces that competing applications will be accepted to establish new Head Start services in geographical areas not currently served by Head Start grantees. Applications are also being accepted to serve Federally-recognized Indian Reservations not currently served by Head Start, and areas where Head Start services are not available for children of migrant farmworkers. In addition, applications are being accepted to establish new grantees to serve additional children in underserved areas in the five boroughs of New York City. It is expected that a total of approximately $13,650,000 will be awarded to support these programs.

DATES: The closing date for receipt of applications is June 13, 1997.

ADDRESSES: Address applications to: Head Start: Unserved Areas, ACYF Operations Center, 3030 Clarendon Blvd.—Suite 240, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: For applications under Category 1 and 4—The ACF Regional Office which is responsible for the Head Start programs in your State. Regional Office telephone numbers are listed in Appendix A.

For applications under Category 2—Helen Scheirbeck, Chief, American Indian Programs Branch, Program Operations Division, Head Start Bureau; (202) 205–8437.

For applications under Category 3—Maria Candamil, Chief, Migrant Programs Branch, Program Operations Division, Head Start Bureau; (202) 205–8455.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves more than 750,000 children through a network of 1440 grantees and more than 700 delegate agencies.

While Head Start is targeted primarily towards children whose families have incomes at or below the poverty line or who are eligible for public assistance, regulations permit up to ten percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. The Head Start statute also requires that a minimum of ten percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-disabled peers, and to receive needed special education and related services.

Head Start programs are locally-designed to provide services through a variety of program options, based on the needs of local families that are not being met by existing early childhood and child care agencies and programs. Program options include part-day/part-year and full-day/full year center-based programs, home-based programs, combinations of center-and home-based options and other locally-designed options.

Migrant Head Start

Migrant Head Start Programs are designed to meet the needs of the children of migrant farmworkers. For purposes of establishing eligibility for Migrant Head Start services, a migrant family is defined as follows:

A family with preschool children who change their residence by moving from one geographic location to another, either intrastate or interstate, within the past 24 months, for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity. (Please note that, although Head Start regulations in 45 CFR 1305.2 cite a 12 month period in which families are to have relocated, this has been superceded by a provision in the

Head Start Act that allows a 24 month period.)

In addition to providing the comprehensive child development services that all Head Start programs provide, Migrant Head Start programs typically operate for extended hours (8 to 12 hours per day), depending on the parents' work schedules and may serve children five to seven days per week. Migrant programs also typically provide child development and child care services to infants, toddlers and preschool-aged children.

Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C. 9801 *et seq.*, as amended.

The relevant regulations are:

45 CFR part 1301, Head Start Grants Administration.

45 CFR part 1302, Head Start Policies and Procedures for Selection, Initial Funding and Refunding of Head Start Grantees, and for Selection of Replacement Grantees.

45 CFR 1303, Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies.

45 CFR part 1304, Program Performance Standards for Operation of Head Start Programs by Grantees and Delegate Agencies.

45 CFR part 1305, Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start.

45 CFR part 1306, Head Start Staffing Requirements and Program Options.

45 CFR part 1308, Head Start Program Performance Standards on Services for Children with Disabilities.

45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments and 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Note: On November 5, 1996 a final rule for the revised Head Start Program Performance Standards (45 CFR 1304) was published in the **Federal Register**, (61 FR 57186). The effective date for these regulations is January 1, 1998. Since the bulk of services funded through awards under this announcement will take place following January 1998, applications must provide evidence of the applicant's knowledge of and capacity to meet Head Start regulations, including the requirements of the revised 45 CFR part 1304.

B. Program Purpose

This announcement solicits applications from eligible applicants that wish to compete for Head Start grants to serve low-income preschool children in areas not currently served by Head Start grantees.

The Administration on Children, Youth and Families (ACYF) is also providing funding to expand Head Start services through two other national competitions. A Head Start Bureau Program Instruction No. 97–01, issued on March 12, 1997 announced the availability of approximately $200,598,000 to increase enrollment in geographical areas currently served by Head Start grantees. In addition, Program Announcement ACYF-HS–93600–07–03, published in the **Federal Register** Vol. 62, No. 74 (April 17, 1997) describes a competition for approximately $25,800,000 to expand services to children under age three and pregnant women in low-income families through funding additional Early Head Start programs.

Full-Day Services

This funding opportunity to expand Head Start to previously unserved communities, families and children coincides with a growing need by low-income families for full-day/full-year forms of early childhood programs. An increasing proportion of Head Start families are working, and many Head Start families who receive public assistance are participating in welfare reform initiatives designed by State governments in response to the newly enacted Temporary Assistance to Needy Families program.

Accordingly, applicants under this announcement are urged to give special consideration to assessing the impacts of employment patterns and welfare reform on needs for Head Start services and to consider creating full-day/full-year service strategies. Applicants are also urged to consider combining Head Start expansion funds with other child care and early childhood funding sources and to delivering services through partnerships with other community-based child care and early child centers, providers, and funding sources.

C. Eligible Applicants

Expansion applications under this announcement should be submitted under one of the following four categories:

Category 1, for Head Start-eligible children living in geographical areas that are not currently served by Head Start. A list of unserved areas is included in Appendix B.

Eligible applicants are local public or private non-profit agencies that wish to initiate a new Head Start program in one or more unserved geographical areas. Successful applicants that are local Head Start grantees from nearby communities that expand their programs into unserved geographical areas would receive an increase in their current grant rather than a new separate grant.

Category 2, for Head Start-eligible children living on or near Federally-recognized Indian reservations where a Head Start program does not currently operate.

Eligible applicants are the Tribal governments of unserved reservations that wish to initiate a Head Start program or agencies designated by these Tribal governments.

Category 3, for Head Start-eligible children of migrant farmworkers in geographical areas that are not currently served by a Migrant Head Start program. (Any geographical area *not* listed in Appendix C. is considered unserved.)

Eligible applicants are local public or private non-profit agencies, including current Migrant Head Start and Head Start grantees.

Sub-Category 3.A, A special Sub-Category 3.A. has been established to select one or more agencies to operate a program for the children of migrant farmworkers in Kern County, CA. For a number of years a Migrant Head Start program has existed in this area. The previous grantee agency is no longer operating this program and we wish to select a replacement grantee to continue providing Migrant Head Start services in this community. Arrangements are being made for an interim grantee to continue operating the program on a temporary basis until a permanent grantee can be selected through this competitive announcement.

Eligible applicants are local public or private non-profit agencies, including current Migrant Head Start and Head Start grantees.

If there is sufficient interest, an informal informational meeting may be held in Bakersfield, CA for potential applicants. If you are interested in attending such a meeting, please contact James Kolb at (202) 205–8580 by May 27, 1997.

Category 4. Head Start-eligible children living in underserved areas in New York, New York (i.e. Bronx, Kings, New York, Queens and Richmond counties). Applicants must propose serving children in underserved areas with high concentrations of poverty.

Eligible applicants are local public or private non-profit agencies in Bronx, Kings, New York, Queens, and

Richmond Counties that are not current Head Start grantees. (Present grantees may submit applications to expand enrollment by responding to Program Instruction ACYF–PI–HS–97–01, issued on March 12, 1997.)

Eligible applicants may apply for more than one of the four categories above, but must submit a separate application for each category.

D. Available Funds

Category 1. A total of approximately $2,000,000 will be made available under Category 1 of this announcement for establishing new Head Start programs for preschool children in currently unserved geographical areas. To assure that the program can operate cost-efficiently, applicants that are not current Head Start grantees will generally not be funded to initiate a new program in unserved geographical areas for less than 60 children unless the applicant can justify why a smaller enrollment level is appropriate for the geographical area proposed for expansion. Current Head Start grantees may be funded for as little as one class (or a group of children and families served by a single home visitor in a home-based program option) when they expand into an unserved geographical area, if such an expansion would be cost efficient.

Category 2. For applicants applying to serve preschool children on unserved Indian reservations under Category 2, up to approximately $3,000,000 will be made available. No minimum enrollment level has been established for new Indian Head Start projects. Applicants should propose to serve a sufficient number of children to ensure a viable and cost-efficient program.

Category 3. For applicants applying to serve migrant children (infants, toddlers and preschoolers) under Category 3, up to approximately $4,500,000 will be made available. While no minimum enrollment level has been established for Migrant Head Start projects, applicants should indicate a sufficient number of eligible children to ensure a viable and cost-efficient program. Factors to be addressed related to program viability should include the size of the service area proposed and a sufficient population to justify program services in ‘‘off years’’ when the population of migrant children might be low due to crop failure, variations in the migrant stream or natural disasters such as drought or flood.

Sub-Category 3.A. Approximately $2,150,000 is available under this Sub-Category to continue the Migrant Head Start program that serves Kern County, CA.

Category 4. Under Category 4, we expect to make awards in a range of approximately $2 million to $4 million to applicants applying to establish new programs to serve children in underserved areas within the five boroughs of New York, New York. Applicants should propose to serve a minimum of 60 children unless the applicant can justify why a smaller enrollment level is appropriate for the geographical area proposed for expansion.

Recipient Share of the Project

Section 640(b) of the Head Start Act requires, with certain possible exceptions, that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal government. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20 percent of the total Federal plus non-Federal project cost of $125,000). The non-Federal share may be in cash or in-kind, fairly valued, including facilities, equipment, or volunteer services.

Part II. Application Requirements

Applicants should include the following information in their applications:

Project Abstract

Provide a one-page summary of the project proposal, including:

—The name and address of the applicant agency.
—The category of application (Category 1,2,3,3A or 4).
—The number of additional children to be served.
—The total annual ongoing Federal funds being requested, exclusive of any one-time start-up funds being requested.
—The communities where expansion is proposed (Name (1) the counties and the cities, towns, or neighborhoods or (2) the Federal Indian Reservation where additional children will be served).
—A statement as to whether or not the applicant is currently a Head Start grantee. Current grantees should include their grant number.

A. Objectives and Need for Assistance

1. Describe and document the need for Head Start services within the proposed target area, including documentation of the number of unserved Head Start-eligible children, including children with disabilities and non-English language children.

2. Provide data and analysis of family and community needs, including the implications of welfare reform and employment patterns on family needs for child care and other support services.

3. Describe the services and resources of other local child care and early childhood programs and providers serving low-income families and discuss how your proposed new Head Start services will complement the work of these other community agencies.

4. Discuss how families and children who have the most need for Head Start services, including children with disabilities, will be reached by describing the proposed target area(s) for services, recruitment strategies, and priorities for selecting children and families for enrollment. Children with disabilities must be enrolled in the full range of Head Start services and activities in a mainstream setting and receive needed special education and related services.

5. Applicants for Migrant Head Start funds should also provide the following information: (a) The specific times and duration of the agricultural growing season, (b) the length of the work day for the migrant farmworkers, (c) the opening and closing hours for the proposed Head Start centers, (d) the distance of migrant residences to the centers, and (e) clear documentation that the families that would be served are mobile farmworkers, as defined in Part I A. of this announcement.

6. Applicants under Category 3A should describe an approach to continuation of services to (a) eligible children who have been participating as enrollees and (b) the target area or areas served by the current interim Head Start grantee.

B. Results or Benefits Expected

1. Describe the results and benefits to be derived by children, families, collaborating agencies and institutions and the larger community.

C. Approach

1. Provide plans for delivering high quality services to children and families in all areas of service and program management defined by the Head Start Program Performance Standards. Applicants should include a plan to meet the needs of non-English language children and families in their preferred language, when appropriate.

2. Provide for the involvement of parents and other community members and organizations in the development and planning of the application. Applicants should ensure that the plan for parent involvement includes efforts to involve Head Start parents in appropriate educational activities in

order to aid their children to attain their full potential.

3. Describe plans to establish new Head Start services in a timely and efficient manner. Applicants for center-based program options should discuss plans to obtain classroom space which meets required licensing standards and to provide adequate transportation. All applicants should outline plans to recruit eligible children and families and begin services as soon as possible. Note: ACYF expects that all applicants funded under this announcement will be serving their full number of proposed children and families no later than September, 1998.

4. Document cooperative arrangements with other public or private agencies to assist the applicant in providing high quality Head Start services. Such cooperative arrangements must include a plan to coordinate the Head Start program with other preschool programs and with school programs children will enter after their Head Start experience. For applicants for Migrant Head Start funding, demonstrate collaboration with other organizations and networks serving migrant children and families.

D. Additional Information

1. Describe the mechanisms for recruiting and hiring well-trained and appropriately-credentialed staff members, based on the Head Start Program Performance Standards. Describe a strategy for ongoing supervision and professional development for all staff members. NOTE: Applications submitted under Category 3A should describe plans for continued employment of qualified personnel of the current interim Head Start grantee.

2. Propose a staffing pattern (including proposed staff:child ratios consistent with Head Start Program Performance Standards, based on the age group of children served) and identify all proposed staff or staff positions, their proposed salary rates and the length of time they would be employed each year.

3. Provide an organizational chart showing how the applicant agency is currently operating, a second chart showing how the new Head Start services will relate to the exiting organizational structure, and a third organizational chart showing the proposed staffing, supervisory, and governance structure for the proposed new services.

4. Demonstrate the ability and experience to administer a Head Start program. Applicants that have provided services comparable to Head Start should provide information on these services.

5. Describe how high quality ongoing services will be provided in accordance with the Head Start Program Performance Standards at a reasonable cost. Provide two budgets: a budget for annual ongoing operating costs and; a budget for the initial period before full services begin that describes start-up costs such as renovation of facilities, purchases of equipment and initial staff training.

6. Identify in the budget the required non-Federal share of the cost of the project. Discuss strategies for obtaining the contributions required to satisfy requirements for the non-Federal share. Document other community resources which would support the proposed expansion of Head Start.

Part III. Criteria for Review and Evaluation of the Grant Application

Competing applications for financial assistance will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance (20 points)

—The extent to which the application provides current relevant data on the needs of children, families and communities for new Head Start services, including changes in rates of poverty, family mobility, employment patterns, implications of welfare reform, and needs for services such as child care, health care, and other family support services.

—The extent to which the application provides analysis of the funding, services, and capacities of other local child care and early childhood programs and providers serving low-income children and families and a convincing rationale for the proposed expansion of Head Start in light of what other organizations are doing.

—The extent to which the application links evidence of family and community needs and patterns of existing early childhood services with the proposed strategy for selecting participants and targeting program services.

—The extent to which the application provides evidence of community support for the analysis of needs and the proposed approach to expanding Head Start services.

In addition, applications under Category 3A will be reviewed on the extent to which provision is made for continuation of services to (a) Eligible children who have been participating as enrollees in the program and (b) the target area served by the program operated by the current interim grantee agency serving Kern County, CA.

Information provided in response to Part II, Section A., will be used to review and evaluate applicants on the above criterion.

B. Results or Benefits Expected (10 points)

—The extent to which the application identifies the results and benefits to be derived by children, families, collaborating agencies and institutions and the larger community.

Information provided in response to Part II, Section B. will be used to review and evaluate applicants on the above criterion.

C. Approach (30 points)

—The extent to which the application includes a detailed, well-organized, and credible plan of action to establish and carry out the proposed expansion of Head Start services.

—The extent to which the application includes clear plans and a demonstrated understanding of and commitment to implement the Head Start Program Performance Standards, including the involvement of parents and families in program design and decision making.

Information provided in response to Part II, Section C. of this announcement will be used to review and evaluate applicants on the above criterion.

D. Staff Background and Organizational Capacity (30 points)

—The extent to which the proposed management team, key project staff, and the organization's experience and history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope, including:

—Providing high quality, responsive services to young children and families as defined by the Head Start Program Performance Standards.

—Managing the proposed new Head Start services in a timely, cost-effective manner.

—Working successfully in partnership with parents, families, and other community organizations, institutions, and agencies.

In addition, applications under Category 3A will be reviewed for the extent to which provision is made for continued employment of qualified personnel of the current interim Head Start grantee.

Information provided in response to Part II, Section D. of this announcement will be used to review and evaluate applicants on the above criterion.

E. Budget Appropriateness (10 points)

—The extent to which the project's costs are reasonable and cost-effective in view of the activities to be carried out and the anticipated outcomes.
—The extent to which proposed salaries and fringe benefits reflect appropriate levels of compensation for the responsibilities of staff.
—The extent to which assurances are provided that the applicant will contribute the required 20 percent non-Federal share of the total project cost.
—If the applicant is proposing to improve facilities, the extent to which the cost and scope of such minor renovations are reasonable and the extent to which such facilities can be occupied within a reasonable timeframe.

Information provided in response to Part II, Section D. of this announcement will be used to review and evaluate applicants on the above criterion.

Part IV. The Application Process

A. Availability of Forms

Eligible agencies interested in applying for funds must submit all of the required forms included at the end of this announcement in Appendix D. Applicants are required to use the Standard Forms, Certifications, Disclosures and Assurances provided under the ACF Uniform Discretionary Grant Application Form (ACF/UDGAF). Applicants should follow instructions in the ACF/UDGAF for NEW APPLICATIONS. Applicants should respond to the instructions under ACF/UDGAF—Program Narrative—Items A (Project Description—Components) and D (*Budget and Budget Justification). Under Project Description—Component, the applicant should address the specific information requested in Part II of this announcement.

In order to be considered for a Head Start grant, an application must be submitted on Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0043. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Each application must have an original signature by the authorized representative of the applicant. A copy of the governing body's authorization for this individual to sign this application as an official representative must be on file in the applicant's office.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start: Unserved Areas, ACYF Operations Center, 3030 Clarendon Blvd., Arlington, VA 22201. The program announcement number (ACYF-HS–97–06) must be clearly identified on the application. Applicants must also indicate in Box 11 on Standard Form 424 for which of the four categories in Part I.A., above, they are applying. Applicants may apply to serve children in more than one category, but must submit a separate application for each category. Applicants applying for more than one category in a single application will not be considered for funding in any category.

Please note that, in order to facilitate the review of proposals, applicants should include a Table of Contents. Although there is no specific limit on the number of pages an application may contain, applicants are encouraged to be as concise and succinct as possible.

C. Application Consideration

Applicants will be reviewed against the evaluation criteria outlined in Part III. The review will be conducted in Washington, D.C. Reviewers will be persons knowledgeable about the Head Start program and early childhood education and development, including parents of Head Start children, Federal staff, and other experts, such as university staff or the staff of child development projects.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with officials in ACF Regional Offices and the Indian and Migrant Programs Branches, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on relative need (including numbers of eligible children who are not participating in Head Start and concentrations of low-income families in a community), applicant ranking, evidence of the degree of community support, evidence of the applicant's capacity to implement the requested expansion, and funds available.

The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services. For example, this might apply to a current Head Start grantee in which previously identified deficiencies have not yet been corrected, if it is determined that the nature of the deficiencies might prevent the agency from delivering expanded services effectively. It might also apply to grantees with large balances of unobligated funds, or grantees that have been unable to serve the agreed upon numbers of children in the past. Also, the Commissioner may decide not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

D. Closing Date for Receipt of Applications

The closing date for the receipt of applications is [Insert date 60 days from date of publication in the **Federal Register**].

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the program announcement, or

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

c. Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m. at the ACYF Operations Center, 3030 Clarendon Blvd.—Suite 240, Arlington, VA 22201 between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACYF cannot accommodate the transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACYF electronically will not be accepted regardless of the date or time of submission and time of receipt.

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date.

3. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The Head Start Bureau will notify each late applicant that its application will not be considered in this expansion.

4. *Extension of deadline.* The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the Head Start Bureau does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (Pub.L.104–13), all information collections within this program announcement are approved under OMB Control Number 0970–0139, the Uniform Discretionary Grant Application Form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applications from Federally recognized Indian Tribes are exempt from E.O. 12372.

Applicants from these twenty-three jurisdictions and from Federally recognized Indian tribes need take no action regarding E.O. 12372. All other applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16a.

SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on September 11, 1997, to allow time for ACF to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain'' rule.

Comments submitted directly to ACF should be addressed to: Lynda Perez, Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013, Attn: Head Start Expansion: Unserved Areas. ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of Single Points of Contact for each State and territory is included at Appendix E.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 8, 1997.

Helen H. Taylor,

Deputy Associate Commissioner, Administration on Children, Youth, and Families.

Appendix A

ACF Regional Offices

Region I: (617) 565–2463 Massachusetts
Region II: (212) 264–2890 New York
Region III: (215) 596–0351 Virginia
Region IV: (404) 588–5700 Georgia, North Carolina
Region V: (312) 353–4237 Wisconsin
Region VI: (214) 767–9648 New Mexico, Oklahoma, Texas
Region VII: (816) 426–3981 Iowa, Kansas, Nebraska
Region VIII: (303) 844–3100 Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Region IX: (415) 437–8400 California, Nevada
Region X: (206) 615–2547 Alaska, Idaho, Oregon, Washington

Appendix B

Counties Unserved by Head Start

Alaska
- Aleutians East Borough
- Aleutians West Census
- Aleutian Is.
- Kobuk
- North Slope Borough
- Sitka Borough
- Skagway-Yakutat-Angoon
- Southeast Fairbanks
- Valdez-Cordova Census
- Yukon-Koyukuk Census
- Juneau

California
- Alpine County

Colorado
- Baca County
- Cheyenne County
- Custer County
- Dolores County
- Douglas County
- Elbert County
- Grand County
- Gunnison County
- Jackson County
- Kiowa County
- Kit Carson County
- Lincoln County
- Mineral County
- Ouray County
- Phillips County
- Pitkin County
- Rio Blanco County
- Routt County
- San Juan County
- San Miguel County
- Sedgwick County
- Summit County
- Teller County

Georgia
- Echols County
- Taliaferro County
- Idaho
- Adams County
- Butte County
- Clark County
- Custer County
- Fremont County
- Jefferson County
- Lemhi County
- Madison County

Iowa
- Adair County

Kansas
- Anderson County
- Barber County
- Chase County
- Chautauqua County
- Cheyenne County
- Clark County
- Coffey County
- Comanche County
- Edwards County
- Elk County
- Greeley County
- Greenwood County
- Hamilton County
- Harper County
- Hodgeman County
- Kingman County
- Kiowa County
- Lane County
- Lincoln County
- Marion County
- Meade County
- Mitchell County
- Morris County
- Morton County
- Ness County
- Norton County

Osborne County
Ottawa County
Phillips County
Pratt County
Rawlins County
Rooks County
Sheridan County
Stafford County
Massachusetts
Nantucket County
Montana
Carbon County
Carter County
Chouteau County
Daniels County
Fallon County
McCone County
Powder River County
Richland County
Sheridan County
Stillwater County
Sweet Grass County
Teton County
Treasure County
Wibaux County
Nebraska
Arthur County
Banner County
Blaine County
Boyd County
Chase County
Dixon County
Dundy County
Franklin County
Frontier County
Furnas County
Gosper County
Grant County
Harlan County
Hayes County
Hitchcock County
Hooker County
Johnson County
Keya Paha County
Logan County
Loup County
McPherson County
Pawnee County
Perkins County
Pierce County
Rock County
Thomas County
Washington County
Wheeler County
Sioux County
Nevada
Douglas
Esmeralda
Eureka
Lander
Lincoln
Nye County
Pershing County
Storey County
New Mexico
Harding County
Los Alamos County
North Carolina
Polk County
North Dakota
Burke County
Divide County
Grant County
McKenzie County
McLean County
Mercer County
Oliver County
Renville County
Sheridan County
Oklahoma
Dewey County
Harper County
Oregon
Harney County
South Dakota
Ziebach County
Texas
Armstrong County
Bailey County
Borden County
Brewster County
Briscoe County
Carson County
Cochran County
Coke County
Culberson County
Falls County
Floyd County
Franklin County
Hansford County
Hartley County
Hemphill County
Hudspeth County
Jack County
Jeff Davis County
Jones County
Kenedy County
Kent County
King County
Lipscomb County
Loving County
Lynn County
McMullen County
Motley County
Oldham County
Presidio County
Rains County
Roberts County
San Saba County
Shackelford County
Sherman County
Stephens County
Sterling County
Stonewall County
Terrell County
Throckmorton County
Wheeler County
Winkler County
Utah
Daggett County
Sanpete County
Virginia
Colonial Heights City
King George County
Manassas City
Manassas Park City
Poquoson City
Prince George County
Washington
Columbia County
Garfield County
Lincoln County
Wisconsin
Kewaunee County
Ozaukee County
Wyoming
Teton County

Note: In States not listed, all counties are currently served by a Head Start program.

Appendix C

Areas Served by Current Migrant Head Start Programs

Alabama
Baldwin County
Blount County
St. Clair County
Arkansas
Desha County
Mississippi County
White County
Arizona
Maricopa County
Yuma County
Pinal
California
Butte County
Contra Costa County
Fresno County
Glenn County
Imperial County
Kern County
Kings County
Lake County
Madera County
Merced County
Monterey County
Orange County
Riverside County
San Benito County
San Diego County
San Joaquin County
San Luis Obispo County
Santa Clara County
Santa Cruz County
Solano County
Sonoma County
Stanislaus County
Sutter County
Tulare County
Yolo County
Colorado
Adams County
Alamosa County
Boulder County
Crowley County
Delta County
Larimer County
Logan County
Mesa County
Montrose County
Morgan County
Otero County
Prowers County
Pueblo County
Rio Grande County
Washington County
Weld County
Delaware
Kent County
Sussex County
Florida
Collier County
Dade County
DeSoto County
Gadsden County
Gulf County
Hendry County
Highlands County
Hillsborough County
Indian River County
Lake County
Lee County
Manatee County
Marion County

Okeechobee County
Orange County
Palm Beach County
Pasco County
Polk County
St. Lucie County
Georgia
Appling County
Candler County
Colquitt County
Montgomery County
Tattnall County
Tift County
Toombs County
Treutlen County
Idaho
Bingham County
Bonneville County
Boundary County
Canyon County
Cassia County
Elmore County
Gooding County
Jerome County
Owyhee County
Payette County
Power County
Twin Falls County
Washington County
Illinois
Champaign County
Coles County
Cook County
De Kalb County
Iroquois County
Jackson County
Johnson County
Kane County
Kankakee County
Kendall County
LaSalle County
Mason County
Peoria County
Tazewell County
Union County
Vermilion County
Will County
Williamson County
Indiana
Benton County
Cass County
Grant County
Howard County
Madison County
Marshall County
Wells County
Louisiana
(Please see Note, below.)
Maryland
Caroline County
Dorchester County
Kent County
Queen Annes' County
Maine
Aroostook County
Washington County
Michigan
Allegan County
Arenac County
Bay County
Berrien County
Kent County
Lenawee County
Oceana County
Ottawa County
Van Buren County
Minnesota
Cass County
Chippewa County
Kandiyohi County
McLeod County
Norman County
Polk County
Renville County
Rice County
Steele County
Wilkin County
Montana
Big Horn County
Carbon County
Park County
Richland County
North Carolina
Alamance County
Caswell County
Duplin County
Gates County
Harnett County
Henderson County
Johnston County
Nash County
Orange County
Pamlico County
Person County
Pitt County
Sampson County
Surry County
Wake County
Wayne County
Wilson County
Yadkin County
North Dakota
Grand Forks County
Pembina County
Richland County
Traill County
Walsh County
Williams County
Nebraska
Box Butte County
Morrill County
Scotts Bluff County
New Jersey
Atlantic County
Cumberland County
New Mexico
Dona Ana County
Luna County
Roosevelt County
New York
Chautauqua County
Genesee County
Niagara County
Ontario County
Orange County
Orleans County
Oswego County
Ulster County
Wayne County
Ohio
Clark County
Huron County
Ottawa County
Putnam County
Sandusky County
Wood County
Oregon
Clackamas County
Hood River County
Klamath County
Malheur County
Marion County
Morrow County
Umatilla County
Wasco County
Washington County
Pennsylvania
Adams County
Chester County
Erie County
Franklin County
Lackawanna County
South Carolina
Aiken County
Beaufort County
Charleston County
Cherokee County
Edgefield County
Georgetown County
Marion County
Saluda County
South Dakota
Clay County
Marshall County
Tennessee
Bledsoe County
Greene County
Hamblen County
Morgan County
Rhea County
Unicoi County
Washington County
Texas
Atascosa County
Bailey County
Brooks County
Cameron County
Crosby County
Deaf Smith County
Dimmit County
Floyd County
Frio County
Hale County
Hidalgo County
Jim Wells County
La Salle County
Lubbock County
Maverick County
Medina County
Pecos County
Reeves County
San Patricio County
Starr County
Uvalde County
Val Verde County
Webb County
Willacy County
Zapata County
Utah
Box Elder County
Davis County
Iron County
Morgan County
Sanpete County
Utah County
Washington County
Weber County
Virginia
Accomack County
Clarke County
Frederick County
Northhampton County
Winchester City
Washington
Adams County
Benton County
Chelan County
Columbia County
Douglas County

Franklin County
Grant County
Okanogan County
Skagit County
Walla Walla County
Whatcom County
Yakima County
Wisconsin
Adams County
Columbia County
Dodge County
Marquette County
Waukesha County
Wyoming
Washakie County

Note: In Louisiana, the current grantee for the Migrant Head Start program in Tangipahoa Parish has decided to no longer operate the program. Therefore, eligible applicants may apply to serve this Parish, as well as other areas in Louisiana.

BILLING CODE 4184–01–P

Appendix D

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction Preapplication: ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify)________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities.)
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. if both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

SECTION C — NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

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Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Columns (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase of decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources.

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project.

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C.§§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

____
Signature of Authorized Certifying Official

____
Title

____
Applicant Organization

____
Date Submitted

____

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the

grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplace at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant. [55 FR 21690, 21702, May 25, 1990]

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules

implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntary excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participation certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____

Signature

____

Title

____

Organization

____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report______

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ______, *if known.* Congressional District, *if known*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** *if applicable:*
8. Federal Action Number, ***if known***:	**9. Award Amount, *if known*:** **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: ______________________ Print Name: ______________________ Title: ______________________ Telephone No.: ______________ Date: ________
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of the children's services and that all subgrantees shall certify accordingly.

Appendix E.—OMB State Single Point of Contact (SPOC) List

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process. These include: Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington. This list is based on the most current information provided by the States.

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326 FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

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Kentucky

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[MB–103–NC]

RIN 0938–AH90

Medicaid Program; Allocation of Enhanced Federal Matching Funds for Increased Administrative Costs Resulting From Welfare Reform

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period announces the methodology used to determine the allocation, among the States and certain Territories, of a $500 million fund to assist them with the additional expenses attributable to eligibility determinations incurred as a result of the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which decouples Medicaid eligibility from receipt of cash assistance for families and children. Also, it announces the actual allocation amount for each State and Territory. The special fund is available for matching a State's or Territory's allowable administrative expenditures incurred only during Federal fiscal years 1997 through 2000, and only during the first 12 calendar quarters in which the State's Temporary Assistance to Needy Families program, which replaced the Aid to Families with Dependent Children program, is in effect after August 21, l996.

DATES: Effective Date: This notice is effective on May 14, 1997.

Comment Period: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 13, 1997.

ADDRESSES: Mail comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–103–NC, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20221, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. When you comment, please refer to file code MB–103–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Under title XIX of the Social Security Act (the Act), Federal funds are available at specified Federal matching rates for expenditures for medical assistance and administrative expenditures under the States' approved Medicaid plans. State Medicaid agencies are required to submit quarterly reports of expenditures (on Form HCFA–64) in order to claim Federal financial participation (FFP), that is, Federal matching funds for these expenditures.

II. Recent Legislation

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) amended title IV–A of the Act to repeal the Aid to Families with Dependent Children (AFDC) program. The AFDC program provided an entitlement to cash assistance for eligible families with dependent children and was funded by an openended, jointly funded Federal-State program. PRWORA replaced AFDC with a program of block grants for States for Temporary Assistance for Needy Families (TANF). The repeal of AFDC becomes effective not later than July 1, 1997, or for most purposes on the date that the Secretary receives a State's TANF plan. Under TANF, States have broad flexibility to provide assistance for the purpose of ending the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; preventing out-of-wedlock pregnancies; and encouraging the formation and maintenance of two-parent families. Prior to the passage of PRWORA, Medicaid eligibility for families with children receiving AFDC was automatic.

With the implementation of each State's TANF program, there is no longer an automatic link between eligibility for cash assistance under the AFDC program and eligibility under the Medicaid program. Section 114(a) of PRWORA amended title XIX of the Act to add a new section 1931 that, in general, requires State agencies to provide Medicaid eligibility to low income families, if they had been eligible under the AFDC plan in effect on July 16, 1996. With the advent of the TANF program, State Medicaid agencies are expected to incur additional administrative costs related to the need to determine Medicaid eligibility for individuals in accordance with section 1931 of the Act. These expenditures include the costs of outreach to potential eligible individuals who will no longer receive automatic Medicaid eligibility through the cash assistance linkage. It is essential that State Medicaid agencies ensure and protect continued Medicaid eligibility for current Medicaid recipients who would have been eligible under the July 16, 1996 AFDC rules or who are otherwise eligible under section 1931 of the Act, and that the State agencies successfully implement new procedures for identifying potential new Medicaid recipients and determining their eligibility.

To assist State agencies with additional administrative costs involved in this transition, section 114(a) of PRWORA created a new section 1931(h) of the Act, which establishes a $500 million fund that is available as Federal matching funds for the State Medicaid agencies' administrative costs of Medicaid eligibility determinations incurred as a result of the delinking of Medicaid eligibility from eligibility for cash assistance under title IV–A of the Act. The additional Federal funds will be provided to State agencies through an enhanced Federal matching rate for the applicable administrative expenditures. A State agency is eligible to claim the enhanced Federal matching funds for allowable expenditures incurred during the first 12 calendar quarters (3 years) in which the State's TANF program is in effect. Furthermore, the enhanced Federal matching funds are only available for allowable expenditures for the period beginning with Federal fiscal year 1997 (that is October 1, 1996) and ending with Federal fiscal year 2000 (that is September 30, 2000). The law requires the Secretary to increase the usual Federal matching percentage of 50 percent for States' claims for administrative expenditures from this fund and to ensure the equitable distribution of the increased matching funds.

Under section 1931(h) of the Act, the $500 million fund is available only for the administrative costs of Medicaid eligibility determinations attributable to the application of the requirements of section 1931 of the Act, that is, the rules of the States' former AFDC programs. The fund is not available for the costs of determining Medicaid eligibility for individuals with respect to other provisions of PRWORA, such as those related to alien and immigration status or the Supplemental Security Income (SSI) program, unless those individuals are screened for Medicaid eligibility through provisions of section 1931 of the Act. HCFA estimates that $500 million provide adequate funds to offset additional administrative costs that States will incur attributable to the requirements of section 1931 of the Act.

III. Provisions of the Notice

This notice with comment period announces the enhanced Federal matching rates, the allocation formula and the factors included in that formula, the dollar amounts allocated to each State, and the activities for which FFP will be available at enhanced matching rates, which are established under section 1931(h) of the Act. Specifically, sections 1931 (h)(1), (h)(2), and (h)(3) of the Act, respectively, authorize the Secretary to: specify the enhanced Federal matching rates; determine the allowable expenditures; and ensure the equitable distribution of the funds among States by establishing the allocation formula and factors included in the formula, and the dollar amounts allocated to each State.

We are allocating two amounts to each State agency from the $500 million fund: A minimum (base) allocation, which is generally the same for all States; and an additional allocated amount (secondary allocation), which differs by State and is determined by a formula using factors discussed in detail in section VI. of this notice. State agencies may claim Federal funding for allowable activities against the base allocation at a 90-percent matching rate. State agencies may claim Federal funding against the secondary allocation at one of two Federal matching rates: A 90-percent enhanced matching rate for specified activities considered critical to protecting beneficiaries (for example outreach and beneficiary education); and a 75-percent enhanced rate for other allowable activities. In claiming Federal matching for expenditures for these activities, States must identify them separately on the form HCFA–64. States may draw down funds for their allocation as they incur allowable expenditures.

IV. Activities Subject to Enhanced Funding

Under section 1931(h) of the Act, the $500 million fund may only be used for administrative expenditures shown by State agencies to be attributable to the administrative costs of Medicaid eligibility determinations required as a result of the TANF legislation and the delinking of Medicaid eligibility from AFDC status. The following activities are those for which Federal funding is already available and for which additional funding is available at one of the enhanced Federal matching rates, 90 percent or 75 percent. States can claim 90-percent matching for any of the allowable activities listed below, up to the basic allocation for the State. For the States' secondary allocation, items indicated by an asterisk may be claimed at a 90-percent matching rate and items not noted with an asterisk can be claimed at the 75-percent matching rate.

We established the higher 90-percent enhanced Federal matching rate associated with the base allocation in recognition that there are pressing startup and other common costs among States related to the transition from AFDC to the TANF program. The higher Federal matching rate for the base allocation serves to expedite funds to States for such costs.

We established the two enhanced Federal matching rates associated with the secondary allocation to recognize two priorities of activities related to this provision. The first priority, with the higher 90-percent Federal matching rate, is associated with beneficiary oriented activities such as outreach, public service announcements, and education. The higher enhanced rate encourages such activities and recognizes the importance of ensuring that individuals do not lose their eligibility inappropriately, are correctly determined (or redetermined) eligible, and understand program requirements during the critical period of transition to TANF. Each of these higher rate (90 percent) activities is indicated below by an asterisk. The lower 75-percent enhanced Federal matching rate addresses the other activities performed during the transition period.

Allowable Activities

• Educational activities (relating to current or potential beneficiaries).*
• Public service announcements (PSAs).*
• Outstationing of eligibility workers (more workers or new locations, for example, churches, day care centers, WIC offices, health care providers).*
• Training related to the section 1931 provisions—*
• Eligibility workers.
• Providers.
• Outstationed eligibility workers and others.
• Community.
• Outreach activities (for example, general or targeted mailing campaigns, contracts to assist beneficiaries with the redetermination process).*
• Developing and disseminating new publications (targeted to at-risk populations).*
• Local community activities (for example, meetings with community leaders and speeches to community groups).*
• Hiring new Medicaid eligibility workers (related to section 1931 determinations).
• Designing new eligibility forms, for example, a single application for TANF and Medicaid whether eligibility is linked or not.
• Identification of ''at-risk'' TANF recipients (in this context, at-risk refers to vulnerability to losing Medicaid eligibility as a result of the TANF provisions).
• State and local government organizational changes related to the section 1931 provisions.
• Intergovernmental activities.
• Eligibility systems related changes.
• Other activities identified by States and approved by the Secretary as applicable to the enhanced matching fund provisions.

In order for State agencies to claim Federal funds at the appropriate enhanced rates associated with the two allocated amounts for allowable activities, they will need to identify and report the administrative expenditures for such activities to HCFA on specified lines on the States' quarterly medical assistance expenditure report (Form HCFA–64), in accordance with HCFA guidance and instructions related to the form HCFA–64.

V. Special Issues

We conducted a series of consultations with advocacy, provider, and intergovernmental groups to gather suggestions and recommendations on how to equitably distribute the enhanced matching funds. These groups included the National Governors' Association, the American Public Welfare Association, and the National Conference of State Legislatures. The criteria and requirements included in this notice reflect consideration of their suggestions and recommendations.

A. Federal Matching Rate To Be Increased

Under section 1931(h)(2) of the Act, the Federal matching rate, which will be used for State claims related to the $500 million fund, applies only to those administrative expenditures of a State agency's Medicaid program described in section 1903(a)(7) of the Act (administrative expenditures that are Federally matched at a 50-percent rate). These administrative expenditures include the costs associated with eligibility determination activities.

Because of the specific reference to section 1903(a)(7) of the Act, section 1931(a) of the Act precludes the $500 million fund from being available for matching expenditures referenced in other sections of section 1903(a) of the Act. For example, section 1903(a)(3) of the Act refers to administrative activities related to electronic claims processing systems and the associated Federal matching rates of 90 and 75 percent. Section 1903(a)(4) refers to the costs of systems for verifying immigration status and the associated Federal matching rate of 100 percent. The $500 million fund is not available for these categories of administrative expenditures or others referenced in sections 1903 (a)(1) through (a)(6) of the Act.

We note that, under existing Medicaid regulations published in 1989, the administrative costs associated with automated eligibility systems are not considered part of the mechanized claims process and information retrieval systems, and therefore are not eligible for the 75-percent or 90-percent Federal matching rate referred to in section 1903(a)(3) of the Act. Therefore, these costs are matched at the 50 percent rate under section 1903(a)(7) of the Act, and may be claimed against the State's allocation from the $500 million fund at the higher matching rate if they meet the other requirements.

B. Retroactive Claims

Under sections 1931 (h)(3) and (h)(4) of the Act, the $500 million dollar fund is only available for claims for administrative costs incurred during Federal fiscal years 1997 through 2000 (that is, October 1, 1996 through September 30, 2000), and with respect to any specific State, only during the first 12 calendar quarters that the TANF program is in effect in that State beginning no earlier than October 1, 1996. As long as claims of that State are for expenditures incurred during this period and meet timely filing and other relevant requirements, they would not be precluded from being submitted and allowed retroactively.

C. Equitable Distribution of Funds Among All States

Section 1931(h)(3) of the Act requires the Secretary to ''ensure the equitable distribution'' of the $500 million dollar fund among the States. We interpret this to mean that all States should receive an equitable share of the fund unless the State does not incur any cost associated with the implementation of section 1931 of the Act. Through the consultive process, discussed earlier in this section, States and other groups have expressed the position that every State agency should be able to receive at least some portion of the fund. We agree that the requirement for an equitable distribution must result in each State receiving a portion of the fund against which qualifying expenditures would be claimed. For purposes of the Medicaid program, the definition of ''State'' includes the District of Columbia and the five Territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. However, we have not provided an allocation for the Northern Mariana Islands or American Samoa because they do not have an AFDC program and did not have an AFDC program at the time of the enactment of PRWORA. Therefore, only three Territories, Guam, Puerto Rico and the Virgin Islands, will incur administrative expenditures as a result of the transition from AFDC to TANF.

The three Territories affected by section 1931 of the Act are still subject to the existing cap on Federal Medicaid expenditures for the Territories at section 1108(c) of the Act. This cap will not increase with the availability of a portion of the $500 million fund. However, these Territories could still receive benefits under the $500 million fund provisions because, with an enhanced Federal matching rate, less total territorial matching funds would be required for a given level of administrative costs unless the Territory exceeded its cap. Since these Territories, like the other States, will likely incur additional Medicaid expenditures due to the transition to TANF, a portion of the $500 million enhanced Federal matching fund should be available to them.

D. Reduction of States' Allocations as Claims Are Made

Section 1931(h) of the Act provides for enhanced Federal matching for States' claims against the additional $500 million fund. The enhanced rates and additional Federal funds are in addition to those that would otherwise be Federally matched at the usual 50-percent rate. States' claims for allowable administrative activities will reduce their base and secondary allocations only by the amounts that are in excess of the usual 50-percent FFP and not by the entire Federal matching amount. Specifically, States' allocations will be reduced by the amount of the claim multiplied by the difference between the enhanced Federal matching rate percentage and 50 percent.

To illustrate how State claims against the allocations would work, we provide the following example: The State claim for allowable outreach expenditures is $500,000. This claim would usually be Federally matched at 50 percent, and the usual FFP amount for this claim would be $250,000 (50 percent of $500,000). Assuming the State is claiming these expenditures against the $2 million base allocation, the enhanced Federal matching rate would be 90 percent. Thus, the enhanced FFP amount would be $450,000 (90 percent of 500,000). However, the base allocation would not be reduced by the entire $450,000. Rather, for this claim the base allocation would be reduced by $200,000, which is 40 percent of $500,000. Forty percent represents the excess of the enhanced Federal matching rate amount (90 percent) above the usual Federal matching rate amount (50 percent). If the amount of the State's base allocation was at $2 million prior to this claim, there would be $1.8 million remaining after the claim ($2 million − $200,000).

VI. Factors for Determining State Allotments

We have established several factors that will be considered in determining the allotment for each State from the $500 million fund. We have divided the fund into two parts, an allocation of minimum State amounts and an allocation of the remainder of the fund. These two parts are discussed below.

A. Base Allocation Amount

The first part of the distribution will consist of a minimum allocation amount of $2 million set aside for each State, the District of Columbia and Puerto Rico. Guam and the Virgin Islands will receive a lesser amount proportionate to the level of their administrative expenditures. This base allocation recognizes that States will incur certain costs that will not vary by the size of their Medicaid programs. The total of the base allocations for all States and Territories is $104,352,470.

B. Secondary Allocation Amount

The amount of the $500 million fund remaining after distribution of the base allocations to each State will be allocated among the States according to a formula designed to ensure equity. As indicated in the previous section, the total base allocations for all States and Territories is $104,352,470. Therefore the total amount to be distributed to the States and Territories as secondary allocations is $395,647,530. This secondary allocation will be allocated based on the following four factors and weights.

Factor	Weight (percent)
State AFDC-Related Caseload	60
State Medicaid Administrative Expenditures	20
SSI Childhood Disability Case Reevaluations	10
SSI Immigrant Caseload	10

With respect to Factor 1, State AFDC-related caseload, each State was credited with the higher of their caseloads for FY 1995 and FY 1994, or the arithmetic average of their caseloads for FY 1992, FY 1993, and FY 1994. This served as the basis for allocating $237,388,518, which represents 60 percent of the States' total secondary allocations.

With respect to Factor 2, State Medicaid administrative Expenditures, each State was credited with the higher of certain of its administrative expenditures related to these provisions for FY 1995, FY 1994, or the arithmetic average of its expenditures for FYs 1992, 1993, and 1994. Specifically, we are using a State's Medicaid administrative expenditures reported on its expenditure report (Form HCFA–64) in categories related to operation of systems, third party liability and assignment of rights activities, systems for verification of immigration status, outstationed eligibility workers, and other administrative costs Federally matched at 50 percent. This served as a basis for allocating $79,129,506, which represents 20 percent of the States' total secondary allocations.

With respect to Factors 3 and 4, SSI childhood disability case reevaluations (in States requiring reevaluation under PWRORA) and SSI immigrant caseload, respectively, each State was credited with appropriate caseloads, as provided by the Social Security Administration for FY 1996. The caseload estimates are proxy estimates intended to show the relative administrative burden that each State agency faces under welfare reform. This served as the basis for allocating $39,564,753, which represents 10 percent of the State's total secondary allocations for each of Factors 3 and 4.

The allocations for each State agency are as follows:

STATE ALLOCATIONS FOR ENHANCED MATCHING

STATE	Base allocation	Secondary allocation	Total allocation
Alabama	$2,000,000	$4,504,897	$6,504,897
Alaska	2,000,000	1,039,335	3,039,335
Arizona	2,000,000	5,961,603	7,961,603
Arkansas	2,000,000	3,095,513	5,095,513
California	2,000,000	81,719,458	83,719,458
Colorado	2,000,000	3,166,316	5,166,316
Connecticut	2,000,000	3,756,737	5,756,737
Delaware	2,000,000	801,757	2,801,757
Dis. Columbia	2,000,000	1,259,072	3,259,072
Florida	2,000,000	20,262,23	22,262,239
Georgia	2,000,000	9,591,549	11,591,549
Hawaii	2,000,000	1,435,742	3,435,742

STATE ALLOCATIONS FOR ENHANCED MATCHING—Continued

STATE	Base allocation	Secondary allocation	Total allocation
Idaho	2,000,000	1,288,535	3,288,535
Illinois	2,000,000	17,363,894	19,363,894
Indiana	2,000,000	5,545,162	7,545,162
Iowa	2,000,000	2,782,362	4,782,362
Kansas	2,000,000	2,496,386	4,496,386
Kentucky	2,000,000	5,269,014	7,269,014
Louisiana	2,000,000	7,029,185	9,029,185
Maine	2,000,000	1,569,238	3,569,238
Maryland	2,000,000	5,595,943	7,595,943
Massachusetts	2,000,000	7,463,490	9,463,490
Michigan	2,000,000	13,975,445	15,975,445
Minnesota	2,000,000	5,708,769	7,708,769
Missouri	2,000,000	6,561,956	8,561,965
Mississippi	2,000,000	4,617,604	6,617,604
Montana	2,000,000	764,134	2,764,134
Nebraska	2,000,000	1,308,247	3,308,247
Nevada	2,000,000	1,258,808	3,258,808
New Hampshire	2,000,000	875,952	2,875,952
New Jersey	2,000,000	9,012,253	11,012,253
New Mexico	2,000,000	2,860,333	4,860,333
New York	2,000,000	35,034,556	37,034,556
North Carolina	2,000,000	9,550,703	11,550,703
North Dakota	2,000,000	537,922	2,537,922
Ohio	2,000,000	14,909,161	16,909,161
Oklahoma	2,000,000	3,938,082	5,938,082
Oregon	2,000,000	3,740,656	5,740,656
Pennsylvania	2,000,000	15,553,339	17,553,339
Rhode Island	2,000,000	1,459,771	3,459,771
South Carolina	2,000,000	4,221,783	6,221,783
South Dakota	2,000,000	642,597	2,642,597
Tennessee	2,000,000	7,250,889	9,250,889
Texas	2,000,000	25,523,806	27,523,806
Utah	2,000,000	2,006,172	4,006,172
Vermont	2,000,000	891,672	2,891,672
Virginia	2,000,000	6,531,522	8,531,522
Washington	2,000,000	8,443,170	10,443,170
West Virginia	2,000,000	3,420,593	5,420,593
Wisconsin	2,000,000	5,023,766	7,023,766
Wyoming	2,000,000	475,344	2,475,344
Guam	176,235	94,204	270,439
Puerto Rico	2,000,000	6,325,084	8,325,084
Virgin Islands	176,235	131,810	308,045
Total	104,352,470	395,647,530	500,000,000

VII. Alternative Approaches

We considered an alternative approach to set aside a portion of the variable amount of each State agency's allocation (for example, 20 percent) and earmark the funds for specified activities. States and intergovernmental groups did not support this approach because it restricted their flexibility to respond to their different circumstances across States. We also considered tying receipt of some or all of each State's allocation to successful performance in transitioning their determination of eligibility processes in response to their eligibility for cash assistance and TANF. States and intergovernmental groups also did not support this approach because it would restrict State flexibility. Furthermore, HCFA and the States and intergovernmental groups were not able to arrive at an appropriate measure which accurately correlated successful performance with receipt of allocation funds.

VIII. Waiver of Proposed Notice and Delay in Effective Date

While the Administrative Procedure Act generally requires a 30-day delayed effective date for all rules and also requires an opportunity for public comment prior to the effective date of a rule, it also provides that we may waive those procedures if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest. Similarly, title 5 U.S.C. 801 provides for a 60 day delayed effective date for a major rule until the later of the receipt by Congress of a report on the rule or publication of the rule in the **Federal Register**. This delay provides Congress with an opportunity to review a major rule prior to its implementation. However, title 5 U.S.C. 808 also provides that the rule may take effect without regard to the delay period if the agency finds good cause that notice and public procedure on the rule are impracticable, unnecessary, or contrary to the public interest.

We are making the terms of this notice effective without publication of a proposed notice because we believe it would be impractical and contrary to public interest to delay its effective date in order to consider public comments. States have been implementing their TANF programs since the enactment of PRWORA and more States continue to do so each day. We believe that it is imperative that these States be able to receive the enhanced Federal matching funds as soon as possible so that they are able to make an effective transition to the post-AFDC environment at the time they incur the additional administrative expenses resulting from the decoupling of Medicaid eligibility from receipt of cash assistance under title IV–A of the Act. Further delays in furnishing States with this funding could result in delays in making the determination that individuals are entitled to necessary medical services, with the attendant severe consequences for individuals who need them. It is also similarly important and in the public interest that States are able to conduct outreach efforts to prevent eligible needy individuals losing contact with the Medicaid program which they would otherwise have established because of its previous connection to cash assistance. Moreover, in developing the terms of this notice we have actively worked with intergovernmental and other interested groups to obtain their counsel. Accordingly, we find that good cause exists to waive prior notice and comment, the 30 day delay, and the 60 day delay for advance Congressional review.

IX. Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The fund distribution announced by this notice is required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In addition, the amount of money involved, $500 million divided among 50 States, the District of Columbia, and 3 Territories over a period of 3 years will not have a significant effect on any State or Territory, or the Medicare program.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget. Costs attributable to State activities covered by this notice will be paid for by Federal funds according to the matching rates outlined in the allocation formula analysis described earlier. Further, States will incur some additional costs based on the State share associated with these matching rates.

X. Information Collection Requirements

This document does not impose new information collection requirements that are subject to review by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. States will be required to claim FFP for administrative expenditures attributable to the eligibility determination activities resulting from enactment of PRWORA. The only information that is required will be reported on existing Form HCFA–64. This form has been approved by the Office of Management and Budget under approval number 0938–0067, which expires on March 30, 1998.

Authority: Secs. 1102 and 1931(h) of the Social Security Act (42 U.S.C. 1302 and 1396uu).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 24, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: April 11, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–12429 Filed 5–13–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Board of Scientific Counselors, National Center for Research Resources (NCRR).

Dates of Meeting: July 9–10, 1997.

Time: 8:00 a.m.—until adjournment.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 3B13, Building 31, Bethesda, Maryland 20892.

Scientific Review Administrator: Dr. Louise Ramm, Deputy Director, National Center for Research Resources, Building 31, Room 3B11, Bethesda, MD 20892, Telephone: (301) 496–6024.

Purpose/Agenda: For the review of the NCRR intramural research program.

In accordance with the provisions set forth in sections 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 8, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–12671 Filed 5–13–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on June 11–13, 1997, at the Gaithersburg Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on June 11 to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on June 11, from 8:30 a.m. until recess on June 12, and from 8:30 a.m. until adjournment on June 13. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Kevin M. Callahan, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: May 8, 1997.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 97–12672 Filed 5–13–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Mental Health Council, National Institute of Mental Health, on May 12–13, 1997, which was published in the **Federal Register** on April 18, 1997 (62 FR 19123).

The Council was to have convened in Closed session on May 12, 1997, at 9:00 a.m. The Council now will convene in Closed session at 1:30 p.m. As previously announced the Open session will be held on May 13, at 9:00 a.m.

Dated: May 8, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–12673 Filed 5–13–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: June 10, 1997.
Time: 8:00 a.m.
Place: Bethesda Marriott Hotel, Bethesda, Maryland.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Biological and Physiological Sciences.
Date: June 16–17, 1997.
Time: 8:30 a.m.
Place: Holiday Inn-Chevy Chase, Chevy Chase, Maryland.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Clinical Sciences.
Date: June 16–17, 1997.
Time: 8:00 a.m.
Place: American Inn, Bethesda, Maryland.
Contact Person: Dr. Gopal Sharma, Scientific Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Biological and Physiological Sciences.
Date: June 23–24, 1997.
Time: 8:00 a.m.
Place: Bethesda Marriott Hotel, Bethesda, Maryland.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Chemistry and Related Sciences.
Date: July 9, 1997.
Time: 9:00 a.m.
Place: NIH, Rockledge 2, Room 5104, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435–1165.

Name of SEP: Clinical Sciences.
Date: July 9, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4134, Telephone Conference.
Contact Person: Dr. Clark Lum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4134, Bethesda, Maryland 20892, (301) 435–1195.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.
Date: June 16–18, 1997.
Time: 6:00 p.m.
Place: Silver Cloud Hotel, Seattle, Washington.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.
Date: June 30–July 2, 1997.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Behavioral and Neurosciences.
Date: July 25, 1997.
Time: 8:30 a.m.
Place: Capitol Holiday Inn, Washington, DC.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 8, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–12674 Filed 5–13–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Status: Lower Brule Sioux Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice implements the decision of the Supreme Court in remanding to the Department of the Interior the decision to acquire land in trust for the Lower Brule Sioux Tribe of Indians. In remanding the decision, the Supreme Court reopened the decision of the Secretary to acquire the land in trust. Therefore, as of December 24, 1996, when jurisdiction returned to the

Department of the Interior, the land described below is no longer held in trust by the United States for the benefit of the Lower Brule Sioux Tribe.

EFFECTIVE DATE: December 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Jane Sheppard, Staff Attorney, Office of the Solicitor, Division of Indian Affairs, Room 6456, Main Interior Building, 1849 C Street, NW., Washington, DC 20240, Telephone No. (202) 208–6260.

SUPPLEMENTARY INFORMATION: On October 15, 1996, the Supreme Court remanded to the Secretary for reconsideration the decision to take land into trust for the Lower Brule Tribe in South Dakota. The land in question consists of three parcels in Lyman County, South Dakota: (1) W2SW4 minus RD; Sec 13—T104N—R72W. Acres: 79.11; (2) PT. N2NE4NW4 minus 8.55 A RD & KIT ''A''; Sec 24—T104N—R72W. Acres: 7.85; (3) PT. N2NW4NW4 minus 15.27 A: Sec 24—T104N—R72W. Acres: 4.73.

The Supreme Court held:

> The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the eighth Circuit with instructions to vacate the judgment of the United States District Court for the District of South Dakota and remand the matter to the Secretary of the Interior for reconsideration of his administrative decision.

Department of the Interior v. *South Dakota,* 117 S.Ct. 286 (1996). In its petition for certorari, the Government discussed its new regulation (to be codified at 25 CFR 151.12(b); 61 FR 18082–83 (April 24, 1996)). That regulation provides an opportunity for judicial review before land is taken into trust. In its petition, the Government stated:

> Vacatur of the district court's judgment and remand of the matter to the Secretary for a new decision (which would in turn be subject to judicial review under the APA [Administrative Procedure Act] *before* title passed to the United States) would obviate any need to consider that QTA [Quiet Title Act]/preclusion question. (italics in original)

Petition at 26, n. 16.

Accordingly, the remand operates to take the land out of trust so that judicial review under the APA may be available when the Secretary makes a decision to accept or reject an application concerning the same parcels of land.

Dated: May 8, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–12608 Filed 5–13–97; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; NMNM 96224]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease *NMNM 96224* for lands in *Chaves* County, *New Mexico,* was timely filed and was accompanied by all required rentals and royalties accruing from *March 1, 1997,* the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16½ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective *March 1, 1997,* subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: *Becky C. Olivas, BLM, New Mexico State Office, (505) 438–7609.*

Dated: May 2, 1997.

Becky C. Olivas,

Land Law Examiner.

[FR Doc. 97–12571 Filed 5–13–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC–59104; CO–050–1430–01]

Notice of Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands and conveyance of mineral interests in Gilpin County, Colorado.

SUMMARY: The following described land has been examined and found suitable for disposal under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value:

6th Principal Meridian, Colorado

T. 3 S., R. 73 W., Section 11: Lots 18, 19, 20, 21, 22; 14.35 acres.

T. 3 S., R. 73 W., Section 13: all public land remaining within the boundaries of the following-described aliquot parts of section 13:

W½NE¼SE¼NE¼NW¼, W½SE¼NE¼NW¼, S½S½SE¼ SE¼NE¼NW¼, E½SE¼ NE¼SW¼NW¼, NE¼NE¼SE¼ SW¼NW¼, NE¼SE¼NW¼, E½NW¼SE¼NW¼, S½NW¼NW¼ SE¼NW¼, SW¼NW¼SE¼NW¼, N½NW¼SW¼ SE¼NW¼; 2.68 acres.

The land will be offered by direct sale, with mineral rights, to the City of Central, CO. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or 2 years from publication of this notice, whichever occurs first. This determination and segregation supersedes and replaces the previous exchange determination (COC–56570). Detailed information concerning this disposal, including dates, price, patent reservations, procedures, etc. will be available upon request.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

DATES: Interested parties may submit comments to the District Manager at the above address until June 31, 1997.

FOR FURTHER INFORMATION CONTACT: Lindell Greer, Realty Specialist at (719) 269–8532.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 97–12563 Filed 5–13–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for

Requirements for Permits and Permit Processing, 30 CFR part 773.

DATES: Comments on the proposed information collection must be received by July 14, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR Part 773, Requirements for Permits and Permit Processing.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments Are Invited On

(1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Requirements for Permits and Permit Processing, 30 CFR Part 773.

OMB Control Number: 1029–0041.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian Tribes.

Total Annual Responses: 450.

Total Annual Burden Hours: 2,765.

Dated: May 8, 1997.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 97–12655 Filed 5–13–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–749 (Final)]

In the Matter of Persulfates From China; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of a respondent in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for May 14, 1997 *in camera. See* Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR §§ 207.23(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR § 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3083. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the respondent has justified the need for a closed session. A full discussion regarding the financial condition and related proprietary data of the industry can only occur if a portion of the hearing is held *in camera*. Because much of this information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation that discusses only the financial data submitted and for questions from the Commission relating to the BPI, followed by an *in camera* rebuttal presentation by petitioner. Testimony by industry representatives and questioning by the Commissioners and Staff will be permitted during the *in camera* session. Industry representatives will not be allowed to be present during the testimony or questioning of other industry representatives or when another firm's BPI is being discussed. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR § 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR § 201.39) that, in her opinion, a portion of the Commission's hearing in *Persulfates from China*, Inv. No. 731–TA–749 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: May 9, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–12675 Filed 5–13–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1997 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of grants to assist policing agencies to further develop an infrastructure to institutionalize and sustain community policing practices under the Advancing Community Policing program. Eligible applicants under the Advancing Community Policing program are all state, local, Tribal and other public law enforcement agencies with an established background in community policing.

DATES: Application Kits will be available mid May, 1997. Applications for the Advancing Community Policing program must be postmarked on or before June 30, 1997.

ADDRESSES: Applications may be obtained by writing to Advancing Community Policing, COPS Office, Eighth Floor, 1100 Vermont Avenue NW., Washington, DC 20530, or by calling the Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: http://www.usdoj.gov/cops. Completed applications should be sent to Advancing Community Policing, COPS Office, Eighth Floor, 1100 Vermont Avenue NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to support innovative community policing across the nation.

The Advancing Community Policing program will help policing agencies further develop an infrastructure to institutionalize and sustain community policing practices. Two categories of grants are available to eligible applicants: Organizational Change and Community Policing Demonstration Centers. Applicants may select only one of the categories. Applicants must clearly demonstrate interest in instilling the spirit and practice of community policing throughout their organization by changing its existing structures or serving as a Community Policing Demonstration Center.

Organizational Change grants will help law enforcement agencies overcome organizational-level obstacles to create an atmosphere in which community policing thrives. Applicants must have a solid background in community policing and will be required to focus on changing one element of their organization. The applicant must choose one of the five priority areas within the Organizational Change category: Leadership and Management; Organizational Culture; Modifying Organizational Structures; Research and Planning; or Re-engineering Other Components of the Organization. Applicants are required to submit a detailed Project Narrative including: a description of the problem the proposed change strategy will address, the expected goals and the objectives; a discussion of internal and external forces that might affect implementation of the proposed change; an explanation of how the proposal links to the department's overall change strategy; and an explanation of how the department's overall change strategy links to the department's community policing plan.

Advancing Community Policing awards provided in the Community Policing Demonstration Centers category will allow agencies that have taken the lead in implementing the philosophy of community policing throughout their departments to help other agencies choose effective community policing strategies. These agencies, serving as active community policing laboratories, will be provided with the tools needed to disseminate information and provide assistance to other entities and be designated as Community Policing Demonstration Centers. A Center, through internal and external efforts, will work to perfect accepted community policing methods and experiment with new ideas to map the future of community policing. Applicants must have a multi-year strategic community policing plan already in place. Applicants will be required to submit a detailed Project Narrative including: a description of the agency's community policing history and its present capacity to continue developing community policing; a discussion of recent problem-solving efforts, community partnerships, current training and analysis capabilities; an analysis of the organization's strategic plan, how it fits in with the goals of Community Policing Demonstration Centers and how it can be enhanced; current and anticipated research and evaluation efforts; and a time line that reflects the stages of implementation.

Advancing Community Policing is an extremely competitive program. Up to $10 million in Organizational Change grants will be awarded. Organizational Change awards will not exceed $250,000, with the average award expected to be $100,000.

Community Policing Demonstration Centers awards will be cooperative agreements. Up to $25 million will be awarded under Community Policing Demonstration Centers. For a jurisdiction serving a population of less than 150,000, each award will not exceed $500,000; for a jurisdiction serving a population of 150,000 or greater, each award will not exceed $1 million. Smaller jurisdictions are encouraged to form a consortium with other jurisdictions.

Local matching funds are not required under Advancing Community Policing. However, all applicants are strongly encouraged to contribute cash or in-kind resources to their proposed project. Award funds must be used to supplement, not supplant, state or local funds.

An award under Advancing Community Policing will not affect the eligibility of an agency's application for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 30, 1997.

Joseph E. Brann,

Director.

[FR Doc. 97–12662 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Bell Communications Research, Inc.

Notice is hereby given that, on January 16, 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''), Bell Communications Research, Inc. (''Bellcore'') has filed written notifications on behalf of Bellcore, and Research in Motion, Ltd. (''RIM'') simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Morristown, NJ; and RIM, Waterloo, Ontario, CANADA.

Bellcore and RIM entered into an agreement effective as of December 19, 1996, to engage in cooperative research related to wireless paging, data, protocols, and other services and networks to better understand the feasibility and application of such technologies for leading edge wireless and messaging services.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12666 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Pursuant to Cercla

In accordance with the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA''), notice is hereby given of a consent decree amendment lodged on April 22, 1997, in *United States of America* v *City of Somersworth,* Civ. Act. No. 96–46–SD (D.N.H.). The amendment resolves alleged federal liability under section 113 of CERCLA, 42 U.S.C. § 9613, for contribution towards response costs incurred at the Somersworth Sanitary Landfill Superfund Site in the City of Somersworth, New Hampshire. The amendment has been signed by the United States, the State of New Hampshire, the General Electric Company, and the City of Somersworth.

The terms of the consent decree include the following: the United States, on behalf of the United States Navy, shall pay (a) $166,500 to the Hazardous Substance Superfund; (b) $224,713 to General Electric Company and the City of Somersworth; and (c) 9.25% of response costs incurred by General Electric Company and the City of Somersworth in completing the remedial action required by the Consent Decree.

The Department of Justice will receive written comment on this consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Eileen T. McDonough, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v *City of Somersworth,* DJ Reference No. 90–11–3–1256.

The proposed amendment and the consent decree may be examined at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the consent decree and the amendment, please enclose a check in the amount of $41.75. In addition to the Consent Decree Library, the amendment and the consent decree, may be viewed at the EPA New England Library, located on the Eleventh Floor, One Congress Street, Boston, Massachusetts, and the Office of the Clerk of the United States District Court for the District of New Hampshire, Room 412, James C. Cleveland Federal Building, 55 Pleasant Street, Concord, NH 03301.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 97–12567 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period for Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that the public comment period is being extended for 15 days to allow comment on the proposed Consent Decree in *United States* v. *Conoco Inc.*, Civ. No. 97–0445, that was lodged on March 6, 1997 with the United States District Court for the Western District of Louisiana. The original **Federal Register** notice was published on April 8, 1997.

The parties to the Decree are Conoco Inc. (''Conoco'') and the relevant natural resource trustees: the National Oceanic and Atmospheric Administration; the Department of the Interior, and the State of Louisiana through the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources. Under the terms of the Decree, Conoco agrees to implement and fund a restoration-based settlement as compensation for natural resource damages suffered as a result of a March, 1994 release of 1,2 dichloroethane (''EDC'') from Conoco's facility in Westlake, Louisiana. The claim being settled arise under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607.

Conteporaneously with lodging the Consent Decree, the United States and the State of Louisiana jointly filed a complaint alleging that Conoco is an owner or operator of the facility that released the EDC within the meaning of Sections 107(a)(1) and 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9607(a)(1) and 9607(a)(2).

The Department of Justice will receive, for an additional fifteen (15) 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. *Conoco*, DOJ Reference Number 90–11–3–1655.

The proposed Consent Decree my be examined at the Consent Decree Library, 1120 G street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $21.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12565 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 134–97]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The automated Law Enforcement Support Center Database (LESC) JUSTICE/INS–023, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e) (4) and (11) has been published.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30 day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by June 13, 1997. The public, OMB and the Congress are invited to submit any comments to Patricia E. Neely, Program Analyst, Information Management and Security

Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: April 28, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–023

SYSTEM NAME:

Law Enforcement Support Center Database.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Law Enforcement Support Center (LESC), Eastern Regional Office Building, 70 Kimball Avenue, South Burlington, Vermont 05403–6813.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrants that have the status of legal permanent resident and/or United States citizen and who are either the subject of an investigation, or have been arrested, charged with and/or convicted of criminal or civil offenses which could render them deportable or excludable under the provisions of immigration and nationality laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include: Biographic identifiers (e.g. name, alien registration number, date and place of birth, social security number, Federal Bureau of Investigation number); investigatory and criminal history information; booking number; passport number; correctional inmate identifiers and any other information that would enable INS to gather additional evidence, respond to law enforcement queries, and/or to determine the status and/or deportability/excludability of an individual. In addition, the system will include criminal alien inquiries and INS responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 8 U.S.C. 1103 and 1252; (2) 21 U.S.C. 802 and section 7343 of the Anti-Drug Abuse Act of 1988, (Pub. L. 100–690); and (3) Section 504 of the Immigration Act of 1990 (Pub. L. 101–649).

PURPOSE(S):

The database will provide an efficient means to manage and maintain investigatory information which has been collected from a variety of external sources such as the law enforcement community, and from internal sources (including other INS automated systems). This database will allow authorized personnel to respond to specific criminal alien inquiries from law enforcement agencies who wish to determine the immigration status of the individual, and whether they are under investigation and/or wanted by INS. In particular, it will enable INS to comply with a requirement of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, that states the INS will maintain (on a 24-hour basis) resources to identify individuals arrested as aggravated felons. In addition, the system of records will permit INS to facilitate the processing of individuals for deportation and expulsion proceedings. Finally, it will enable INS to determine whether previous law enforcement inquiries have been received concerning alleged criminals and, through statistical or other analyses, to evaluate the success of its enforcement efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed to the following:

A. To other Federal, State, local, or foreign government law enforcement and regulatory agencies, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the United States Coast Guard, INTERPOL and individuals and organizations during the course of investigations in the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

B. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; or in any case to Federal, State, local, or foreign agencies as otherwise needed to perform their law enforcement responsibilities.

C. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation. The DOJ, or any DOJ component or subdivision thereof; any DOJ employee in his/her official capacity; any DOJ employee in his/her individual capacity where the DOJ has agreed to represent the employee; or the United States where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

D. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

E. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. to a Member of Congress, or staff acting on the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in electronic and hardcopy format. Electronic records are stored on magnetic or optical media (i.e., computer hard drives, floppy disks, tapes and optical disks). Hardcopy records (printouts) are stored in locked file cabinets.

RETRIEVABILITY:

These records are retrieved by name, alien registration number(s), date of birth, booking number(s), FBI criminal history number(s), state criminal history number(s), social security number, passport number, inmate number and/or other personal identifiers.

SAFEGUARDS:

These records are located in a secured government office. Physical access to hardcopy records and computer terminals is limited to INS employees who require access in the performance of their official duties. The LESC application is further restricted through the use of unique personal identification numbers and passwords.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 20, Items 5 and 6, Electronic Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Law Enforcement Support Center, Eastern Regional Office, Immigration and Naturalization Service, 70 Kimball Avenue, Room 117, South Burlington, VT 05403.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager noted above or to the FOIA/PA Officer at the same address.

RECORDS ACCESS PROCEDURES:

This system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to the granting or denial of access shall be made at the time a request is received. Requests for access to records in this system must be in writing, and should be addressed to the System Manager or the FOIA/PA Officer at the Eastern Regional office. Such request may be submitted either by mail or in person. The envelope and letter shall be clearly marked ''Privacy Access Request.'' To identify a record, the record subject should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.21(b)), and any other identifying information which may be of assistance in locating his or her record. He or she shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

This system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the granting or denial of a request shall be made at the time a request is received. An individual desiring to request amendment of records maintained in the system should direct his or her request to the System Manager or the FOIA/PA officer at the Eastern Regional office as indicated under ''Records Access Procedures.'' The request should state clearly what information is being contested, the reasons for contesting it and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Federal, State and local criminal justice agencies (e.g., prosecutors, correctional institutions, police departments and inspectors general).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3); (d) and (e)(1) pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 97–12569 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 133–97]

Privacy Act of 1974; System of Records

This notice is provided by the Privacy Act (5 U.S.C. 552a). The Department of Justice, Immigration and Naturalization Service, is republishing Subsystem I. of ''The Immigration and Naturalization Service Index System, Justice/INS–001,''—last published October 5, 1993 (58 FR 51847)—as a separate system of records to be entitled ''Finance Section Indexes, Justice/INS–020.'' Subsystem I. is being redescribed as a separate system of records to add the appropriate routine use disclosure provisions and to otherwise achieve clarity and accuracy of the system description, e.g., remove unnecessary exemptions and inapplicable routine use disclosure provisions.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposal.

Therefore, please submit any comments June 13, 1997. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this system.

Dated: April 21, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–020

SYSTEM NAME:

Finance Section Indexes.

SYSTEM LOCATION:

Headquarters, Regional and District offices, Administrative Centers, Service Centers, and other file control offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Creditors and debtors, including:

(a) Individuals who are indebted to the United States Government, whether it be for goods, services, or benefits, or for administrative fines and assessments, etc.

(b) Employees who have received travel advances or overpayments from the United States Government, who are in arrears in their accounts, or who are liable for damage to Government property.

(c) Vendors who have furnished supplies, material, equipment, and/or services to the Government.

(d) Employees and witnesses who have performed official travel.

(e) Employees and other individuals who have a claim against the Government.

CATEGORY OF RECORDS IN THE SYSTEM:

Accounts with creditors—Records include vendors' invoices, purchase orders, travel vouchers, and claims.

Accounts with debtors—Records include bills for inspection services performed under the Immigration and Naturalization Act of March 2, 1931; fees, fines, penalties, vendor indebtedness for overpayments, and deportation expenses assessed pursuant to the Immigration and Nationality Act; and employee indebtedness for travel advances, for the unofficial use of Government facilities and services, for damage to or loss of Government property, and for erroneous or overpayment of compensation for travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Sec. 103, 265 and 290 and Title III of the Immigration and Nationality Act (66 Stat. 163), as amended (8 U.S.C. 1103; 8 U.S.C. 135; 8 U.S.C. 1360), and the regulations pursuant thereto; (2) 31 U.S.C. 66a.

PURPOSE(S):

This system of records is used to provide an accounting of the financial activities of the INS, including accounts receivable and accounts payable, and to assist management in the administration of these activities. Further, the system provides the necessary information to meet external fiscal reporting requirements and respond to written inquires and complaints by the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. Where the record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (whether civil, criminal or regulatory in nature) to the appropriate agency, (whether federal, state, local or foreign) charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the related statute, rule, regulation or order issued pursuant thereto.

B. To other Federal or State agencies as specified in applicable law or implementing regulations.

C. To the Internal Revenue Service (IRS) to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer. Addresses obtained from IRS may be redisclosed to consumer reporting agencies, but only for the purposes of allowing these agencies to prepare a commercial credit report for INS use.

D. To employers to effect salary or administrative offsets to satisfy a debt owed the United States by that person; or, when other collection efforts have failed, to the IRS to effect an offset against Federal income tax refund due. Such disclosures will be made only when all procedural steps (including due process) established by the Debt Collection Act have been taken.

E. To a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the IRS will also be disclosed, but only where necessary to locate such taxpayer to collect or compromise a Federal claim.

F. To a Federal, State, local, or foreign agency or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the identity or location of the debtor, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or agency.

G. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: The DOJ, or any DOJ component or subdivision thereof; any DOJ employee in his/her official capacity; any DOJ employee in his/her individual capacity where the DOJ has agreed to represent the employee; or the United States where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

H. To any third party who may possess the information, such as the U.S. Post Office, State motor vehicle administration, a professional organization, etc., to obtain a current mailing address in order to locate a debtor.

I. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

J. To a Federal agency in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

K. To Federal, State, and local licensing agencies or association which require information concerning the suitability or eligibility of an individual for a license or permit.

L. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

M. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

N. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

31 U.S.C. 3711 requires that, where appropriate, the notice required by section 552(e)(4) of title 5 must indicate that information in the system may be disclosed to a consumer reporting agency pursuant to subsection (b)(12). Such notice is provided as follows:

Notice of Disclosure to Consumer Reporting Agencies Under Subsection (b)(12) of the Privacy Act

Records relating to the identity of debtors and the history of claims may be disseminated to consumer reporting agencies to encourage payment of the past-due debt. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. Prior to such disclosure, satisfactory assurances will be obtained from such consumer reporting agency concerning compliance by that agency with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and any other Federal law governing the provision of consumer credit information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally, index records are recorded on cards and stored in file boxes and/or drawers. Other paper records are kept in file folders. These records are also maintained on microfiche and computer processable storage media. Inactive files are stored at the Federal Records Center.

RETRIEVABILITY:

Records are first retrieved by appropriation for the appropriate fiscal year and then by creditor/debtor name and/or social security number, as well as by vendor identification number.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked outside of normal office hours. Many records are stored in cabinets or machines which are locked outside of normal office hours. Access to automated records is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Accounts with creditors and debtors are retained for two years from the close of the fiscal year to which they relate and then are transferred to Federal Records Centers for storage and disposition in accordance with General Records Schedules 6 and 7.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Financial Management, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the FOIA/PA Officer at the INS office where the record is maintained, or to the System Manager or the FOIA/PA

Officer, at 425 I Street, NW, Washington, DC 20536.

RECORD ACCESS PROCEDURES:

Requests for access to records in this system must be in writing, and should be addressed to the System Manager or to the FOIA/PA Officer at the INS office where the record is maintained or (if unknown) to the FOIA/PA officer at 425 I Street, NW, Washington, DC 20536. Such request may be submitted either by mail or in person. The envelope and letter shall be clearly marked ''Privacy Access Request.'' The requester should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.21(b)) and return address for transmitting the records to be released. If known, the requester should also identify the date or year in which a debt was incurred, e.g., date of the invoice or purchase order.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his or her request to the INS System Manager or the appropriate FOIA/PA officer as indicated under ''Records Access Procedures.'' The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

(1) Personnel who handle finance-related activities of the INS, such as payroll, contracting, purchasing, travel-related payments and debt collections and (2) the individuals covered by this system of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–12663 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. and States of New York and Ohio, and Commonwealth of Pennsylvania v. Cargill Inc., Akzo Novel, N.V., Akzo Nobel Inc., and Akzo Nobel Salt, Inc.; Proposed Final Judgment and Competitive Impact Statement

United States, States of New York and Ohio, and Commonwealth of Pennsylvania v. *Cargill Inc., Akzo Nobel, N.V., Akzo Nobel Inc., and Akzo Nobel Salt, Inc.:* Proposed Final Judgment and Revised Competitive Impact Statement.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Revised Competitive Impact Statement have been filed with the United States District Court for the Western District of New York, Rochester Division, in the United States and States of New York and Ohio and Commonwealth of Pennsylvania v. Cargill Inc., Akzo Nobel, N.V., Akzo Nobel, Inc. and Akzo Nobel Salt Inc., Civil Action No. 97–CV–6161 L.

On April 21, 1997, the United States, the states of New York and Ohio, and the Commonwealth of Pennsylvania filed a Complaint alleging that Cargill Inc.'s proposed acquisition of Akzo Nobel, N.V.,'s Western Hemisphere salt operations would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint further alleges that the acquisition by Cargill of Akzo Nobel's salt operations would lessen competition substantially and tend to create a monopoly in the production and sale of rock deicing salt in the Northeast Interior Section of the country (western Pennsylvania and Massachusetts, upstate New York, Vermont and eastern Ohio) and in the production and sale of food grade evaporated salt east of the Rocky Mountains. The proposed Final Judgment, filed the same time as the Complaint, requires that Akzo divest the development rights to a rock salt mine in Hampton Corners, New York, and that Cargill divest a huge stockpile of bulk deicing salt in Retsof, New York; a number of deicing salt depots; a four-year supply contract for the sale of bulk deicing salt from Cargill and Akzo mines; and the Akzo evaporated salt plant in Watkins Glen, New York, along with certain tangible and intangible assets.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operations.

United States District Court Western District of New York Rochester Division

United States of America, State of New York, Commonwealth of Pennsylvania and State of Ohio, Plaintiffs, v. Cargill, Inc., Akzo Nobel, N.V., Akzo Nobel, Inc. and Akzo Nobel Salt, Inc., Defendants. Civil Action No. 97–CV616L.

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 (including American Rock Salt Company LLC, ''American''), and venue of this action is proper in the United States District Court for the Western District of New York.

(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 plaintiffs have not withdrawn their consent, which any of them may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and American and by filing that notice with the Court.

(3) Defendants and American shall abide and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, 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 Cargill and Akzo 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.

(6) In the event (a) The United States has withdrawn 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.

(7) Cargill, Akzo and American represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Cargill, Akzo and American will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestitures provisions contained therein. Dated: April 17, 1997.

For Plaintiff United States of America:

Anthony E. Harris,

U.S. Department of Justice, Antitrust Division, Litigation II, Suite 3000, Washington, D.C. 20005, (202) 307–6583.

For Plaintiff State of New York:

John A. Ioannou,

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For Plaintiff Commonwealth of Pennsylvania:

D. Michael Fisher,

Attorney General, Commonwealth of Pennsylvania.

By: Deneice Convert Zeve,

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For Defendant Cargill Inc.:

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For Defendant Akzo Nobel, NV:

John W. Behan,

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For American Rock Salt Company LLC:

Gunther K. Buerman, Esquire,

Harris Beach & Wilcox, LLP, 130 E. Main Street, Rochester, NY 14604, (716) 232–4440.

For Plaintiff State of Ohio:

Betty D. Montgomery,

Attorney General.

By: Mitchell Gentile,

Mitchell Gentile,

Assistant Attorney General, Ohio Attorney General's Office, 30 East Broad Street, 16th Floor, Columbus, OH 43215, (614) 466–4328.

Order

It is so ordered by the Court, this 21 day of April, 1997.

David G. Larimer,

United States District Judge.

United States District Court Western District of New York Rochester Division

United States of America, State of New York, Commonwealth of Pennsylvania and State of Ohio, Plaintiffs, v. Cargill Inc., Akzo Nobel, N.V., Akzo Nobel, Inc. and Akzo Nobel Salt, Inc., Defendants. Civil Action No.: 97–CV616L.

Final Judgment

Whereas, plaintiffs, the United States of America, the States of New York and Ohio, and the Commonwealth of Pennsylvania, having filed their Complaint herein on April 18, 1997, and plaintiffs and defendants and American by their respective 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 and American 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 rights and assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants make certain divestitures for the purpose of remedying the loss of competition as alleged in the Compliant;

And whereas, defendants and American have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants and American 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, 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. ''Cargill'' means defendants Cargill Inc., a Delaware corporation with its headquarters in Wayzata, Minnesota, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees.

B. ''Akzo'' means defendants Akzo Nobel, N.V., based in Arnhem, The Netherlands, and includes its successors and assigns, its subsidiaries and divisions (including Akzo Nobel, Inc. and Akzo Nobel Salt, Inc.), and directors, officers, managers, agents, and employees.

C. ''American'' means American Rock Salt Company LLC, a New York limited liability company with its headquarters in Rochester, New York, and includes its successors and assigns, its directors, officers, managers, agents, partners and employees.

D. ''Relevant Evaporated Salt Assets'' means:

(1) All of the tangible assets used in the operation of the Akzo evaporated slat plant in Watkins Glen, New York, including but not limited to: all real property (owned or leased) in Watkins Glen, New York and used in the operation of that plant, or storage of plant inventory; all manufacturing, packaging equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of that plant (but excluding Akzo's industrial service centers located outside New York and salt mining or manufacturing locations outside Watkins Glen, New York); all licenses, permits and authorizations issued by any governmental organization relating to that plant; all contracts, agreements, leases, commitments and understandings pertaining to that plant and its operations; all customer lists and credit records, and other records maintained by Akzo or Cargill in connection with the business of the Watkins Glen plant;

(2) At the acquirer's option, a nonexclusive license, for a term designated by the acquirer, to make, have made, use or sell under the label of any water conditioning salt product produced by Akzo at the Watkins Glen, New York plant, and any improvement to or line extension of that label, but excluding the Diamond Crystal label; and

(3) All intangible assets, wherever located, that relate in any way to the tangible assets and labels described above (including, but not limited to, production, packaging and distribution know-how); exclusive, assignable rights to make, have made, use or sell under any and all patents or proprietary technology that relate to the Watkins Glen plant exclusively; contracts to supply goods or services to the Watkins Glen plant exclusively and the prorated portion of any other contract to supply goods or services to the Watkins Glen plant; business information solely dedicated to the tangible assets or the

labels described above; and nonexclusive, assignable rights to make, have made, use or sell under all related patents, proprietary technology and business information used in connection with, but not solely dedicated to the tangible assets or the labels described above.

E. ''Relevant Bulk Deicing Salt Assets'' means:

(1) A four-year bulk deicing salt supply agreement that includes the following terms:

(a) For the first three years, the salt supply agreement shall be renewable annually, at American's (or its assignee's) option; the fourth year and final year of the agreement shall take effect only if American (or its assignee) elects, and the United States, New York and Pennsylvania conclude, in their sole discretion, that substantial progress has not been made toward construction of a rock salt mine at Hampton Corners, New York, or that a continuation of the salt supply contract is necessary for other competitive reasons;

(b) For each of the first three years of the agreement, Cargill shall supply a maximum of 400,000 tons of specification-grade bulk deicing salt annually, at $10/ton f.o.b. mine, as follows: 200,000 tons from its S. Lansing, New York mine, and 200,000 tons (with no force majeure clause) from Akzo's Cleveland, Ohio mine; in the fourth and final year of the supply contract, Cargill shall supply a maximum of 300,000 tons of specification-grade bulk deicing salt, at $10/ton f.o.b. mine, as follows: 150,000 tons from its S. Lansing, New York mine and 150,000 tons (with no force majeure clause) from Akzo's Cleveland, Ohio mine; and

(2) All the right, title and interest conveyed by Akzo to Cargill in each of the following eleven bulk deicing salt terminals currently owned or leased by Akzo: University Heights, Schenectady, Whitehall, and Hudson, New York; Buttonwood, Falls Creek, Reading, and Cresson, Pennsylvania; Hartford, Connecticut; Middlesex, Vermont; and Columbus, Ohio.

F. ''Additional Rock Salt Terminals'' means all the right title and interest conveyed by Akzo to Cargill in the following bulk deicing terminals currently owned or leased by Akzo: Bow, West Lebanon, Claremont and Littleton, New Hampshire; Taunton, Readville and N. Billerica, Massachusetts; Norwich and Waterbury, Connecticut; Staunton and Roanoke, Virginia; Brewer and Oakland, Maine; Long Island City, New York; and Baltimore, Maryland.

G. ''Hampton Corners Mine Rights'' means all right, title and interest in any land, equipment, mining rights, or other assets, tangible or intangible, to be conveyed by Akzo to American pursuant to the Asset Purchase Agreement, dated January 31, 1997.

H. ''Default'' means (a) With respect to the Hampton Corners Mine Rights, the failure by American to close, due to its failure to fulfill all conditions precedent to closing, on its purchase of the Hampton Corners Mine Rights from Akzo within 60 days after September 1, 1997, or such other closing date later agreed upon by Akzo and American, provided that in no event shall the closing date for that purchase take place after September 1, 1998; and (b) with respect to the Retsof Stockpile, the failure by American to close, due to its failure to fulfill all conditions precedent to closing, on its purchase of the Retsof Stockpile within 60 days after September 1, 1997, or such other closing date later agreed upon by American and Cargill, provided that in no event shall the closing date for that purchase take place after September 1, 1998.

I. ''Retsof Stockpile'' means all right, title and interest in the rock salt inventory outside Akzo's Retsof, New York rock salt mine in Livingston County, New York, which currently consists of approximately 870,000 tons of bulk deicing salt.

J. ''Label'' means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress (and any improvements, extensions or modifications); the brand's trade secrets; know-how or other proprietary information for making, having made, using and selling the brand, including, but not limited to, packaging, sales, marketing and distribution know-how and documentation, such as customer lists.

K. ''Northeast United States'' means any of the following areas: Vermont, western portions of Pennsylvania and Massachusetts, upstate New York, and eastern Ohio.

L. ''Relevant Assets'' means the Retsof Stockpile, Relevant Bulk Deicing Salt Assets, Relevant Evaporated Salt Assets, Hampton Corners Mine Rights, and Additional Rock Salt Terminals, as the context requires.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants and American, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants Akzo and Cargill shall require, as a condition of the sale or other disposition of all or substantially all of each of their respective salt assets that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from an acquirer of the assets to be divested pursuant to the Final Judgment.

IV. Divestitures and Assignments

A. Defendant Cargill is ordered and directed to divest the Retsof Stockpile to American, at a cost of $10/ton for specification-grade bulk deicing salt, loaded f.o.b. at the Retsof Stockpile. Cargill is ordered and directed, within 120 days after filing of the Complaint in this action, to execute a contract to divest the Retsof Stockpile and to ensure the availability of salt from the Retsof Stockpile to American for the winter of 1997–1998.

B. Cargill is ordered and directed, within 150 days after filing of the Complaint in this action, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Evaporated Salt Assets to an acquirer acceptable to plaintiff United States, in its sole discretion.

C. Defendant Cargill is ordered and directed, within 30 days after the filing of the Complaint in this action, to divest the Relevant Bulk Deicing Assets to American. Cargill is further ordered and directed, within 12 months after filing of the Complaint in this action, or five (5) days after the entry of this Final Judgment by the Court, whichever is later, to grant American an irrevocable option to acquire, at book value or cost (whichever is lowest), the Additional Rock Salt Terminals, or where Cargill does not own an Additional Rock Salt Terminal, Cargill must offer to assign to American its rights in that terminal. American must exercise its option to acquire or accept assignment of such rights and obligations in any or all of the Additional Rock Salt Terminals within seven (7) months after it has received such option or assignment offer from defendant Cargill.

D. Defendant Akzo is ordered and directed to divest the Hampton Corners Mine Rights to American. In the event that American defaults on its purchase of the Hampton Corners Mine Rights, Akzo is ordered and directed to divest the Hampton Corners Mine Rights, within 120 days after default, to an acquirer acceptable to the United States, New York and Pennsylvania, in their sole discretion.

E. In the event that American defaults on its purchase of the Retsof Stockpile, Cargill is ordered and directed to divest the Retsof Stockpile, within 120 days after default, to an acquirer acceptable to the United States, New York and Pennsylvania, in their sole discretion.

F. In the event that American decides to sell or otherwise assign its rights to the Relevant Bulk Deicing Assets or the Retsof Stockpile, American shall provide plaintiffs United States, New York and Pennsylvania with thirty days' written notice of the proposed sale or assignment. Any such sale or assignment shall be made to an acquirer acceptable to the United States, New York and Pennsylvania, in their sole discretion.

G. Unless plaintiffs United States, New York and Pennsylvania otherwise consent in writing (or in the case of the Relevant Evaporated Salt Assets, the United States alone consents in writing), the divestitures pursuant to Section IV (B), (D) and (E) of this Final Judgment, or by the trustee appointed pursuant to Section V, shall include all of the Relevant Assets, and shall be accomplished in such a way as to satisfy: (a) the United States, New York and Pennsylvania, in their sole discretion, that the Retsof Stockpile and Hampton Corners Mine Rights can and will be used by an acquirer (or acquirers) as part of a viable, ongoing business engaged in the sale and distribution of bulk deicing salt in the Northeast United States; and (b) in the case of the Relevant Evaporated Salt Assets, the United States alone, in its sole discretion, that the Relevant Evaporated Salt Assets will be used as part of a viable, ongoing business engaged in the sale of food grade evaporated salt. The divestitures, whether pursuant to Section IV (B), (D) and (E) or V of the Final Judgment, shall be made (1) To an acquirer that, in the sole judgment of plaintiffs United States, New York and Pennsylvania (or in the case of the Relevant Evaporated Salt Assets, plaintiff United States's sole judgment), has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a seller of bulk deicing or food grade salt; and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiffs United States, New York and Pennsylvania (or in the case of the Relevant Evaporated Salt Assets, plaintiff United States's sole judgment), interfere with the ability of any acquirer to compete effectively.

H. Defendants Akzo (in the case of the Hampton Corners Mine Rights) and Cargill (in the case of the Retsof Stockpile, and Relevant Evaporated Salt Assets) are ordered and directed to use their best efforts to divest said assets or assign said rights, and to use their best efforts to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. Plaintiffs United States, New York and Pennsylvania, in their sole discretion (or in the case of the Relevant Evaporated Salt Assets, the United States alone) may extend the time period for each such divestiture for two (2) additional thirty-day periods of time, not to exceed 60 calendar days in total.

I. In accomplishing the divestiture ordered by this Final Judgment, defendant Cargill promptly shall make known, by usual and customary means, the availability of the Relevant Evaporated Salt Assets. In the event of default on the Hampton Corners Mine Rights, Akzo promptly shall make known, by usual and customary means, the availability of the Hampton Corners Mine Rights. In the event of default on the Retsof Stockpile, Cargill promptly shall make known, by usual and customary means, the availability of the Retsof Stockpile.

Akzo and Cargill shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to the Final Judgment and provide such person with a copy of the Final Judgment. Akzo and Cargill shall make known to any person making an inquiry which Relevant Assets are available for sale. Akzo and Cargill also shall offer to furnish to all bona fide prospective acquirers, subject to customary confidentiality assurances, all information regarding the Relevant Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. Akzo and Cargill shall make available such information to plaintiffs at the same time that such information is made available to any other person.

J. Akzo and Cargill shall permit bona fide prospective acquirers of the Relevant Evaporated Salt Assets to have access to personnel and to make such inspection of all Relevant Evaporated Salt Assets, and any and all financial, operational or other documents and information, as is customary in a due diligence process.

K. Defendants Akzo and Cargill shall not interfere with any efforts by any acquirer to interview or employ the general manager or any other employee of Akzo's Watkins Glen, New York evaporated salt plant.

L. Akzo and Cargill shall not take any action, direct or indirect (not including otherwise lawful competitive price action, expansion of capacity or similar competitive conduct), that will impede in any way the development of the Hampton Corners Mine Rights.

V. Appointment of Trustee

A. In the event that Cargill has not divested the Retsof Stockpile or the Relevant Evaporated Salt Assets, or Akzo has not divested the Hampton Corners Mine Rights, within the applicable time period specified in Section IV above, the Court shall appoint, on application of plaintiff United States, a trustee selected by the United States 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 assets that have not been timely divested. 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 IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of the party that has not made the pertinent divestiture 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 trustees. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiffs United States, New York and Pennsylvania, in their sole judgment (or in the case of the Relevant Evaporated Salt Assets, the United States alone), and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of any of the Relevant Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiffs and the trustee no later than 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 Cargill (in the case of the Retsof Stockpile or Relevant Evaporated Salt Assets) and Akzo (in the case of the Hampton Corners Mine Rights) 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 Cargill (in the case of the Retsof Stockpile or the Relevant Evaporated Salt Assets) and Akzo (in the case of the Hampton Corners Mine Rights), and the trustee's service shall then be terminated. The compensation of such trustees 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 any 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 Relevant Evaporated Salt Assets, Retsof Stockpile, or Hampton Corners Mine Rights, and defendants shall develop such financial or other information as may be necessary for the divestiture of these assets. Defendants shall permit prospective acquirers of the 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 Cargill (in the case of the Retsof Stockpile or the Relevant Evaporated Salt Assets), Akzo (in the case of the Hampton Corners Mine Rights), plaintiffs, and the Court;, setting forth the trustee's efforts to accomplish divestiture of the assets as contemplated under the 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 Relevant Assets, and shall describe in detail each contact with any such person during the period. The trustee shall maintain full records of all efforts made to divest the Relevant 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 plaintiffs and Cargill and Akzo, 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 Relevant Evaporated Salt Assets required by Section IV of the Final Judgment has been accomplished:

A. Defendants Cargill and Akzo shall take all steps necessary to operate Akzo's Watkins Glen, New York evaporated salt plant as a separate, independent, ongoing, economically viable and active competitor to defendant Cargill's other evaporated salt plants and solar salt operations in the United States, 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, management of the Watkins Glen, New York evaporated salt plant, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendant Cargill.

B. Defendant Cargill shall use all reasonable efforts to maintain and increase sales of evaporated salt products by Akzo's Watkins Glen, New York evaporated salt plant and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, promotional advertising, sales, marketing and merchandising support for salt products produced by Akzo's Watkins Glen, New York evaporated salt plant.

C. Defendants Cargill and Akzo shall take all steps necessary to ensure that the assets used in the operation of Akzo's Watkins Glen, New York plant, and managers, technical and operating and employees of that plant shall not be transferred or reassigned to any other facility, except for transfer bids initiated by employees pursuant to a defendant's regular, established job posting policies, provided that the defendant gives plaintiff United States and the acquirer ten (10) days' notice of such transfer.

D. Defendants Cargill and Akzo shall not, except as part of a divestiture approved by plaintiffs United States, New York and Pennsylvania, sell any salt from the Retsof Stockpile.

E. Defendants Cargill and Akzo shall take no action, other than lawful competitive price action, expansion of capacity, or similar competitive conduct, that may jeopardize sale or assignment of the Retsof Stockpile, Relevant Evaporated Salt Assets, Additional Rock Salt Terminals, or Hampton Corners Mine Rights.

F. Defendants Cargill and Akzo shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for each defendant's compliance with Section VI of the 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 the Final Judgment, Cargill or Akzo or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible for effecting the divestiture, it shall similarly notify Cargill and Akzo. 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 Relevant Evaporated Salt Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from defendants, the proposed acquirer or acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed acquirer, and any other potential acquirer. 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 plaintiffs have been provided the additional information, whichever is later, plaintiffs United States, New York and Pennsylvania shall provide written notice to defendants and the trustee, if there is one, stating whether or not they object to the proposed divestiture. If plaintiffs United States, New York and Pennsylvania fail to object within the period specified, or if they provide written notice to defendants and the trustee, if there is one, that they do not object, then the divestiture may be consummated, subject only to a defendant's limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV (A), (C) or (D) shall not be consummated if plaintiffs United States, New York or Pennsylvania object to it. A divestiture proposed under Section IV(B) shall not be consummated if plaintiff United States objects to it. Upon objection by the United States, or by Cargill or Akzo 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 plaintiffs United States, New York and Pennsylvania.

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 plaintiffs 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 Relevant 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 Relevant Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment Cargill shall deliver to the United States 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 the Relevant Assets pursuant to Section VI of this Final Judgment. Cargill shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to the Section within fifteen (15) calendar days after such change is implemented.

C. Cargill and Akzo shall preserve all records of all efforts made to preserve and to divest the Relevant Assets.

X. 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 plaintiff United States, including consultants and other persons retained by the United States, 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 or American 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 the 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 X 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 the United States 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 plaintiffs, 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 plaintiffs 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.

XI. 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.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: ______, 1997.

United States District Judge.

United States District Court Western District of New York Rochester Division

United States of America, State of New York, Commonwealth of Pennsylvania and State of Ohio, Plaintiffs, v. Cargill, Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt, Inc., Defendants. Civil No. 97–CV–06161 L.

Revised Competitive Impact Statement

The United States, 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

On April 21, 1997, the United States, the states of New York and Ohio, and the Commonwealth of Pennsylvania filed a civil antitrust complaint, which alleges that Cargill Inc.'s acquisition of the Western Hemisphere salt assets of Akzo Nobel, N.V. (''Akzo'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Cargill and Akzo are two of only four competitors engaged in the production and sale of rock salt for bulk deicing purposes (''rock deicing salt'') in the Northeast Interior Market, an area of the United States centered around the eastern portion of Lake Erie, and which comprises the western portions of Pennsylvania and Massachusetts, upstate New York, eastern Ohio, all of Vermont, and major cities such as Buffalo and Rochester, New York, Erie, Pennsylvania, and Burlington, Vermont. Cargill and Akzo are also the second and third largest firms engaged in the production and sale of food grade evaporated salt in that part of the United States east of the Rocky Mountains.

The Complaint alleges that a combination of Cargill and Akzo would substantially lessen competition in the production and sale of rock deicing salt and food grade evaporated salt in two relevant geographic markets. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctions that would prevent Cargill from acquiring control of Akzo's bulk deicing and food grade evaporated salt business, or otherwise combining them with its own business in the United States.

At the same time the suit was filed, the United States, the states of New York and Ohio, and the Commonwealth of Pennsylvania also filed a proposed settlement that would permit Cargill to complete its acquisition of Akzo's Western Hemisphere salt operations, but require it to divest certain bulk deicing and evaporated salt assets in such a way as to preserve competition in these markets. This settlement consists of a Stipulation and Order and a proposed Final Judgment. Both impose obligations on American Rock Salt Company LLC (''American''), a third party that voluntarily submitted to the jurisdiction of the Court for purposes of ensuring effective relief in the rock deicing salt market.

The proposed Final Judgment orders Cargill to divest Akzo's Watkins Glen, New York evaporated salt plant and certain tangible and intangible assets that relate to that plant. It also orders Cargill and Akzo to divest a number of bulk deicing salt assets to American, a prospective new entrant in the sale of bulk deicing salt in the Northeast Interior Market. The deicing salt assets to be sold by Akzo to American include options to develop a new rock salt mine site in Hampton Corners, New York.[1] The deicing salt assets to be sold by Cargill to American include a mammoth 872,000 ton stockpile of bulk deicing salt located in Retsof, New York; a three-year contract (with an optional fourth year) for the supply of rock deicing salt to be sold at $10 a ton; and a number of terminals throughout the Northeast that have been used by Akzo for storage and transshipment of deicing salt. With these assets, American can immediately begin competing in the sale of rock deicing salt, while constructing its own rock salt mine in Hampton Corners, New York, now scheduled to begin full scale operations in 1999.

Cargill must complete its divestiture of the Watkins Glen evaporated salt plant and related assets within 150 days, or five days after entry of the Final Judgment, whichever is later. Cargill must complete its divestiture of the supply contract and salt terminals to American within thirty (30) days and must contract to sell the Retsof Stockpile within one hundred and twenty (120) days after filing of the Complaint. Akzo's sale of the Hampton Corners rights to American must be consummated no later than September 1, 1998.

The Stipulation and Order and proposed Final Judgment require Cargill and Akzo to ensure that, until the divestitures mandated by the proposed Final Judgment are accomplished, Akzo's Watkins Glen evaporated salt plant and related assets will be maintained and operated as a saleable and economically viable, ongoing concern, with competitively-sensitive business information and decision-making divorced from Cargill's own salt business. Cargill and Akzo will each appoint a person or persons to monitor and ensure their compliance with these requirements of the proposed Final Judgment.

The parties 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.

[1] The final agreement reached between Cargill and Akzo did not include the sale of the Hampton Corners rights to Cargill; thus, Akzo is responsible for divesting these rights.

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

Cargill is a large, privately-held concern that, *inter alia*, mines, produces and sells bulk deicing and food grade evaporated salt throughout the United States. Cargill owns and operates a rock salt mine in South Lansing, New York that produces bulk deicing salt sold throughout the Northeast. Cargill also operates evaporated salt plants in Beaux Bridge, Louisiana; Hutchinson, Kansas; and Watkins Glen, New York that compete in the production and sale of food grade evaporated salt in states east of the Rocky Mountains. In 1996, Cargill's total sales of all types of salt exceeded $250 million.

Akzo also mines, produces and sells bulk deicing and food grade evaporated salt throughout the United States. Akzo owns rock salt mines in Cleveland, Ohio and on Avery Island, Louisiana. It also operated a rock salt mine in Retsof, New York, until the mine flooded and was closed in 1995. Before the mine closed, however, Akzo salvaged as much rock salt as it could, creating a huge stockpile of salt on the Retsof site, from which Akzo continued to sell rock salt deicing salt to customers in the Northeast Interior Market. Akzo had plans to increase production out of its Cleveland mine and ship significantly greater quantities of rock deicing salt from there into the Northeast Interior Market, directly in competition against Cargill's South Lansing, New York mine.

Akzo owns and runs evaporated salt plants in St. Clair, Michigan; Akron, Ohio; and Watkins Glen, New York, that directly compete against Cargill in the sale of food grade evaporated salt in the area of the country east of the Rocky Mountains. In 1996, Akzo had total sales of all kinds of salt of about $370 million.

In August 1996, Cargill agreed to acquire the Western Hemisphere salt operations of Akzo for about $160 million. This transaction, which would combine the nation's second and third largest salt producers in already highly concentrated markets for salt, precipitated the governments' antitrust suit.

B. The Effects of the Transaction on Competition in the Sale of Bulk Rock Deicing Salt in the Northeast Interior Market

Bulk deicing salt is a medium or coarse grade of rock or solar salt purchased primarily by state and municipal government agencies for use in deicing roads and sidewalks. Because of its unique combination of highly desirable features—low cost, general availability and superior ice and snow melting capabilities—there are no good substitutes for bulk deicing salt.

Either rock or solar salt may be used for bulk deicing purposes. As a practical matter, however, in the Northeast Interior Market, only rock salt can be economically used for bulk deicing purposes. Sources of solar salt are too far away from the Northeast Interior Market to be effective competitive factors, and solar salt itself, because of its high moisture content, will not perform well in the low winter temperatures prevalent in the Northeast. For these reasons, for bulk deicing purposes, solar salt is not a good substitute for rock salt in the Northeast Interior Market.

The Complaint alleges that, for purposes of antitrust analysis, the production and sale of rock salt for bulk deicing purposes constitutes a line of commerce, or relevant product market, and that the Northeast Interior Market, because of its distance and relative isolation from other areas, constitutes a section of the country, or relevant geographic market.

Only four firms produce and sell rock deicing salt in the Northeast Interior Market—Cargill, Akzo, Morton, and North American Salt (''NAMSCO'')—and each bids on contracts to supply state and municipal governments with this critical winter safety product. Entry is time-consuming and difficult. Absent the acquisition, and despite the closure of Akzo's Retsof mine, Akzo and Cargill would have actively bid against each other for customers in the relevant market. The evidence developed in this investigation indicates that the combination of Cargill and Akzo likely would result in an increase in the amount of the price of winning bids for state salt contracts, to the detriment of consumers, even if the three remaining bidders do not actively collude or cooperatively interact.

While the proposed acquisition was pending, Akzo contracted to sell its rights to develop the Hampton Corners salt mine site to American, a prospective new entrant. The opening of a new mine by American, or any other new firm, would eliminate any anticompetitive effect in the Northeast Interior Market from Cargill's acquisition of Akzo. An analysis of this ''fix'', however, must recognize that American has not yet closed on its purchase of the mine development rights, and even when it does, it will not complete its development of the Hampton Corners mine until at least 1999. Until the mine is completed and opened, the effect of Cargill's acquisition of Akzo's huge Retsof Stockpile, Cleveland, Ohio rock salt mine, and Northeast rock salt terminals may be to substantially lessen competition in the production and sale of bulk deicing salt in the Northeast Interior Market.

C. The Effects of the Transaction on Competition in the Market for the Production and Sale of Food Grade Evaporated Salt East of the Rocky Mountains

Food grade evaporated salt, unlike rock or solar salt, is a highly refined product (at least 99.7% purity) that contains few contaminants such as bacteria, silica or dirt and meets high purity standards established by the Food and Drug Administration for salt intended for human consumption. One of the purest forms of salt available, food grade evaporated salt is primarily used by food makers as a spice to help preserve, or to enhance the flavor of, a very wide variety of baked, packaged, canned and frozen foods and snacks, everything from apple pie to canned zucchini.

Because of its high purity, food makers strongly prefer to use food grade evaporated salt and they will pay a significant premium for that salt before switching to any other products. There is not good substitute for food grade evaporated salt.

The Complaint alleges that, for antitrust purposes, the manufacture and sale of food grade evaporated salt constitutes a line of commerce, or relevant product market, and that the area east of the Rocky Mountains constitutes a section of the country, or relevant geographics market. The Complaint alleges that in this market, the effect of Cargill's acquisition of Akzo may be to lessen competition substantially in the manufacture and sale of food grade evaporated salt.

There are three major producers of food grade evaporated salt in the East of the Rocky Mountains Market: Cargill, Akzo and Morton. NAMSCO and United, which also produce food grade evaporated salt, do not have significant shares of the East of the Rocky Mountain Market. IMC Global, a new entrant into the production of evaporated salt, has not opened its plant, much less made significant sales of food grade salt. Moreover, it would take any new entrant, including IMC, years to build a reputation for consistent production of high purity salt, a critical requirement for successfully marketing this product to the nation's food processors.

In this highly concentrated market, a combination of Cargill and Akzo, the Complaint alleges, would likely lead to an increase in prices for food grade evaporated salt east of the Rocky Mountains, a $200 million market. Cargill's acquisition of Akzo is likely to diminish competition by enabling the remaining competitors to engage more easily, frequently, and effectively in coordinating pricing interaction that harms customers. With the elimination of Akzo, market incumbents will no longer compete for business as aggressively since they will not have to worry about losing business to Akzo.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of bulk deicing salt in the Northeast Interior Market and in the sale of food grade evaporated salt in the East of the Rockies Market. The Judgment requires that within one hundred fifty (150) days after the Complaint in this action is filed (or five days after it receives notice that the Judgment has been entered), Cargill must divest Akzo's Watkins Glen, New York evaporated salt plant and related assets to a acquirer acceptable to the United States. The Watkins Glen, New York plant has sufficient production capacity for food grade evaporated salt and, due to the high margins for food grade evaporated salt, the incentive to increase output and discipline any attempt to increase prices by Cargill and Morton, the major players in food grade evaporated salt. A Watkins Glen plant not owned by the current major food grade evaporated salt competitors would alleviate the anticompetitive concerns raised by Cargill's acquisition of Akzo's St. Clair, Michigan and Akron, Ohio plants. To ensure that the plant remains independent and viable before sold, the Judgment mandates that Cargill keep operations, pricing, and marketing for that plant separate from those of its other operations.

To preserve competition in the sale of rock salt for bulk deicing purposes in the Northeast Interior Market, the Judgment affirmatively requires that Akzo divest the Hampton Corners mine rights to American, or if American, or if American fails to secure financing and defaults, that it divest to an acquirer willing to compete by building a new mine at the Hampton Corners mine site. To preserve market competition in the interim period preceding the construction of a new mine by American or any other firm, the Judgment requires that Cargill must divest to American the Retsof, New York rock salt stockpile; a three-year contract (with an optional fourth year) for the supply of bulk deicing salt, at $10 a ton, from Cargill's South Lansing, New York and Akzo's Cleveland, Ohio rock salt mines; and a number of terminals or depots currently used by Akzo to store or transship bulk deicing salt to customers. If American defaults on its contract to purchase the Retsof Stockpile, Cargill must divest the Retsof Stockpile.

In the event that American defaulters on the Hampton Corners mine rights purchase, or on its Retsof Stockpile purchase, the divestiture of these assets must be made to an acquirer acceptable to the Unites States, New York and Pennsylvania, in their sole discretion.

Until the ordered divestitures take place, defendants must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective acquirer. If defendants do not accomplish the ordered divestitures within the specified time periods, the proposed Judgment provides procedures by which the Court shall appoint a trustee to complete the divestitures. The defendants must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that party initially responsible for making the divestiture will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price then available for the assets to be divested, and to accomplish the divestiture as quickly as possible.

After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the mandated divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explain why the divestiture has not been accomplished, and make any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. To each affected party will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

The relief sought in the various markets alleged in the Complaint has been tailored to ensure that purchasers of food grade evaporated salt and bulk deicing salt will not experience anticompetitive prices or other contract terms as a consequence of the proposed acquisition.

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 neither will impair nor assist the bringing of any private antitrust damage action. Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effectg in any subsequent private lawsuit that may be brought against Cargill and Akzo.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties 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 the entry of the decree on 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 United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States 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 United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the manufacture and sale of food grade evaporated salt and bulk deicing salt in the relevant geographic markets that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the federal and state governments would have obtained through litigation, but avoids the time, expense and uncertainty a full trial on the merits of the governments' Complaint.

VII. Standard of Review Under the AAPA 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, it any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16 (e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA 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 (D.C. Cir 1995).

In conducting this inquiry, ''the 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.'' 119 Cong. Rec. 24598 (1973). Rather,

> absent a showing of corrupt failure of the government 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 response 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. (CCH) ¶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), *quoting 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 1448 (D.C. Cir. 1995). 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. *United States* v. *Bechtel,* 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added)

the proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetivite 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 acceptability or is 'within the reaches of public interest.' '' (citations omitted). *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), (*aff'd sub nom., Maryland* v. *United States,* 460 U.S. 1001 (1983).

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.

Dated: May 2, 1997.

Respectfully submitted,

Anthony Harris,

Attorney, Department of Justice, Antitrust Division.

Certificate of Service

I, Anthony E. Harris, hereby certify that on May 2, 1997, I caused copies of the foregoing Revised Competitive Impact Statement to be served on plaintiffs states of New York and Ohio and Commonwealth of Pennsylvania, and on defendants Cargill Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt Inc., and on American Rock Salt Company, LLC, by mailing the pleading first-class, postage prepaid, to those parties as follows:

John A. Ioannou, Assistant Attorney General, Antitrust Bureau, Attorney General's Office, 120 Broadway, Suite 26–01, New York, New York 10271

Counsel for State of New York

Deneice Covert Zeve, Deputy Attorney General, Antitrust Section, Office of the Attorney General, 14th Floor, Strawberry Square, Harrisburg, PA 17120

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Counsel for Akzo Nobel, N.V., Akzo Nobel Inc. and Akzo Nobel Salt Inc.

Gunther K. Buerman, Esquire, Harris, Beach & Wilcox, 130 E. Main Street, Rochester, NY 14604

Counsel for American Rock Salt Company, LLC

Anthony E. Harris, Esquire,

Trial Attorney.

[FR Doc. 97–12568 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, please be advised that a proposed Consent Decree was lodged on March 12, 1997, in *United States* v. *Camden Iron & Metal, Inc., and S.P.C. Corporation,* C.A. No. 96–2972, with the United States District Court for the Eastern District of Pennsylvania (''District Court''). The proposed consent decree addresses alleged violations of the National Recycling and Emission Reduction Program, which is found in Section 608 of the Clean Air Act, 42 U.S.C. § 7671g, and the regulations promulgated thereunder at 40 C.F.R. part 82, subpart F. The alleged violations took place at the defendants' scrap metal recycling facility in Philadelphia, Pennsylvania.

A complaint filed in May of 1996 alleged that the defendants violated the Clean Air Act's National Recycling and Emission Reduction Program by failing to either (a) Evacuate all chlorofluorocarbon (CFC)-containing refrigerants from appliances prior to disposal, or (b) verify that the suppliers of the appliances had properly evacuated the CFC refrigerant prior to sending the appliances to the facility. The Complaint also alleged that the defendants violated Section 114 of the Clean Air Act by failing to provide timely and complete responses to information requests made by EPA.

Under the terms of the Consent Decree, the defendants will pay a penalty of $125,000, and will spend $375,000 on a supplemental environmental project (SEP). The SEP requires the defendants to work with municipalities in the Philadelphia metropolitan area to establish programs to recover CFC refrigerant from discarded and abandoned appliances, such as refrigerators and air conditioning units.

Comments regarding this settlement 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. *Camden Iron & Metal, Inc. and S.P.C. Corp.,* DOJ Ref. # 90–5–2–1–2028. The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia, Pennsylvania 19106 and the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. 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, (202) 624–0892. The proposed decree contains 40 pages, without attachments. The attachments constitute an additional 109 pages. To obtain a copy of the decree, please enclose a check in the amount of $8.50 (25 cents per page reproduction costs). Please make the check payable to the Consent Decree Library, and refer to the case by its title and DOJ Ref. # 90–5–2–1–2028.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12566 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cable Television Laboratories, Inc.

Notice is hereby given that, on March 26, 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''), Cable Television Laboratories, Inc. (''Cablelabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the 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 CableLabs: Halifax Cablevision Limited, Halifax, Novia Scotia, Canada; and Midcontinent Cable Co. Aberdeen, South Dakota.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs 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 September 7, 1988 (53 FR 34593). The last notification with respect to membership changes was filed with the Department on December 18, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 1997 (62 FR 14704).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12665 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Corporation for National Research Initiatives; Cross Industry Working Team Project

Notice is hereby given that, on October 29, 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 Corporation for National Research Initiatives (''CNRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the Cross Industry Working Team Project (''XIWT''). 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 additional parties have become Primary Members of XIWT: BBN Corporation, Cambridge, MA; and Sprint Communications Company, Kansas City, MO. The following additional party has become an Associate Member of XIWT: The New York Times Company, New York, NY. The following parties have discontinued membership in XIWT: Ameritech Corporation; Cable Television Laboratories; Science Applications International Corporation (SAIC); and Com 21, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CNRI intends to file additional written notifications disclosing all changes in membership. On September 28, 1993, CNRI 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 December 17, 1993 (58 FR 66022). The last notification was filed with the Department on July 31, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 1996 (61 FR 56708).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12667 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933; Network Management Forum

Notice is hereby given that, on March 10, 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 Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to 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 identities of the new members to the venture are as follows: Mannesmann Mobilfunk GmbH, Dusseldorf, Germany; and Platinum Technology, Inc., Edison, NJ are Corporate members. BEA Systems, Inc., Sunnyvale, CA; Belgacom, S.A., Brussels, Belgium; LG Information & Communications, Ltd., Kyunggi-do, Korea; Master Software, Inc., Walnut Creek, CA; Mitsui Knowledge Industry Co., Ltd., Tokyo, Japan; 02 Technology, Palo Alto, CA; and SONETECH, Inc., Sterling, VA are Associate Members. DEJ Consulting, Madrid, Spain; HN Telecom, Inc., Burnaby, BC, Canada; Teleconsulting GmbH, Diessen, Germany; and Universitat Politecnica De Catalunya (UPC), Barcelona, Spain are Affiliate Members.

No other changes have been made since the last notification filed with the Department in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum 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 December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on December 9, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 1997 (62 FR 8992).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12668 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification; Southwest Research Institute

Correction

In notice document 97–7749 appearing on page 14703 in the issue of Thursday, March 27, 1997, make the following correction:

In the third column, in the third paragraph, in the eighth line, ''but'' should read ''by''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12664 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; solicitation for proposals to conduct naturalization ceremonies.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. Additionally, this notice will also serve as the 60-day public notification for comments as required by the Paperwork Reduction Act of 1995.

There is an emergent need for this notice to be published and implemented immediately so that the INS may begin to provide funding to public and private entities selected to conduct oath administration ceremonies in accordance with section 647 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, beginning this year (around July 4th). Additionally, INS believes this proposed solicitation procedure is the best manner in which to provide funding to local groups throughout the nation as provided in this section of the law.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by May 16,1997. If granted, the emergency approval is only valid for 180 days.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Solicitation for Proposals to Conduct Naturalization Ceremonies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Naturalization Program, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The collection of this information is necessary to solicit proposals from the public and non-profit entities to assist INS district offices in conducting naturalization ceremonies on a business day near Independence Day (July 4th).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 6 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 8, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–12584 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1846–97]

RIN 1115–AD06

INS Immigration User Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Bi-yearly Notice of User Fee Account Status.

SUMMARY: The Attorney General is required to submit a report to the Congress concerning the status of the Immigration User Fee Account (IUFA), and to recommend any adjustment in the prescribed fee. The report is to be submitted to the Congress following a public notice with the opportunity for comment. This notice accordingly publishes the status of the IUFA as of September 30, 1996, and presents an opportunity for the public to comment and propose regulatory changes.

DATES: Written comments must be received on or before July 14, 1997.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service (INS), Room 5307, 425 I Street NW., Washington, DC 20536–0002. To ensure proper handling, please reference INS No. 1846–97 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael T. Natchuras, Chief, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 6240, Washington, DC 20536–0002, telephone (202) 616–2754.

SUPPLEMENTARY INFORMATION: Section 286(d) of the Immigration and Nationality Act (Act) specifies that, as of December 1, 1986, the Attorney General shall collect a fee per individual for the immigration inspection of each passenger arriving at a port-of-entry in the United States aboard a commercial aircraft or commercial vessel, or for the pre-inspection of a passenger at a location outside the United States prior to such arrival. Passengers arriving from Canada, Mexico, the adjacent islands and territories, and possessions of the United States by means other than aircraft, are exempt from the fee. Also exempt from the fee are persons who meet provisions delineated in 8 CFR 286.3 The 1994 Appropriations Act for the Department of Justice, P.L. 103–121, raised the IUFA fee from $5.00 to $6.00 per passenger inspected.

The fees deposited in the IUFA are used to reimburse the INS' Salaries and Expense (S&E) Appropriated Account for expenses incurred in: (1) Providing inspection and pre-inspection services for commercial aircraft and sea vessels; (2) detaining and deporting inadmissable aliens arriving on commercial aircraft and sea vessels; (3) providing exclusion and asylum proceedings at air and sea ports-of-entry for inadmissable aliens arriving on commercial aircraft or sea vessels; (4) funding the detention and deportation, removal and asylum costs for aliens seeking to illegally enter the country by avoiding inspection at air and sea ports-of-entry; (5) administering debt recovery; (6) establishing and operating a national collections office; (7) expanding, operating, and improving information systems for nonimmigrant control and debt collection; and (8) detecting fraudulent documents presented by passengers traveling into the United States.

Section 286(h) of the Act requires the Attorney General to submit a bi-yearly report to Congress concerning the status of the IUFA. This report assesses whether an adjustment in the prescribed inspection fee is required to ensure that receipts collected under the IUFA for the succeeding 2 years equal, as closely as possible, the cost of providing the services listed above. Before this report is submitted, the Attorney General must present a summary of the IUFA's status for review and public comment.

As of September 30, 1996, the status of the IUFA was as follows:

IUFA FINANCIAL SUMMARY ($000)

	Fiscal year 1995 actual	Fiscal year 1996 actual	Fiscal year 1997 estimate
Start of year balance	$40,368	$43,109	$80,080
Collections*	303,475	351,622	359,389
Obligations	303,409	317,470	376,964
Recovery of prior year obligations	2,675	2,819	....
End of year balance	$43,109	$80,080	$62,505

*Includes passenger fees, inspector overtime billings, liquidated damages, and one-third of § 271 and § 271 enforcement fines as prescribed by law.

Collections: Collections totaled $303.5 million for FY 1995 and $351.6 million for FY 1996, marking a 16 percent increase of FY 1996 collections over FY 1995 collections. Collections for FY 1997 are projected to be $359.4 million, which is 2 percent higher than collections realized in FY 1996.

Obligations: The United States Government records orders for goods and/or services which require payment as ''obligations.'' More specifically, Office of Management and Budget Circular A–34, Instructions on Budget Execution, defines obligations as purchase orders placed, contracts awarded, and services received by a Federal agency which require it to make cash outlays during the same or future periods. Obligations incurred by the IUFA during FY 1996 totaled $317.5 million, representing a 5 percent increase over FY 1995. Obligations for FY 1997 are estimated at almost $377 million, which is approximately 19 percent over the spending level for FY 1996. Five factors contribute to the increase in FY 1997 obligations: (1) Staffing increases from 2,426 authorized inspectors in FY 1996 to 2,624 authorized inspectors in FY 1997; (2) systems infrastructure enhancements, such as expanding automation and providing for improved data and communications networks; (3) opening a new contract detention facility; (4) implementing a departure management pilot; (5) initiating a shared database initiative with the State Department; and (6) the automation of the Service's I–94, Arrival/Departure Record.

End-of-Year Balances: The increase in the FY 1996 balance over the 1995 balance resulted from the following factors: (1) Collections from two major carriers projected to be received in the first month of FY 1997 were actually received in the last month of FY 1996, resulting in an overstatement of collections for FY 1996; (2) the annual volume of international air travel, which is the primary catalyst and determinant of fee collections, exceeded expectations; (3) program spending for FY 1996 was lower than planned levels; and finally, (4) a large volume of fourth quarter receipts due by the close of FY 1995 were not actually received until FY 1996 which resulted in the collection of more than four quarters' worth of fees in FY 1996.

Program Highlights: An important mission of the INS is to control the borders of the United States. The INS inspects persons seeking to enter the United States at air and sea ports-of-entry to determine admissibility. The following discussion presents major program highlights of the IUFA. Three program activities—Inspections, Detention and Deportation, and Data and Communications—comprise almost 90 percent of the total operations of the IUFA for FY 1997.

Inspections, the largest program, is allocated $233.5 million for FY 1997, which is approximately 60 percent of total IUFA resources. The function of this program is to enforce and administer immigration and nationality laws with respect to the inspection of all persons seeking admission into the United States at air and sea ports-of-entry. Applicants for admission are inspected to determine if they qualify for admission and, if so, under what conditions. This process is a cooperative partnership among the Department of State, U.S. Customs Service, the Department of Agriculture, and local port authorities. Determination of admissibility is based on the examination of the applicant, relevant documents, or prior information. Inadmissible aliens are denied entry. A total of 75 million passengers were inspected at air and sea ports-of-entry and pre-inspection sites during FY 1996.

Due to the increasing volume of passengers, INS has dedicated itself to improving the efficiency and effectiveness of its inspections processes. Currently, there are 2,426 authorized inspector positions worldwide. Inspections are located at 112 ports-of-entry and 12 pre-inspection sites. For FY 1997, Congress approved staffing plans for 198 additional inspectors who will be stationed at ports and pre-inspection sites to improve the efficiency of its inspections processes.

Detention and Deportation, the second largest program, is allocated $73.5 million for FY 1997, representing approximately 20 percent of total IUFA resources. Functions of this program include detaining, removing, paroling, and deporting aliens. Currently, a total of 154 detention and deportation officers are authorized to be stationed at detention facilities near major air and sea ports-of-entry. In addition, 1,542 bed spaces are funded and housed at these facilities to detain, until removal, those aliens subject to inadmissibility proceedings who are likely to abscond, or whose freedom at-large could pose risk or danger to public safety and security.

The third largest program, Data and Communications, is allocated $36.9 million for FY 1997 and comprises approximately 10 percent of total IUFA resources. This program supports program initiatives through infrastructure enhancements, automation, and innovation. Infrastructure enhancements include deploying new computer equipment, developing interfaces among existing INS information systems, and acquiring new management information systems.

One innovation being implemented in Data and Communications is the Advance Passenger Information System (APIS) which saves time in performing inspections by enlisting carriers to collect biographical information on passengers before departing. The collected information is then electronically transmitted to the INS and checked against criminal lookout databases before the carrier arrives at its intended port. Over 20 million passengers were processed using APIS during FY 1996.

Another innovation is the INS Passenger Accelerated Services System (INSPASS). This system expedites the inspection of frequent business travelers using biometric information such as hand geometry. Passengers also must insert their INSPASS card into a machine that compares data magnetically stored on the card to the biometric information. Passenger information is checked against criminal lookout databases before entry into the United States is permitted. Nearly 50,000 INSPASS inspections were performed in FY 1996 and the INS expects to expand this program to six additional sites in FY 1997.

Proposed Exemption Removal: The INS is proposing the removal of the current fee exemption for commercial vessel passengers (cruise line passengers) arriving from Canada, Mexico, the adjacent islands and territories, and possessions of the United States. This legislative proposal was submitted to the Congress as part of INS' FY 1998 Budget Request. Currently, the costs of performing inspections and other user fee activities for fee-exempt passengers must be absorbed by the program. The fee is proposed to be established for currently exempt cruise line passengers on October 1, 1997.

By this notice, the public may provide any proposals to revise 8 CFR 286 on matters that may be changed by regulation, and may provide comments on the status of the IUFA before a report is submitted to the Congress.

Dated: April 18, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–12545 Filed 5–13–97; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to GPU Nuclear Corporation for operation of the Three Mile Island Nuclear Station Unit 1 (TMI–1) located in Dauphin County, Pennsylvania.

The proposed amendment would remove the control rod drive mechanisms (CRDMs) from the design basis list of credible missiles and, if approved, would also permit the permanent removal of the reactor vessel missile shields whose design function is to protect the reactor building liner from loss of function due to perforation from credible, internally generated missiles originating from the reactor vessel head area.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 13, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania (Regional Depository), Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing

Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene 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. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Patrick D. Milano: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 31, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania (Regional Depository),Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 7th day of May 1997.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–12595 Filed 5–13–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, Atlantic City Electric Company, Salem Nuclear Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75, issued to Public Service Electric & Gas Company (PSE&G, the licensee), for operation of the Salem Nuclear Generating Station, Units 1 and 2 (Salem Units 1 and 2).

The facility consists of two pressurized water reactors located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed action would change Technical Specification Table 3.3–5, ''Engineered Safety Features Response Time,'' to extend the Containment Fan Cooler Unit (CFCU) response time from 45 to 60 seconds.

The proposed action is in accordance with the licenses application for amendment dated October 25, 1996, as supplemented by letters dated December 11, 1996, January 28, March 27, and April 24, 1997.

The Need for the Proposed Action

The proposed action is needed to make the Technical Specifications (TSs) consistent with the as-built plant. The as-built plant has a longer response time for the CFCUs than that identified in the TSs because (1) a 1976 plant modification added time delays to valves that isolate non-essential service water loads in response to an accident signal, and (2) the licensee failed to consider the impact of CFCU service water outlet valve sequencing delays on overall post-accident system performance. The 1976 modification was implemented to limit the potential for water hammer of the service water system during the isolation of the non-essential loads.

Environmental Impacts of the Proposed Action

The radiological environmental impact of the proposed action has already been evaluated and approved by the staff. In support of Amendment No. 190 for Unit 1 and Amendment No. 173 for Unit 2, issued February 6, 1997, the staff performed its own analysis of the offsite doses resulting from a Loss of Coolant Accident. The staff's analysis was performed using the CFCU response time in the proposed action and the staff concluded that the offsite doses are within the applicable dose acceptance criteria of 10 CFR Part 100. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluent and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement related to the operation of Salem Nuclear Generating Station Units 1 and 2,'' dated April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on April 14, 1997, the staff consulted with the New Jersey State official, Richard Pinney, of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated October 25, 1996, December 11, 1996, January 28, March 27, and April 24, 1997, and Amendment Nos. 190 and 173, dated February 6, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Salem Free Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 7th day of May, 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–12592 Filed 5–13–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric & Gas Company (the licensee) for operation of Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendments would revise Technical Specification (TS) 3.5.2 to eliminate the flow path from the residual heat removal (RHR) system to the reactor coolant system (RCS) hot legs that is specified in Limiting Condition for Operation (LCO) 3.5.2.c.2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves removing the RHR hot leg injection flow path (RH26 valve) during the hot leg recirculation phase of accident mitigation. There are no physical plant modifications being made as a result of the proposed changes and no new accident initiators are created by the proposed changes. This change only involves a system used for ECCS [emergency core cooling system] accident mitigation and is consistent with the flow requirement assumptions made in the safety analysis for hot leg recirculation. Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Removal of the RHR hot leg injection flow path does not impact the ability of the ECCS to mitigate the consequences of an accident but clarifies the flow paths in the ECCS that are required to meet the accident analysis. Operation of one Intermediate Head Safety Injection (IHSI) pump during hot leg recirculation continues to provide adequate core cooling flow such that the hot leg flow directly from the RHR system is not required. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to LCO 3.5.2.c.2 does not involve any physical changes to the plant components, systems, or structures. This change does not affect the ability of the Emergency Core Cooling System to meet the flow required in the accident analysis to remove core decay heat without creating superheated steam during hot leg recirculation. There are no new failure modes introduced as a result of the proposed change since the RH26 valve will remain in the closed position with power to the valve removed during operation in Modes 1—3 as required by TS surveillance requirement 4.5.2.a.1.e and will remain in the closed position following a LOCA [loss-of-coolant accident] in Modes 1—3. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Hot leg recirculation occurs approximately 14 hours into the accident. At this time, the RCS pressure is at equilibrium with the containment pressure, which is conservatively assumed to be at 25.0 psig. At this pressure, the enthalpy of saturated steam is 1160.1 BTU/lbm, and of saturated liquid is 208.52 BTU/lbm. Decay heat generation at this time is 24,540 BTU/sec. Therefore, the required hot leg injection flowrate to prevent superheat is 24,540/(1160.1–208.52)—25.77 lbm/sec. The flow delivered by one Intermediate Head Safety Injection (IHSI) pump to two hot legs is 76.03 lbm/sec at a backpressure of 25.0 psig. For the break locations considered for long-term transients, nearly all of this flow will enter the vessel and will be available to cool the core. Additional cooling will be provided by simultaneous cold leg injection flow. Therefore, sufficient injection flow exists to prevent superheat and the change to the hot leg recirculation does not affect the LOCA mass and energy of containment integrity calculation.

With the elimination of the RCS hot leg flow path, the ECCS system will continue to meet the limiting design basis hot leg flow requirement assuming a single failure which can result in operation of a single IHSI pump aligned for hot leg recirculation.

Therefore, the proposed change does not reduce the margin of safety since the accident analysis flow requirements and design basis single failure requirements continue to be met for hot leg recirculation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene 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. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–2, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 25, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 7th day of May, 1997.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–12596 Filed 5–13–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Nuclear Generating Plant Unit 3; Exemption

I

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Nuclear Generating Plant Unit 3. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is of a pressurized water reactor type and is located in Citrus County, Florida.

II

Title 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *.''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site.

By letter dated June 22, 1995, as supplemented November 22, 1995 and January 31, 1996, the licensee submitted its exemption request for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, unescorted access into the protected areas of Crystal River Unit 3 is controlled through the use of a photograph on a badge and a separate keycard (hereafter, these are referred to as badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contract personnel, who have been granted unescorted access, are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take badges offsite. In accordance with the CR3 physical security plan, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control computer system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control computer system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plants. Badges do not carry any information other than a unique identification number. All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e. visitors.

Based on a Sandia report entitled, ''A Performance Evaluation of Biometric Identification Devices'' (SAND91—0276 UC—906 Unlimited Release, printed June 1991), and on its experience with the current photo-identification system, the licensee demonstrated that the false-acceptance rate for the hand geometry system will be better than is achieved by the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The CR3 Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process and potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Florida Power Corporation an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee (i.e., contractors, who are authorized unescorted access into the protected area) can take their badges offsite provided that the licensee implements a process testing of the proposed system and revise the CR3 Physical Security Plan as described in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 24982).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of May 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–12591 Filed 5–13–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Grants Management Requirements

AGENCY: Office of Management and Budget.

ACTION: Proposed Revision of OMB Circulars A–21, A–87, A–102, A–110 and A–122.

SUMMARY: The Office of Management and Budget (OMB) proposes to revise OMB Circulars A–21, ''Cost Principles for Educational Institutions,'' A–87, ''Cost Principles for State and Local Governments,'' A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and A–122, ''Cost Principles for Non-Profit Organizations,'' to provide a conditional exemption from OMB's grants management requirements and a conditional class deviation from the agencies' Grants Management Common Rule for certain Federal grant programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A recompiled Circular A–122 is also provided.

DATES: All comments on this proposal should be in writing and must be received by July 14, 1997. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Grants Management Exemption Docket, Office of Federal Financial Management, Office of Management and Budget, Room 6025 New Executive Office Building, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted via the Internet to kahlow__b@a1.eop.gov. Please include the full body of E-mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3053. The text of this proposed revision and of the current OMB Circulars A–21, A–87, A–102, and A–110 are available electronically on the OMB Home Page at http://www.whitehouse.gov/WH/EOP/omb. The text of a fully recompiled Circular A–122 is appended to this proposal and will also be available electronically on the OMB Home Page. The current version of OMB Circulars A–21, A–87, A–102, and A–110 are available in paper format by contacting the OMB Publications Office at (202) 395–7332.

SUPPLEMENTARY INFORMATION: The Administration believes in greater flexibility for State-administered grant programs in return for greater accountability. Therefore, the Office of Management and Budget (OMB) proposes to revise OMB Circulars A–21, ''Cost Principles for Educational Institutions,'' A–87, ''Cost Principles for State and Local Governments,'' A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and A–122, ''Cost Principles for Non-Profit Organizations,'' to provide a conditional exemption from OMB's grants management requirements and a conditional class deviation from the agencies' Grants Management Common Rule (GMCR) for certain Federal grant programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment.

This exemption could be granted to related Federal non-entitlement grant programs which are administered by State and local governments and which have the following characteristics: the related programs (1) serve a common program purpose, (2) have specific statutorily-authorized consolidated planning and consolidated administrative funding, and (3) are administered by State agencies which are funded mostly by non-Federal sources. In order to promote efficiency in the State and local program administration of such related programs, Federal agencies could exempt these covered State-administered, non-entitlement grant programs from Federal grants management requirements in OMB Circulars A–21, A–87, A–110, and A–122, and the GMCR. The exemptions would be from all but the allocability-of-costs provisions of Circulars A–21 (Section C, subpart 4), A–87 (Attachment A, subsection C.3), and A–122 (Attachment A, subsection A.4), and from all of the administrative requirements provisions of Circular A–110 and the GMCR.

A Federal agency would have the discretion to exempt a Federal grant program from the Federal grants management requirements. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

If a Federal agency exempts a Federal grant program from these requirements, a State would only qualify if it adopts its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A–87, and extends such requirements to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients. If a State does not adopt such fiscal and administrative requirements, then it would continue to be subject to the Federal grants management requirements.

To provide such a conditional exemption, Section A.3 of Circular A–21, Attachment A Section A.3 of Circular A–87, Section 2 of Circular A–102, Subpart C of Circular A–110, and Attachment A Section A of Circular A–122 are proposed for amendment.

Franklin D. Raines,

Director.

OMB proposes to add the following language: (1) As a new paragraph d under A.3 Purpose and Scope, Application of Circular A–21; (2) as a new paragraph e under Attachment A, A.3 Purpose and Scope, Application of Circular A–87; (3) as a new paragraph j under Section 2, Post-award Policies of Circular A–102; (4) as a new Section __.45 under Subpart C, Post-award Requirements of Circular A–110; and, (5) as a new paragraph 7 under Attachment A, A. Basic Considerations of Circular A–122:

Conditional exemptions. OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A–87 (Attachment A, subsection C.3), ''Cost Principles for State, Local, and Indian Tribal Governments,'' A–21 (Section C, subpart 4), ''Cost Principles for Educational Institutions,'' and A–122 (Attachment A, subsection A.4), ''Cost Principles for Non-Profit Organizations,'' and from all of the administrative requirements provisions of OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and the agencies' grants management common rule.

When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A–87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

Appendix

OMB originally issued Circular A–122 on June 27, 1980 (45 FR 46022). OMB amended the Circular on April 25, 1984 (49 FR 18260), on May 19, 1987 (52 FR 19788), and on September 29, 1995 (60 FR 52516). This Appendix presents the fully recompiled Circular A–122. It reflects all of the amendments and all of OMB's current editorial conventions, and incorporates various non-substantive technical corrections. In addition, the recompilation includes the following two clarifying changes in Attachment B which reflect what has been OMB's interpretation: (a) Under Idle facilities and idle capacity, Subparagraph 16.b.(1) now reads ''They are necessary to meet fluctuations in workload'' instead of ''They are unnecessary to meet fluctuations in workload;'' and, (b) under Taxes, Subparagraph 47.a now reads ''* * * based on an exemption afforded the Federal Government'' instead of ''* * * based on an exemption afforded the Government.''

The text of the recompiled Circular follows:

Circular No. A–122

Revised

Transmittal Memorandum No. 4

To the Heads of Executive Departments and Establishments

SUBJECT: Cost Principles for Non-Profit Organizations

This transmittal memorandum is a recompilation of Circular A–122, ''Cost Principles for Non-Profit Organizations,'' that consists of the original Circular published at 45 FR 46022 (June 27, 1980), as amended by Transmittal Memoranda Numbers 1 through 3, at 49 FR 18260 (April 25, 1984), 52 FR 19788 (May 19, 1987), and 60 FR 52516 (September 29, 1995), respectively. This recompilation reflects all of the amendments and all of the Office of Management and Budget's current editorial conventions, and incorporates various non-substantive technical corrections and two clarifying changes.

Franklin D. Raines

Director

Attachment

Circular No. A–122
Revised

To the Heads of Executive Departments and Establishments

Subject: Cost principles for non-profit organizations

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations. It does not apply to colleges and universities which are covered by Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions''; State, local, and federally-recognized Indian tribal governments which are covered by OMB Circular A–87, ''Cost Principles for State and Local Governments''; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by individual agencies for non-profit organizations.

3. *Applicability.*

a. These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, Circular A–87 shall apply.

4. *Definitions.*

a. *Non-profit organization* means any corporation, trust, association, cooperative, or other organization which:

(1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) is not organized primarily for profit; and

(3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term ''non-profit organization'' excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally-recognized Indian tribal governments; and (iv) those non-profit organizations which are excluded from coverage of this Circular in accordance with paragraph 5.

b. *Prior approval* means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some non-profit organizations.* Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to non-profit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to OMB. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to OMB within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles
Attachment B—Selected Items of Cost
Attachment C—Non-Profit Organizations Not Subject To This Circular

8. *Requests for exceptions.* OMB may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, OMB, Washington, DC 20503, telephone (202) 395-3993.

Attachments

Circular No. A–122

Attachment A—General Principles

Table of Contents

Circular No. A–122

Attachment A—General Principles

A. Basic Considerations

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs.* To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles (GAAP).

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see Sec. __.24 of Office of Management and Budget (OMB) Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

6. *Advance understandings.* Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in paragraph 19 of Attachment B). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

e. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in subparagraph B.2. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. *General.*

a. Where a non-profit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in subparagraph 2.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subparagraphs 2 through 5.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. *Simplified allocation method.*

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in subparagraph B.3.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 30 of Attachment B.

d. Except where a special rate(s) is required in accordance with subparagraph 5, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

3. *Multiple allocation base method.*

a. Where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits.

b. The groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision desired.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. In general, any cost element or cost related factor associated with the organization's work is potentially adaptable for use as an allocation base, provided (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (ii) it is common to the benefiting functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subparagraph 5, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as major subcontracts and subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 30, Attachment B. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool.

4. *Direct allocation method*.

a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in subparagraph 2.

5. *Special indirect cost rates*. In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under subparagraphs 2, 3, and 4, and (ii) the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. *Definitions*. As used in this section, the following terms have the meanings set forth below:

a. *Cognizant agency* means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate* or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. *Negotiation and approval of rates.*

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with subparagraph D.5, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

Circular No. A–122

Attachment B—Selected Items of Cost

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Circular No. A–122

Attachment B—Selected Items of Cost

Paragraphs 1 through 51 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 41; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with Office of Management and Budget (OMB) Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;'' or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* (reserved)

4. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in subparagraph g). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see subparagraph g), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3) (a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Pension plan costs.*

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93–406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

h. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. *Overtime, extra pay shift, and multi-shift premiums.* See paragraph 28.

j. *Severance pay.* See paragraph 45.

k. *Training and education costs.* See paragraph 49.

l. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph (2), except when a substitute system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Attachment A.)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2), must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516). For this purpose, the term ''nonprofessional employee'' shall have the same meaning as ''nonexempt employee,'' under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term ''contingency reserve'' excludes self-insurance reserves (see subparagraphs 6.f (3) and 18.a(2)(d); pension funds (see subparagraph 6.g); and reserves for normal severance pay (see subparagraph 45.b(1)).

8. *Contributions.* Contributions and donations by the organization to others are unallowable.

9. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in subparagraph f, a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under subparagraph e, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

10. *Donations.*

a. *Services received.*

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government,

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Sec. __.23 of Circular A–110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs), provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a).

b. *Goods and space.*

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Sec. __.23 of Circular A–110. The value of the donations shall be determined in accordance with Sec. __.23 of Circular A–110. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 26).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) *Equipment* means an article of nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An organization may use its own definition, provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) *Acquisition cost* means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) *Special purpose equipment* means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) *General purpose equipment* means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $1000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 43 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See subparagraph 6.f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) *Facilities* means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) *Idle facilities* means completely unused facilities that are excess to the organization's current needs.

(3) *Idle capacity* means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis may be used if it can

be shown that this amount of usage could normally be expected for the type of facility involved.

(4) *Costs of idle facilities or idle capacity* means costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see subparagraphs 48.b and d).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development.* [Reserved]

18. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see subparagraphs 6.f and 6.g(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see subparagraph 6.f(4)). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fundraising, and investment management costs.*

a. Interest.

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable. However, interest on debt incurred after the effective date of this revision to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after the effective date of this revision and used in support of sponsored agreements is allowable, provided that:

(a) For facilities acquisitions (excluding renovations and alterations) costing over $10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

- A statement of purpose and justification for facility acquisition or replacement.
- A statement as to why current facilities are not adequate.
- A statement of planned future use of the facility.
- A description of the financing agreement to be arranged for the facility.
- A summary of the building contract with estimated cost information and statement of source and use of funds.
- A schedule of planned occupancy dates.

(b) For facilities costing over $500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of Sec. __.30 through __.37 of Circular A–110, which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated (''arm's length'') third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(c) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated (''arm's length'') third party.

(d) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(e) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subparagraph (b). For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(f) Non-profit organizations are also subject to the following conditions:

(i) Interest on debt incurred to finance or refinance assets acquired before or reacquired after the effective date of this Circular is not allowable.

(ii) For debt arrangements over $1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(iii) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(iv) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated (''arm's length'') third party.

(2) For non-profit organizations subject to ''full coverage'' under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of subparagraph a do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

(3) The following definitions are to be used for purposes of paragraph 19:

(a) *Re-acquired assets* means assets held by the non-profit organization prior to the effective date of this revision that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(b) *Initial equity contribution* means the amount or value of contributions made by non-Federal entities for the acquisition of the asset or prior to occupancy of facilities.

(c) *Asset costs* means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

b. Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fundraising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Attachment A.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Lobbying.*

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph a:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph a(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.3 of Attachment A.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph 21 complies with the requirements of this Circular.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: (1) The employee engages in lobbying (as defined in subparagraphs (a) and (b)) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph 21. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

22. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

23. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

24. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

25. *Meetings and conferences.*

a. Costs associated with the conduct of meetings and conferences include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, Entertainment costs, and paragraph 30, Participant support costs.

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective (see paragraph B of Attachment A). These costs are allowable, provided that they meet the general tests of allowability, shown in paragraph A of Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

26. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences sponsored by others when the primary purpose is the dissemination of technical information are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

27. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

28. *Overtime, extra-pay shift, and multi-shift premiums.* Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the

prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions, such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Federal Government will result.

29. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Federal Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

30. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

31. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 35).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Federal Government, are unallowable (also see paragraph 44).

32. *Pension plans.* See subparagraph 6.g.

33. *Plant security costs.* Necessary expenses incurred to comply with Federal security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

34. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

35. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to subparagraphs b, c, and d when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Federal Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see subparagraph 48.e).

36. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subparagraph 18.a(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subparagraph a shall be excluded in computing award costs.

37. *Public information service costs.*

a. Public information service costs include the costs associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

38. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed in paragraph 29.

39. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

40. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, fair wear and tear excepted, are allowable.

41. *Recruiting costs.* The following recruiting costs are allowable: cost of ''help wanted'' advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see subparagraph 42.c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

42. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in subparagraphs b, c, and d, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of subparagraph b. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 51 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

43. *Rental costs.*

a. Subject to the limitations described in subparagraphs b through d, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which are required to be treated as capital leases under GAAP, are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed, i.e., to the amount that minimally would pay for depreciation or use allowances, maintenance, taxes, and insurance. Interest costs related to capitalized leases are allowable to the extent they meet criteria in subparagraph 19.a. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the organization purchased the facility.

44. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

45. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

46. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable, provided the charges for the services meet the conditions of either subparagraph b or c and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subparagraph A.5 of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally-supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to subparagraph A.6 of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

47. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) Taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

48. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default (see Sec. __.61 of Circular A–110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Sec. __.30 through __.37 of Circular A–110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2). Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under subawards. Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

49. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in subparagraphs b and c.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 23, and 43.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under subparagraphs b and c may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

50. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 24). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

51. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to subparagraphs b through e, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 41 and 42, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term ''foreign travel'' means travel outside that country.

Circular No. A–122

Attachment C—Non-Profit Organizations Not Subject to This Circular

Aerospace Corporation, El Segundo, California
Argonne Universities Association, Chicago, Illinois
Associated Universities, Incorporated, Washington, D.C.
Associated Universities for Research and Astronomy, Tucson, Arizona
Atomic Casualty Commission, Washington, D.C.
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Center for Energy and Environmental Research (CEER), (University of Puerto Rico), Commonwealth of Puerto Rico
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
Comparative Animal Research Laboratory (CARL), (University of Tennessee), Oak Ridge, Tennessee
Environmental Institute of Michigan, Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Institute, Chicago, Illinois
Institute for Defense Analysis, Arlington, Virginia
Institute of Gas Technology, Chicago, Illinois
Midwest Research Institute, Headquartered in Kansas City, Missouri
Mitre Corporation, Bedford, Massachusetts
Montana Energy Research and Development Institute, Inc. (MERDI), Butte, Montana
National Radiological Astronomy Observatory, Green Bank, West Virginia
Oak Ridge Associated Universities, Oak Ridge, Tennessee
Project Management Corporation, Oak Ridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Sandia Corporation, Albuquerque, New Mexico
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
Universities Corporation for Atmospheric Research, Boulder, Colorado
Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
Other non-profit organizations as negotiated with awarding agencies

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BILLING CODE 3110–01–P

POSTAL RATE COMMISSION

[Docket No. MC97–2]

Parcel Classification Reform; Notice of Withdrawal of Request by United States Postal Service and Order Granting Motion to Close Docket

May 9, 1997.

On April 14, 1997, the United States Postal Service filed a pleading announcing the withdrawal of its Request in this proceeding and moving that the Commission close this docket. Notice of United States Postal Service of Withdrawal of Request for a Recommended Decision and Motion to Close Docket, April 14, 1997. In its pleading, the Postal Service states that it is currently engaged in evaluating its financial situation, as well as existing schedules of all postal rates and fees, and that this review may lead to an omnibus request for changes in rates and fees pursuant to 39 U.S.C. § 3622. According to the Service, such a request would include the subclasses for which it proposed mail classification and other changes in this proceeding, and these latter proposals ''would be considered for inclusion in such a request.'' Id. at 1, n.1.

The Postal Service claims that the current review of its financial status and existing rate and fee schedules has four consequences. First, it says the review has required an allocation of significant time and resources, many of which ''are unique and would be required for both litigation of the current case and preparation and litigation of a general rate case.'' Id. at 1. Second, the Service has found that developing comprehensive proposals ''requires reliance on projections and assumptions that in some respects overtake the bases of its proposals in the instant proceeding.'' Id. at 1–2.[1] Third, should the Governors decide to submit an omnibus rate request in the near future, the Service notes that simultaneous litigation of a rate case and the current case might present a burden for mailers, other participants, and perhaps the Commission. Finally, the Service argues that the successive implementation of rate and fee changes resulting from decisions in this case and a rate proceeding could prove to be unduly disruptive to mailers and to the Postal Service. Id. at 2.

In light of all these considerations, the Postal Service states that it ''has concluded that it cannot continue to participate in the instant docket in light of its efforts to develop appropriate options for the Board's consideration with respect to a general rate case.'' Ibid. Accordingly, the Service notes that the Board of Governors has authorized it to withdraw its Request in this docket, and gives notice of such withdrawal, as well as its cessation from participation in the case as of April 14, 1997.

No participant has opposed the Postal Service's motion to terminate this docket in light of the withdrawal of its Request.[2] However, in a response filed

[1] The Service also claims that efforts by some parties to expand the scope of the instant proceeding, if successful, would require allocation of additional resources and increase the possibility of differences between its initial request here and proposals currently undergoing review.

[2] On April 23, the Commission received in this docket a pleading captioned, ''Joint Motion of Advertising Mail Marketing Association, Association of American Publishers and the Direct Marketing Association for Bound Printed Matter.'' The movants do not oppose the Postal Service's motion to terminate this proceeding, nor request that the Commission keep the docket open for a

on April 24, the Office of the Consumer Advocate argues that discovery in this proceeding had been hampered by certain practices of the Postal Service; that the Service has relied on flawed legal premises regarding appropriate use of Motions to Excuse from Answering; that the Commission should make greater use of its authority to suspend proceedings when the Postal Service fails to comply with discovery requests; and that the Commission should consider initiating a rulemaking proceeding to address problems with the discovery process. Response of the Office of the Consumer Advocate to the Notice of Withdrawal of Request for a Recommended Decision and Motion to Close Docket Pursuant to Presiding Officer's Ruling No. MC97–2/7, April 24, 1997. OCA claims that the difficulties it cites ''have occurred in many, if not all, ratemaking and classification proceedings in recent memory[,]'' and therefore recommends that the Commission take a ''fresh look'' at its discovery process, perhaps culminating in a rulemaking proceeding. Id. at 22.

The Commission shall grant the Postal Service's motion to terminate this proceeding. In view of postal management's determination to discontinue its efforts in support of the proposals pending before the Commission in this docket—an action which the Board of Governors has specifically authorized—continuing these proceedings would appear to serve no practical purpose.

However, while this docket will be closed, the Commission strongly encourages the Postal Service to supply the Commission and participants with as much material responsive to outstanding Presiding Officer's Information Requests and discovery requests as is feasible at this time. Both the Commission and the participants have invested considerable efforts in exploring the factual bases of the Service's mail classification and rate proposals in this case.[3] To the extent that the Service had undertaken to prepare responses to these discovery efforts prior to the determination to withdraw the Request, failure to produce them would appear wasteful, especially if the same proposals are to likely to be re-litigated in an omnibus rate case or other subsequent proceeding. Consequently, while proceedings will be terminated formally by this order, the Commission urges the Postal Service to provide responses to discovery requests or to outstanding Presiding Officer's Information Requests it might be able to prepare conveniently, in order to avoid needless duplication of effort by the Commission and participants in a putative later proceeding.

The Commission does not believe that terminating proceedings at this time will result in prejudice to the due process rights of any participant. The Complainant in Docket No. C97–1, who moved to hold that proceeding in abeyance pending consideration of the Postal Service's proposed changes in parcel pricing in this case, has resumed prosecution of its Complaint in that docket, and the Commission has granted its request to convene an informal conference to discuss the possibility of settlement. Order No. 1170, Order Granting Request To Schedule Informal Conference, April 18, 1997.[4] Additionally, as noted earlier, the Commission will consider the joint motion to initiate a new proceeding to consider one proposed mail classification change in the Postal Service's Request—and any other similar motions—independently of this docket.

It is ordered:

1. The Motion of the United States Postal Service to Close Docket No. MC97–2 is granted.

2. In view of the termination of these proceedings, all pending motions in Docket No. MC97–2 are rendered moot.

3. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–12669 Filed 5–13–97; 8:45 am]

BILLING CODE 7710–FW–P

limited purpose. Instead, they request ''that the Commission exercise its powers pursuant to 39 U.S.C. § 3623(b) and, on its own motion, initiate a proceeding to consider whether the maximum weight limitation * * * imposed upon mail otherwise eligible for bound printed matter should be increased to 15 pounds, as the Postal Service has proposed in this proceeding.'' Id. at 1. Because the Joint Motion is intended, by its own terms, as a petition for the Commission's initiation of a special-purpose mail classification change proceeding *sua sponte*, it will be considered independently, rather than ruled upon as a pending motion in this docket.

[3] OCA's response, *supra*, is indicative of the zealous, but sometimes unavailing, discovery efforts of some participants in this proceeding. In light of the current posture of the case, there is no opportunity to resolve the discovery-related issues raised by OCA. However, the Commission will continue to bear these considerations in mind in adapting its rules to discovery practice in future proceedings.

[4] The informal conference was held on May 1, 1997. According to a status report subsequently filed by the Postal Service, the consensus of those attending the conference was that there are sufficient grounds for exploring the possibility of settlement, and to that end parties are now engaged in a joint effort to draft a settlement agreement. Status Report Pursuant to Order No. 1170, May 7, 1997.

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: May 5, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 20227, April 25, 1997.

CHANGE: At its meeting on May 5, 1997, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date: Consideration of the Report of the Capital Projects Committee on the Tray Management System.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–12806 Filed 5–12–97; 3:27 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22656; 813–150]

The BSC Employee Fund, L.P. and BSCGP Inc.; Notice of Application

May 7, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The BSC Employee Fund, L.P. (the ''Partnership'') and BSCGP Inc. (the ''General Partner'').

RELEVANT ACT SECTIONS: Order under section 6(b) of the Act for an exemption from all provisions of the Act except sections 7, 8(a), 9, 17 (except for certain provisions of sections 17(a), (d), (f), (g), and (j) as described herein), and 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Partnership, and other partnerships offered to the same class of investors (the ''Subsequent Partnerships'') (together with the Partnership, the ''Partnerhships''), to engage in certain affiliated and joint transactions. Each partnership will be an employees' securities company within the meaning of section 2(a) (13) of the Act. Partnership interests will be offered to eligible employees, officers, and directors of The Bear Stearns Companies Inc. (''BSC'') and any entities controlled directly or indirectly by BSC (together with BSC, ''Bear Stearns'').

FILING DATES: The application was filed on April 17, 1996 and amended on August 16, 1996 and April 18, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 2, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 245 Park Avenue, New York, New York 10167.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. BSC is a holding company that, through its subsidiaries, principally Bear, Stearns & Co. Inc. and Bear, Stearns Securities Corp. (''BSSC''), is a leading U.S. investment banking, securities trading, and brokerage firm serving U.S. and foreign corporations, governments, and institutional and individual investors. Bear, Stearns & Co. Inc. and BSSC are broker-dealers registered under the Securities Exchange Act of 1934 (the ''Exchange Act''). Bear, Stearns and Co. Inc. and two other affiliates of BSC are registered as investment advisers under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. From time to time, in the course of its investment banking business, numerous investment opportunities come to the attention of Bear Stearns. Such opportunities may include certain types of closed-end private investment funds that typically are excepted from the definition of ''investment company'' under section 3(c)(1) or, potentially, section 3(c)(7) of the Act (''Acquisition Funds''). Acquisition Funds typically invest directly in portfolio companies identified by the general partners of the Acquisition Funds (the ''Portfolio Companies''). Portfolio Companies may be subject to leveraged buyouts, may require venture financing, or may otherwise require growth capital. Certain of the Acquisition Funds may also make other types of investments, including real estate-related investments and investments in emerging market opportunities.

3. The Partnership currently consists of the General Partner, which is a Delaware corporation and a wholly-owned subsidiary of BSC, and BSC, which is currently acting as the Partnership's sole limited partner. The General Partner has registered as an investment adviser under the Advisers Act. The Partnership is soliciting subscriptions from a number of its employees, officer, and directors (''Eligible Employees,'' as defined below) to acquire limited partnership interests in the Partnership; however, such Eligible Employees have not yet been admitted to the Partnership as limited partners (''Limited Partners''). Upon the occurrence of certain events, including receipt by the Partnership of the order requested herein, the Eligible Employees will be admitted into the Partnership as Limited Partners (the ''Closing''), and, pursuant to the subscription agreements, as such time the Limited Partners will be required to make their initial cash capital contribution to the Partnership, which the Partnership in turn will use to acquire the interests in the Acquisition Funds previously subscribed for by Bear Stearns.[1] Bear Stearns has entered into subscription agreements with respect to seven Acquisition Funds identified for investment by the Partnership. These subscription agreements were entered into in the expectation that at the time Eligible Employees are first admitted to the Partnership: (i) all the rights and obligations arising under these subscription agreements will be transferred to the Partnership; (ii) the Partnership will be admitted as a Limited Partner to each of the Acquisition Funds or will otherwise succeed to the economic interest in the Acquisition Funds previously held by Bear Stearns; and (iii) Bear Stearns will be reimbursed by the Partnership for its net cash contribution for any funds previously advanced by Bear Stearns in respect of its subscription agreements with such Acquisition Funds.

4. The purpose of the Partnership is to enable certain key personnel of Bear Stearns to pool their investment resources and to receive the benefit of investing in a portfolio of Acquisition Funds, without the necessity of each investor seeking to identify such opportunities and to analyze their investment merit. In addition, the pooling of resources should allow the investors to participate in investment opportunities that ordinarily would not be available to them as individual investors. The Partnership will seek to reward and retain current key personnel and, through the potential formation of Subsequent Partnerships, to attract other individuals to Bear Stearns.

5. Interests in the Partnership will be offered without registration under a claim of exemption under section 4(2) of the Securities Act of 1933 (''Securities Act'')[2] and will be offered and sold only to Eligible Employees of Bear Stearns or trusts established for their benefit or for the benefit of their immediate family. To be an Eligible Employee, an individual must be at the time of subscription a managing director or senior managing director of Bear Stearns (which represent the two most senior categories of professional employees within Bear Stearns) or a Bear Stearns director or senior officer, and such individual must also be an ''accredited investor'' meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the Securities Act.[3] All Eligible Employees

[1] Bear Stearns presently has not determined whether Subsequent Partnerships will in fact be formed and offered to Eligible Employees. To the extent that Subsequent Partnership are formed and offered, it is expected that their purpose, structure, and manner of operation will be substantially similar to the purpose, structure, and manner of operation of the Partnership. Each Subsequent Partnership will observe all of the terms and conditions of the application.

[2] Section 4(2) exempts transactions by an issuer not involving any public offering from the Securities Act's registration requirement.

[3] The sole exception to these offering and eligibility requirements is that three BSC employees who are not accredited investors but who have been intimately involved in the organization of the Partnership and the investment program contemplated thereby will be offered the opportunity to invest in the Partnership. Each employee who is not an accredited investor pursuant to the income requirements set forth in rule 501(a)(6) of Regulation D will have had reportable income from all sources (including any profit shares or bonus) in the calendar year

will be offered interests in the Partnership, but no Eligible Employee will be required to invest in the Partnership.

6. The management and control of the Partnership, including all investment decisions to be made on a going-forward basis, will be vested exclusively in the General Partner, and the Limited Partners will have no part in the management and control of the Partnership and will have no authority or right to act on behalf of the Partnership in connection with any matter. The business and affairs will be managed by or under the direction of the board of directors of the General Partner (the ''Board''); thus, the Board indirectly will manage and control the Partnership. The Board will, among other things, act as the advisory committee of the Partnership responsible for approving all investment decisions. The Board is composed exclusively of senior officers of BSC or one of its principal operating subsidiaries. Each member of the Board qualifies as an Eligible Employee, and each initial member of the Board will invest as a Limited Partner.

7. Except with respect to the reimbursement of expenses, the General Partner will not receive any form of management fee or other form of compensation for acting as the General Partner. Instead, it, or any other entity within Bear Stearns incurring such expenses, will be reimbursed for actual organization expenses up to a specified amount and for normal operating expenses, including rent, salaries of its personnel, expenses incurred by its personnel in investigating investment opportunities, communications and travel expenses, and an allocated share of corporate overhead, subject to a ceiling of 0.5% of Total Commitments (as defined below) each year. The Partnership also will pay certain enumerated expenses of the General partner and the Partnership incurred in connection with the operation and dissolution of the Partnership. The nature of the General Partner's interest in the Partnership (which is expected to represent at least a 1.0% Percentage Interest, as defined below), will not entitle it to a carried interest or other special or preferred distribution rights. The General Partner will be entitled to distributions from the Partnership solely in accordance with its Percentage Interest.

immediately preceding such person's admission as a Limited Partner in excess of $120,000 and will have a reasonable expectation of reportable income in the years in which such person will be required to make capital contributions of at least $150,000.

8. Pursuant to subscription agreements to be entered into by the General Partner and each of the Limited Partners (together, the ''Partners''), a maximum total commitment (''Total Commitment'') will be established for each Partner in connection with that Partner's investment in the Partnership. Each Limited Partner's Total Commitment will consist of (i) a capital commitment (''Capital Commitment'') equal to 50% of the Limited Partner's Total Commitment and (ii) an equal amount of debt of the Partnership (other than amounts attributable to accrued and unpaid interest) outstanding under a credit agreement to be entered into between Bear Stearns and the Partnership (''BSC Credit Facility''). The Total Commitment for all Partners will represent an amount sufficient to fund the purchase price payable by the partnership for the purchase of interests in the previously identified Acquisition Funds, the aggregate unpaid capital commitments made in respect of the Partnership's subscription agreements with the Acquisition Funds, as well as organization and ongoing administrative expenses.[4]

9. Concurrently with the Closing, the partnership will enter into an agreement with Bear Stearns creating the BSC Credit Facility, a line of credit with a maximum availability equal to the sum of (i) 50% of the aggregate Total Commitment of each Limited Partner and (ii) accrued and unpaid interest thereon. Indebtedness under the BSC Credit Facility will be debt of the Partnership and without recourse to the Partners. Because the Partners may not share in the debt proportionately, indebtedness under the BSC Credit Facility will be allocated to each Partner separately, and each Partner's share of interest expense and cash distributions from the Partnership will be calculated separately to reflect that Partner's allocable share of that indebtedness.

10. Advances from Bear Sterns under the BSC Credit Facility will bear interest based on prevailing LIBOR rates plus an applicable margin (initially expected to be 100 basis points). The terms of the BSC Credit Facility will be no less favorable to the Limited Partners than those that generally would be obtained by the Limited Partners on an arm's length basis.

11. The Partnership will not be permitted to make investments other than investments in (i) Acquisition Funds, (ii) temporary investments in specified short-term government securities, certificates of deposit, commercial paper and similar securities, as well as money market funds (including funds managed, sponsored, or underwritten by Bear Stearns) that invest in such securities (''Temporary Investments''),[5] or (iii) securities or other property that may be distributed by Acquisition Funds to their limited partners (including securities for which securities so distributed may be exchanged or into which securities so distributed may be converted).

12. No Bear Stearns Related Person (as defined below) other than the Partnership is making an investment in any of the Acquisition Funds that have been identified for transfer to the Partnership as of the Closing Date and, except as described below, a Bear Stearns Related Person will not, at any time a Partnership is not fully invested, be permitted to make investments in Acquisition Funds without having first offering the opportunity to make the investment to the Partnership (''obligation to offer''). A ''Bear Stearns Related Person'' means the General Partner, The Bear Stearns Companies Inc., and any other person in which at least 80% of the ownership interest is beneficially owned directly or indirectly by The Bear Stearns Companies Inc., as well as any investment fund managed by any of the foregoing.

13. Certain investments are not subject to the ''obligation to offer.'' These investments include (i) An investment made by a Bear Stearns Related Person pursuant to an offer made only to BSC or one of its subsidiaries, (ii) an investment that constitutes compensation for providing investment banking or other services, (iii) an investment made by any Bear Stearns Related Person in its underwriting capacity or in connection with broker-dealer activities, or (iv) an investment made in connection with the purchase of a portfolio of securities from another entity.[6]

[4] Acquisition Funds tend to make capital calls on their limited partners periodically on an as-needed basis in connection with particular investment in one or more Portfolio Companies. To accommodate anticipated liquidity concerns of the Limited Partners and to avoid drawing their capital substantially in advance of the funding requirements established by the Acquisition Funds, the partnership has determined to draw down the Limited Partners' capital over time, roughly in parallel fashion to capital calls issued by the Acquisition Funds.

[5] The Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

[6] Applicants expect that there may be co-investments by the Partnership with one or more of its affiliated entities. For example, the Partnership and a Bear Stearns Related Person may co-invest in

Continued

14. Any transactions involving Bear Stearns, an Acquisition Fund, affiliates of Acquisition Funds, any Portfolio Company, or any Partner or person or entity related to any Partner must be on terms no less favorable to the Partnership than generally are afforded to unrelated third parties in comparable transactions. Such transactions may include the purchase or sale by the Partnership of an investment from or to any Bear Stearns affiliate, acting as principal, or borrowings of the Partnership pursuant to the BSC Credit Facility. With respect to any investment purchased by the Partnership from Bear Stearns, acting as principal, the Partnership will acquire the investment for no more than Bear Stearns' net cash contribution, plus carrying costs and certain organizational expenses. The Partnership does not presently expect that it will acquire investments from Bear Stearns, acting as principal, other than in connection with acquisitions of interests in Acquisition Funds that previously have been acquired by Bear Stearns and designated by Bear Stearns and the General Partner at the time of acquisition for resale to the Partnership, and, potentially, in connection with the purchase of Temporary Investments.

15. Bear Stearns may provide investment banking or management or other services to, and receive related fees or other compensation and expense reimbursement from, entities in which a Partnership makes an investment or competitors of such entities. Such fees or other compensation may include, without limitation, advisory fees, organization or success fees, financing fees, management fees, performance-based fees, fees for brokerage and clearing services, and compensation in the form of carried interests entitling Bear Stearns to share disproportionately in income or capital gains or similar compensation.

16. Upon admission into the Partnership, each participant will become a Limited Partner and, as such, will participate *pro rata* with other Limited Partners in making Partnership investments and paying Partnership expenses (other than interest on borrowing from Bear Stearns, as discussed above). Each Limited Partner will also be entitled to a *pro rata* share of Partnership allocations and distributions. Distributions of amounts received from the Acquisition Funds will be made, and items of income, gain, loss, and deduction attributable to the Acquisition Funds will be allocated ratably among the Partners in accordance with their percentage interests, which will equal each Partner's Total Commitment as a percentage of all Total Commitments of the Partners (''Percentage Interests'').

17. For a Limited Partner who is an employee of Bear Stearns at the time of distributions, the Limited Partner's Percentage Interest of available cash, net of expenses, will be applied in the following order: (i) To fund aggregate distributions each year equal to the combined federal, New York State, and New York City income tax on items of income of the Partnership calculated at the highest rates applicable to individuals for the type of income at issue (''Tax Distributions''); (ii) to pay in full the Limited Partner's share of accrued interest on any outstanding indebtedness under the BSC Credit Facility; (iii) to repay the Limited Partner's share of the principal amount of any outstanding indebtedness under the BSC Credit Facility; and (iv) to fund distributions to the Partner.

18. A Limited Partner whose employment with Bear Stearns is terminated for other than death, disability, or retirement and who honors his or her obligation to fund Capital Commitments as described below will no longer share in the 50% portion of the post-termination distributions corresponding to the portion of the investment that was initially funded with the proceeds of the BSC Credit Facility, but otherwise will be treated as a Limited Partner who remains employed by Bear Stearns. To achieve this result, such a Limited Partner's Percentage Interest of available cash, net of expenses, will be applied in the following order: (i) To fund Tax Distributions to the Limited Partner; (ii) to fund Tax Distributions to Bear Stearns in respect of the 50% portion of the distribution not paid to the Limited Partner; (iii) to pay in full the Limited Partner's share of accrued interest on any outstanding indebtedness under the BSC Credit Facility; (iv) to repay the Limited Partner's share of the principal amount of any outstanding indebtedness under the BSC Credit Facility; (v) to fund a distribution to the Limited Partner equal to such Limited Partner's ''Catch-Up Amount,'' as defined below; and (vi) to fund distributions 50% to the Limited Partner and 50% to Bear Stearns.[7]

19. If a Limited Partner's employment with Bear Stearns is terminated by reason of the disability or retirement of the Limited Partner, the Limited Partner will retain his or her entire Interest following the termination as though he or she were still an employee. In the case of the death of the Limited Partner, (i) the Limited Partner's estate will receive the economic rights of such Interest but will not be admitted to the Partnership as a Limited Partner, without the consent of the General Partner, and (ii) the estate of the Limited Partners will have the option to cease making capital contributions, in which case the estate's Interest will relate solely to assets of the Acquisition Funds at the time of death, and (iii) the estate will have the right to receive cash from the General Partner in an amount equal to the fair market value of the Limited Partner's Interest in the Partnership, as determined by the General Partner.

20. If a Limited Partner ceases to be employed by Bear Stearns for any reason other than death, disability, or retirement, and at that time all Capital Commitments of the Limited Partner have been fully funded, the Limited Partner will retain, following the termination of employment, his or her entire interest in assets of the Partnership acquired with his or her Capital Commitments, but will not retain any interest in assets of the Partnership acquired with the proceeds of the BSC Credit Facility. If a Limited Partner's employment with Bear Stearns is terminated other than for death, disability, or retirement, and at that time the Limited Partner has an unfunded Capital Commitment, the Limited Partner will be required to make a capital contribution to the Partnership equal to the Limited Partner's undrawn Total Commitment. Amounts contributed upon termination will be

an Acquisition Fund. In all events, transactions to which the Partnership is a party that would otherwise be prohibited by section 17(d) of the Act and rule 17d–1 thereunder will be effected only in compliance with the conditions applicable to such transactions that are specified below.

[7] The Catch-Up Amount of a Limited Partner shall equal an amount based on the assumption that the distributions to such Limited Partner were determined for such period without regard to distributions made to cover payments of interest on and principal of indebtedness under the BSC Credit Facility, and taxes on distributions not made to the Limited Partner. The Catch-Up Amount is intended to reverse the effects of using the investment return to repay the attributable share of the BSC Credit Facility of a Limited Partner who has ceased to be employed by Bear Stearns. Cash for each investment is provided to the Partnership 50% from the Limited Partner's Capital Commitment and 50% from BSC Credit Facility proceeds. All distributions, after funding tax distributions, are first applied to pay principal and interest on the BSC Credit Facility. After the BSC Credit Facility is repaid, for a Limited Partner who has ceased to be employed by Bear Stearns, additional proceeds from the entire investment are first distributed to the Limited Partner through the Catch-Up Amount provision (up to the amount applied to make payments on the BSC Credit Facility) and then are distributed 50% to the Limited Partner and 50% to Bear Stearns. The effect is generally to put the Limited Partner in the same position in which he or she would have been had the investment not been leveraged in the first place.

invested in Temporary Investments, pending investment in the Acquisition Funds. All income or loss from such Temporary Investments will be allocated, and cash (net of expenses and reserves for future expenses) produced by such investments will be distributed, to that Limited Partner, but otherwise such a Limited Partner will be treated as if his or her Capital Commitment had been fully funded at the termination of employment. If the Limited Partner fails to make such required capital contribution, the Partnership may then immediately redeem such Limited Partner's Interest at a price equal to the lesser of (i) the amount of such Limited Partner's capital account as reflected on the books and records of the Partnership, and (ii) the fair value of such Limited Partner's Interest (as determined by the General Partner), in each case measured as of the date of termination of such Limited Partner. Except as the Partnership and the Limited Partner may otherwise agree, the redemption price will be paid in the form of a note from the Partnership, bearing interest at three-month LIBOR, that will mature upon dissolution of the Partnership. Interest on the note will accrue and be payable at maturity.[8] To avoid unfairly disadvantaging departing Limited Partners who honor their Capital Commitments as compared to those who do not, the amount payable under the note will in no event exceed the amounts that would have been payable in respect of a Limited Partner's Interest (after giving effect to amounts advanced by Bear Stearns in respect of any unfunded Capital Commitment) had such Limited Partner made the required capital contribution upon his or her termination.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers; or by members of the immediate family of such employees, persons on retainer, or former employees.

2. Applicants request an order under section 6(b) of the Act granting an exemption from all provisions of the Act, except section 7, 8(a), 9, 17 (except for certain provisions of sections 17 (a), (d), (f), (g), and (j) as described herein), and 36 through 53, and the rules and regulations thereunder. Applicants assert that the order requested pursuant to section 6(b) of the Act is consistent with the protection of investors. Applicants believe that a substantial community of economic and other interests exists among Bear Stearns, the members of the Board, the officers of the General Partner, and the Limited Partners, taking into consideration the form of organization of the Partnership and the absence of any public investors. Applicants note that the capital structure of the Partnership will be such that the General Partner will contribute substantial capital to the Partnership but will not receive any special or preferred distribution rights with respect to its interest in the Partnership; indeed, neither the General Partner nor any Bear Stearns affiliate will receive any form of sales load or management or advisory fee from the Partnership or any of the Limited Partners. Applicants state that the community of interest between Bear Stearns and the Partnership will be enhanced further by the existence of the BSC Credit Facility, since Bear Stearns will bear a substantial portion of the risk of loans made thereunder, given that such loans will be nonrecourse to the Partners and payable only out of the assets of the Partnership. Finally, applicants believe Bear Stearns will have a substantial stake in the success of the Partnership given the concern of Bear Stearns with the morale of its key personnel, a substantial number of which are expected to invest in the Partnership.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other such property. Applicants request an exemption from section 17(a) of the Act to the extent necessary to permit a Partnership to: (a) Acquire interests in Acquisition Funds from Bear Stearns on a principal basis; (b) purchase interests in an Acquisition Fund in which Bear Stearns already owns an interest or where such Acquisition Fund (or, in certain circumstances, one of its Portfolio Companies) is otherwise affiliated with Bear Stearns or a Partnership; (c) sell, put or tender, or grant options in securities or interests in a company or other investment vehicle back to such entity, where such entity is affiliated with Bear Stearns; (d) participate as a selling security holder in a public offering that is underwritten by Bear Stearns or in which Bear Stearns acts as a member of the underwriting group; and (e) make money market fund or other short-term investments.

4. Applicants assert that, without the requested relief, the Partnerships would be precluded from acquiring interests in Acquisition Funds previously subscribed for by Bear Stearns. Applicants note that following commencement of the offering of Interests to Limited Partners by the delivery of offering materials, there will be no discretion regarding which interests in Acquisition Funds previously acquired by Bear Stearns will be sold to the Partnership the Acquisition Funds described in the offering materials have been designated for sale to the Partnership since the time the investments were made, and will be sold for a price not to exceed Bear Stearns' net cash contribution plus carrying costs and certain organizational expenses. Applicants argue that this arrangement should ensure the fairness and reasonableness of the purchase of interests in the Acquisition Funds.

5. Applicants state that relief is also requested to permit a Partnership the flexibility to deal with its portfolio of Acquisition Funds, and, in particular, securities in Portfolio Companies that may be distributed from time to time by the Acquisition Funds to their limited partners, in the manner the General Partner deems most advantageous. Applicants contend that relief from section 17(a) is necessary since underwritten public offerings typically involve purchases of each underwriter, on several basis, from each selling security hold of a portion of the securities sold by each such security holder. Applicants expect that the short-term investments described above may be purchased from, or sold to, Bear Stearns at market value without payment of fees by the Partnership. In connection with money market fund investments in funds advised or administered by Bear Stearns, applicants state that the assets will be subject to an advisory and/or administrative fee on the same basis as those charged to and paid by unaffiliated persons participating in the same fund or transactions.

[8] Applicants believe that deferring maturity of the note until dissolution of the Partnership is consistent with the protection of investors because the timing of the dissolution of the Partnership is outside the control of Bear Stearns and Bear Stearns has no incentive to defer dissolution of the Partnership, and the holders of the notes are not being treated any differently from other Limited Partners, who also will await dissolution for their final distributions.

6. Applicants represent that the Partners will have been fully informed of the possible extent of the dealings by the Partnership, the Acquisition Funds, and the Portfolio Companies with Bear Stearns. Applicants assert that, as professionals employed in the securities business, the Partners will be able to understand and evaluate the attendant risks. Applicants believe that the community of interest among the Partners, on the one hand, and Bear Stearns, on the other hand, is the best safeguard against any risk of abuse in this regard.

7. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such company, or a company controlled by such company, is a joint or joint and several participants with the affiliated person in contravention of SEC rules. Rule 17d–1 provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicants request an order under section 17(d) and rule 17d–1 to the extent necessary to permit the Partnerships to engage in transactions in which affiliated persons of the Partnerships may also be participants. Applicants believe that the concern that permitting joint investments with BSC or another Bear Stearns vehicle and/or an affiliate of either of them on the one hand, and a Partnership on the other, might lead to disadvantageous treatment of the Partnership will be mitigated by the fact that Bear Stearns is acutely concerned with its relationship with the key employees who are expected to invest in the Partnership.

9. In addition, applicants believe the agreement of Bear Stearns to lend substantial funds to the Partnership creates opportunities for the Limited Partners to leverage their investment capital to a greater degree than would be possible normally in transactions organized by non-affiliated third parties. Applicants note that the nonrecourse loans from Bear Stearns to the Partnership will provide the Partnership with the ability to make a greater number of investments or larger investments than would be possible if the Partnership has only its own equity capital to invest. Applicants state that Bear Stearns will bear a substantial portion of the risk of repayment of such loans since the loans will be (i) nonrecourse to the Partners, (ii) generally payable prior to maturity only out of 50% of the Partnership's cash available for distribution after repayment of accrued interest and taxes and certain other expenses, and (iii) payable at maturity only out of the Partnership's assets. Applicants contend that all of the foregoing factors suggest that the policy considerations underpinning section 17(d) are not present here.

10. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Rule 17f–1 under the Act specifies the requirements that must be satisfied for a registered management investment company to use a broker-dealer as custodian. Applicants request an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit Bear Stearns to act as custodian without a written contract. Applicants believe that, because there is such a close association between the Partnership and Bear Stearns, requiring a detailed written contract would subject the Partnership to unnecessary burden and exposure. Applicants also request an exemption from the terms of rule 17f–1(b)(4), which requires an independent accountant to periodically verify by actual examination the securities and investments of a registered management investment company using a broker-dealer as custodian. Applicants do not believe the expense of retaining an accountant to conduct such verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

11. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit the Partnership to comply with rule 17g–1 without the necessity of having a majority of the members of the Board who are not "interested persons," as that term is defined in section 2(a)(19) of the Act, take such actions and make such approvals as are set forth in the 17g–1. Applicants state that, because all the members of the related Board will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief.

12. Section 17(j) and rule 17j–1 require every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Section 17(j) and paragraph (a) of rule 17j–1 also make it unlawful for certain persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Applicants request an exemption from section 17(j) and rule 17j–1 (except rule 17j–1(a)) because the requirements contained therein are burdensome and unnecessary. Applicants believe that requiring each Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of such Partnership by virtue of their common association in Bear Stearns and the substantial and largely overlapping protection afforded by the conditions with which such Partnerships have agreed to comply.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is party (the "Section 17 Transactions") will be effected only if the Board, through the General Partner, determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, the Partnership's organizational documents, and the Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, the Board's findings, the information or materials upon which the board's findings are based, and the basis therefor. All such records will be maintained for the life of such Partnership and at least two years thereafter, and will be subject to examination by the SEC and its staff.[9]

2. In connection with Section 17 Transactions, the Board, through the General Partner, will adopt, and

[9] The Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners, and each annual report of the Partnership required to be sent to the Partners, and agree that all such records will be subject to examination by the SEC and its staff.[10]

4. The General Partner will send to each person who was a Partner at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. In addition, within 90 days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his or its federal and state income tax returns and a report of the investment activities of the Partnership during such year. To the extent that a valuation of any interest in the Partnership is required by the terms of the Partnership Agreement or otherwise, such valuation will be made by the General Partner or by independent third parties appointed by the General Partner and deemed qualified by the General Partner to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets, and liabilities of the Partnership as the General Partner or the independent third party, as the case may be, may reasonably determine and, in the case of the General Partner, consistent with its fiduciary duty to the Limited Partners.

5. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by a Bear Stearns advisory director, director, officer, or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purchase or sale.

6. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a ''Co-Investor,'' as defined below, has acquired or proposes to acquire an investment in the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which such Partnership and the Co-Investor are participants, unless such Co-Investor, prior to disposing of all or part of its investment, (a) gives such General Partner sufficient, but not less than one day, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with, the Co-Investor. The term ''Co-Investor,'' with respect to any Partnership, means any person who is: (a) an ''affiliated person'' (as such term is defined in the Act) of such Partnership; (b) an entity within Bear Stearns; (c) an officer or director of an entity within Bear Stearns; or (d) a company in which the General Partner of such Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12548 Filed 5–13–97; 8:45 am]

BILLING CODE 8010–01–M

[10] The Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Green Oasis Environmental, Inc.; Order of Suspension of Trading

May 9, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Green Oasis Environmental, Inc. (''Green Oasis''), a Charleston, South Carolina based company purportedly engaged in the business of developing and selling equipment to process waste motor oil into more valuable fuels, because of questions regarding, among other things, Green Oasis' press releases concerning (1) the development of Green Oasis' products; (2) Green Oasis' business operations, including the testing of its equipment; (3) relationships between Green Oasis and a financial analyst who recommended purchase of its shares; and (4) the commercial viability to the contracts Green Oasis has announced it received to purchase its equipment.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, May 9, 1997 through 11:59 p.m. EDT, on May 22, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12636 Filed 5–9–97; 4:05 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38582; File No. SR–DCC–97–05]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of Adams, Viner, and Mosler, Ltd. as an Interdealer Broker for Delta Clearing Corp.'s Repurchase Agreement Clearance System

May 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on March 21, 1997, Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to give notice that DCC has authorized Adams, Viner, and Mosler, Ltd. (''AVM'') to act as an interdealer broker in DCC's over-the-counter clearance and settlement system for repurchase agreement and reverse repurchase agreement (''repos'') transactions involving U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through its repo clearing system, DCC clears repo transactions that have been agreed to by DCC participants through the facilities of interdealer brokers that have been authorized by DCC to offer their services to DCC participants.[3] The purpose of the proposed rule change is to give notice that DCC has authorized AVM to act as a broker in DCC's clearance and settlement system for repo trades.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions; therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(e)(4) thereunder[6] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–97–05 and should be submitted by June 4, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12639 Filed 5–13–97; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1995).

[7] 17 CFR 200.30–3(a)(12) (1995).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38584; File No. SR–OCC–97–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Cross-Margining Agreement With the Chicago Mercantile Exchange and the Commodity Clearing Corporation

May 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 18, 1997, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 17, 1997, and April 22, 1997, amended the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change facilitates the establishment of a cross-margining arrangement among OCC, the Chicago Mercantile Exchange (''CME''), and the Commodity Clearing Corporation (''CCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to facilitate the establishment of a cross-margining arrangement among OCC, CME, and CCC. The proposed cross-margining agreement (''Agreement'') to be entered into by the three organizations is patterned after the existing trilateral cross-margining agreement among OCC, The Intermarket Clearing Corporation (''ICC''), and CME. From the time the New York Stock Exchange sold the New York Futures Exchange (''NYFE'') to the New York Cotton Exchange (''Cotton Exchange''), OCC and the Cotton Exchange have been working together to move the clearance and settlement of NYFE products from ICC to the Cotton Exchange's clearinghouse, CCC. One obstacle to transferring the clearance and settlement services from ICC to CCC was the lack of a cross-margining program among OCC, CME, and CCC. The proposed rule change will facilitate the establishment of a cross-margining program that will allow NYFE participants to continue to receive the benefits of cross-margining after CCC assumes the clearance and settlement of NYFE products on April 29, 1997.[3] The proposed Agreement will be modified as necessary from the existing OCC/ICC/CME cross-margin agreement to accommodate CCC as a participating carrying clearing organization in place of ICC. As with the OCC/CME/ICC cross-margining agreement, the proposed Agreement will accommodate bilateral and trilateral cross-margining.

Existing Cross Margining Agreement

The following describes the most important sections of the existing agreement among OCC, CME, and ICC that are being modified in order to effectuate the cross-margining program among OCC, CME, and CCC.[4]

Section 2 of the Agreement provides for the designation of either OCC or CME as the ''designated clearing organization'' (''DCO'') for a joint clearing member or pair of affiliated clearing members. This section has been changed to allow the designation of the DCO to be made by agreement among OCC, CME, and the clearing members and not by the clearing members alone as it was in the OCC/ICC/CME cross-margining program. In addition, language designating OCC as DCO in place of CME where clearing members have selected CME as DCO has been deleted. This issue is covered under a separate proposed letter agreement among the clearing organizations which was filed with the Commission by amendment to this filing.[5]

Section 5 of the Agreement includes language that provides that CCC has elected to use the margin calculations produced by the DCO's margin system for purposes of calculating the base margin requirement and risk margin requirement for any set of cross-margin accounts for which CCC is a carrying clearing organization. A provision also has been added to this section to provide that each clearing organization assumes the responsibility of determining that the margin requirements are adequate and that no clearing organization shall have liability to any other clearing organization based upon an allegation that any margin calculation was inadequate.

Section 6 of the Agreement describes the acceptable forms of margin and the procedures by which margin deposits are released to the depositing clearing members. This section provides that common stocks deposited as initial margin are valued at the lower of the values determined under the rules of OCC or CME. This replaces language providing for valuation under OCC Rule 604(d) which prescribes valuation at seventy percent of current market value or such lesser rate as approved by the Commission or the Commodity Futures Trading Commission (''CFTC''). This section also provides that valuation of Treasury securities deposited as initial margin are valued at the lower of the values determined under the rules of OCC or CME. This replaces language providing for valuation under the rules of any clearing organization.

In addition, Section 6 of the Agreement contains a new provision whereby CCC will be deemed to have given the necessary approval for the release of securities to the depositing clearing member unless CCC gives timely written objection to the release. These changes are intended for the protection of each clearing organization.

Section 7 of the Agreement provides that CCC will be deemed to have given all necessary approvals and will not be required to execute or specifically authorize any instruction or direction to transfer with respect to CME acting as CCC's agent for the purposes of transfers of funds in connection with settlement unless CCC gives timely, written notice of CCC's objection to such instruction or direction to transfer.

Similarly, this section has been changed to require CCC to obtain the approval of OCC and CME regarding the funds transfer instructions it gives to the applicable cross-margin clearing banks. In addition, a clearing member may not withdraw margin excess in excess of the amount of margin of that form deposited by the clearing member in the set of cross-margin accounts from which the withdrawal is requested.

Finally, Section 7 of the Agreement provides procedures for intraday margin calls by CCC, including procedures for intraday margin call notification to clearing members and for withdrawal of variation margin in the event of margin excess. These changes also are intended to protect each clearing organization and to incorporate CCC's intraday margin call procedures into the cross-margining program.

Section 8 of the Agreement provides that CCC is entitled to retain or receive a share of the surplus from a proprietary liquidating account that is the greater of its pro rata share of the equivalent unhedged risk[6] or five percent of the surplus. OCC or CME is entitled to receive the remaining surplus provided that if both are carrying clearing organizations, each is entitled to fifty percent of the remaining surplus for application against losses sustained from a defaulting clearing member.

Section 8 also sets forth the loss sharing procedures to be used in the event non-proprietary liquidating accounts are insufficient. If CCC is a carrying clearing organization, CCC will bear a share of the shortfall equal to the greater of its pro rata share of the daily equivalent unhedged risk or five percent of the liquidating deficit. OCC and CME, whichever is a carrying clearing organization, shall bear the remaining shortfall; however, if both OCC and

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Currently, NYFE participants receive the benefits of cross-margining through the OCC/ICC/CME cross-margining program.

[4] For a complete description of the cross-margining agreement among OCC, CME, and ICC, see Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 (order approving proposed rule changes relating to trilateral cross-margining.)

[5] Letter from Robert C. Rubenstein, OCC (April 21, 1997).

[6] For purposes of the Agreement, ''equivalent unhedged risk'' is defined as the sum of the initial margin that will be required by each carrying clearing organization on contracts in each cross-margin account by that carrying clearing organization without regard to contracts carried in cross-margining accounts at other clearing organizations.

CME are carrying clearing organizations, each will bear fifty percent of the remaining shortfall. This is different from the OCC/ICC/CME cross-margining agreement which provides that OCC and ICC together are to bear fifty percent of losses together and CME was to bear the remaining fifty percent. Because CCC is not acting as an equal participant in the current cross-margining program, this agreement has been drafted to reflect that CCC will not engage in the same level of clearing activity as OCC and CME.[7]

Section 11 of the Agreement is new and provides that no clearing organization will have any liability to another clearing organization as the result of any action taken or not taken in its capacity as a DCO unless such action or inaction constitutes willful misconduct.

Section 13 of the Agreement sets forth who may terminate the Agreement and who may withdraw from the agreement. Section 13 allows OCC, CME, and CCC to terminate the Agreement without cause by delivering notice of termination specifying a termination date not less than ninety days following the date on which notice is sent. OCC and CME also may jointly agree to remove CCC as a party to the Agreement by delivering written notice of termination specifying a termination date not less than ninety days following the date on which notice is sent.

Section 13 also provides that if CCC is the defaulting party or gives notice of default under the Agreement, the Agreement is terminated with respect to CCC only. This section further provides that the Agreement will remain in effect between OCC and CME in the event that the termination date is established with respect only to CCC. This is intended to facilitate the continuity of the Agreement in the event that CCC no longer participates in the cross-margining program.

With regard to information sharing, Section 15 of the Agreement provides that CCC has the same mutual obligation to notify the other clearing organizations if it is notified by the Cotton Exchange or NYFE of the application of any special surveillance procedures to a clearing member. These changes also are intended to protect each clearing organization.

Finally, Section 17 of the Agreement provides that the Agreement is to be deemed a ''netting contract'' for purposes of Title IV, Subtitle A of the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA''). The parties to the Agreement do not intend this amendment to override any interpretation of FDICIA. Instead, the parties intend this amendment to protect the viability of the Agreement under circumstances that may give rise to application of FDICIA.

Clearing Member Agreements

Various forms of agreements are required to be executed by participating clearing members and market professionals participating in the cross-margining programs established by the cross-margining agreement.[8] Specifically, these agreements are the: (1) Proprietary cross-margin account agreements and security agreement for a joint clearing member; (2) proprietary cross-margin account agreement and security agreement for affiliated clearing members; (3) non-proprietary cross-margin account agreement and security agreement for a joint clearing member; (4) non-proprietary cross-margin account agreement and security agreement for affiliated clearing members; (5) subordination agreement for cross-margining for a joint clearing member; and (6) subordination agreement for cross-margining for affiliated clearing members.

Each agreement is based on the comparable existing agreement used in the current OCC/CME/ICC cross-margining program, and each is modified as necessary to accommodate cross-margining with CME and CCC as participating carrying clearing organizations.

Each agreement also provides that the agreement will become effective upon execution or upon receipt of all necessary regulatory approvals from the Commission and the CFTC. The purpose of this provision is to allow clearing members to have the agreements executed and in place on the date of regulatory approval to avoid any delays that may occur from obtaining signatures after regulatory approval.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Act because cross-margining enhances the safety of the clearing system while providing lower clearing margin costs to participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Section 17A(a)(2)(A)(ii)[10] of the Act directs the Commission to use its authority under the Act to facilitate the establishment of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options. The Commission believes that the proposed rule change is consistent with these requirements under the Act.

Similar to other cross-margining arrangements to which OCC is a party, the current proposal links and coordinates the clearance and settlement facilities of OCC, CME, and CCC with respect to shared management of risks associated with the clearing members' intermarket portfolios and with respect to information sharing regarding the financial condition of participating joint and affiliated members. The Commission views cross-margining arrangements as a significant risk reduction method because they provide a means whereby individual clearing organizations do not have to independently manage the risk associated with some components (*i.e.*, the futures or options component) of a clearing member's total portfolio. Therefore, cross-margining programs serve to help OCC assure the safeguarding of securities and funds and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of futures and options, transactions in securities.[11]

In addition, since it granted approval of the first cross-margining program in 1988,[12] the Commission repeatedly has found that cross-margining programs are

[7] Conversation between Robert C. Rubenstein, OCC, and Jeffrey S. Mooney, Attorney, Division of Market Supervision, Commission (April 18, 1997).

[8] A copy of each agreement has been submitted with the proposed rule change and is available for inspection and copying in the Commission's Public Reference Room or at the principal office of OCC.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(a)(2)(A)(ii). Congress added this section to the Act as part of the Market Reform Act of 1990. Pub. L. No. 101–432, 104 Stat. 963 (1990).

[11] 15 U.S.C. 78q–1(a)(2)(A)(ii).

[12] Securities Exchange Act Release No. 26153 (October 3, 1998), 53 FR 39567 (order approving non-proprietary cross-margining program between OCC and ICC).

consistent with clearing agency responsibilities under Section 17A of the Act. Cross-margining programs, among other things, enhance clearing member liquidity and systemic liquidity both in times of normal trading and in times of market stress. Under routine trading, clearing members who participate in a cross-margining program have lower initial margin deposits. Reduced margin requirements help clearing members manage their cash flow by increasing available cash to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of clearing members and therefore would enhance liquidity in the market as a whole. By enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[13]

The cross-margining program in the present proposed rule change is based on the OCC/ICC/CME model and retains virtually all of the important safety provisions of the OCC/ICC/CME cross-margining program, the Commission believes the cross-margining programs proposed here is consistent with clearing agencies' statutory requirements to assure the safeguarding of funds and securities which are in their custody or control or for which they are responsible.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because accelerated approval will allow OCC, CME, and CCC to establish the cross-margining program and will allow the continuity of clearance and settlement services for NYFE products after CCC assumes the clearance and settlement of NYSE products. In addition, the Commission does not expect to receive any adverse comments on the present rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Pubic Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–97–04 and should be submitted by June 4, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–04) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12638 Filed 5–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38580; File No. SR–PCX–15]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trading Differentials for Equity Securities

May 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 5, 1997, the Pacific Exchange, Inc. (''PCX'') or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization (''SRO''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its Rule 5.3(b) to allow the Exchange to establish trading differentials for equity securities at its discretion. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 5.3(b) currently provides that, unless specifically ruled otherwise, the trading differentials on stocks shall be as follows: On stocks other than those traded on the New York Stock Exchange (''NYSE'') or American Stock Exchange (''Amex''); if the selling price is below ½ of $1, the trading differential is 1⁄32; if the selling price is ½ of $1 but under $5, the trading differential is 1⁄16; and if the selling price is $5 and above, the trading differential is ⅛. The rule further provides that on stocks also traded on the NYSE or the Amex, the trading differentials shall be the same as those prescribed by such exchanges.

The Exchange is proposing to modify Rule 5.3(b) to provide that the Exchange shall determine the trading differentials for equity securities traded on the Exchange. The Exchange is proposing this change in order to add flexibility, so that it can change the trading differentials on an immediate basis. The Exchange notes that some exchanges do not have specific rules on trading differentials and are able to change them on an immediate basis. The Exchange

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[13] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by cross-margining arrangements, would ''help ensure that a securities market failure does not become a credit market failure.'' The Market Reform Act of 1989: Joint Hearings on S. 648 before Subcom. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101 st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

intends to base any changes to trading differentials on competitive considerations and other factors as appropriate, but such trading differentials will conform to any applicable Intermarket Trading System (''ITS'') rules.[2]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–15 and should be submitted by June 4, 1997.

[2] The PCX indicated to the Commission that it intends to take into account the manner in which ITS is operating at the time the Exchange is considering changes to its trading differentials.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Security.

[FR Doc. 97–12546 Filed 5–13–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38575; File No. SR–PCX–97–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trading Differentials for Equity Securities

May 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 5, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization (''SRO''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a procedure, effective for ninety days, under which the Exchange may establish trading differentials for equity securities at its discretion.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 5.3(b) currently provides that, unless specifically ruled otherwise, the trading differentials on stocks shall be as follows: On stocks other than those traded on the New York Stock Exchange (''NYSE'') or American Stock Exchange (''Amex''): if the selling price is below ½ of $1, the trading differential is 1⁄32; if the selling price is ½ of $1 but under $5, the trading differential is 1⁄16; and if the selling price is $5 and above, the trading differential is ⅛. The rule further provides that on stocks also traded on the NYSE or the Amex, the trading differentials shall be the same as those prescribed by such exchanges.

The Exchange is proposing to establish a procedure, effective for ninety days, under which the Exchange may determine the trading differentials for equity securities traded on the Exchange. The Exchange is proposing this change in order to add flexibility, so that it can change the trading differentials on an immediate basis. The Exchange notes that some exchanges do not have specific rules on trading differentials and are able to change them on an immediate basis. The Exchange intends to base any changes to trading differentials on competitive considerations and other factors as appropriate, but such trading differentials will conform to any applicable Intermarket Trading System (''ITS'') rules.[2]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] The PCX indicated to the Commission that it intends to take into account the manner in which ITS is operating at the time the Exchange is considering changes to its trading differentials.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20545. 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 Room, 450 Fifth Street, NW., Washington, DC 20549. Also copies of such filing will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–16 and should be submitted by June 4, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6 and Section 11A of the Act.[5]

Recently, there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various SROs. The Amex recently reduced its minimum trading increment, and Nasdaq has proposed to reduce its minimum quotation increment.[6] In addition, several third market makers have begun quoting securities in increments smaller than the primary markets. The proposed rule change will allow the PCX the flexibility it needs to address this development and remain competitive with these markets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof into the **Federal Register.**[7] As discussed above, the proposal provides the PCX with the ability to quickly modify its trading increment to meet changing market conditions. This will enable the PCX to quote competitively with other markets. Waiting the full statutory review period for the proposed rule change could place the PCX at a significant competitive disadvantage to other markets. At the same time, the proposal is effective for only ninety days. This will provide the Commission with a sufficient period to receive and assess comments on the PCX's proposal before it is adopted on a permanent basis.[8] Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval on a temporary basis to the proposed rule change.[9]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–97–16) is hereby approved on an accelerated basis through August 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12547 Filed 5–13–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Request to Resolve Questionable Quarters of Coverage (SSA–512); Request for Quarters of Coverage History Based on Relationship (SSA–513)—0960–NEW. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence who have worked and earned 40 qualifying quarters of coverage (QC) for Social Security purposes can generally receive State benefits. QCs can also be allocated to a spouse and/or to a child under age 18, if needed to obtain 40 qualifying QCs for the alien. The form SSA–512 is used by the States to request clarification from SSA on questionable QC information. The form SSA–513 is used by States to request QC information for an alien's spouse or child in cases where the alien does not sign a consent form giving permission to access his/her social security records. The respondents are State agencies which require QC information in order to determine eligibility for benefits.

	SSA–512	SSA–513
Number of Responses	200,000	350,000.
Frequency of Response	1	1.
Average Burden Per Response:	2 minutes	2 minutes.
Estimated Annual Burden	6,667 hours	11,667 hours.

2. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. The information collected by the Social Security Administration on form SSA–8203 is used to determine whether SSI

[5] 15 U.S.C. §§ 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

[6] Securities Exchange Act Release No. 39571 (May 5, 1997) (approving Amex proposal to reduce the minimum trading increment from 1⁄8 to 1⁄16 for Amex-listed equity securities priced at or above $10.00); Securities Exchange Act Release No. 38531 (Apr. 21 1997), 62 FR 20233 (Apr. 25, 1997) (publishing notice of a proposed rule change by the Nasdaq Stock Market to reduce the minimum quotation increment from 1⁄8 to 1⁄16 for Nasdaq-listed securities priced equal to or greater than $10.00).

[7] A prior proposal by another exchange to reduce its minimum fractional change was published for the full statutory comment period without any comments being received by the Commission. Securities Exchange Act Release No. 38571 (May 5, 1997) (approving a proposed rule change by the Amex to reduce the minimum trading differential from 1⁄8 to 1⁄16 for equity securities priced at or above $10.00).

[8] The Exchange has submitted a companion filing that requests permanent approval of the procedures described herein. *See* File No. SR–PCX–97–15.

[9] 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

[10] 15 U.S.C. 78s (b)(2).

[11] 17 CFR 200.30–3(a)(12).

recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The information collected will also assist agencies administering Medicaid programs in ascertaining the legal liability of third parties to pay for care and services. The respondents are recipients of SSI benefits or their representative payees.

Number of Respondents: 552,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 156,400 hours.

3. Work Activity Report—Employee—0960–0059. The information on form SSA–821 is needed by the Social Security Administration to determine whether an individual is performing substantial gainful activity. The information will be used to determine eligibility for benefits. The respondents are Social Security Disability and Supplemental Security Income applicants and recipients.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 225,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: May 8, 1997.

Frederick W. Brickenkamp,

Forms Management Officer, Social Security Administration.

[FR Doc. 97–12590 Filed 5–13–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Springfield-Beckley Municipal Airport Springfield, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Springfield, Ohio, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 11, 1995, the FAA determined that the noise exposure maps submitted by the city of Springfield, Ohio, under Part 150 were in compliance with applicable requirements. On March 18, 1997, the Associate Administrator for airports approved the Springfield-Beckley Municipal Airport noise compatibility program. Twenty six of the twenty seven recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Springfield-Beckley Municipal Airport noise compatibility program is March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7293. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Springfield-Beckley Municipal Airport, effective March 18, 1997.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The city of Springfield, Ohio, submitted to the FAA on July 5, 1994, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 24, 1993, through December 5, 1995. The Springfield-Beckley Municipal Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on August 11, 1995. Notice of this determination was published in the **Federal Register** on August 28, 1995.

The Springfield-Beckley Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on September 19, 1996, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained twenty seven (27) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective March 18, 1997.

Outright approval was granted for twenty six of the twenty seven specific program elements. Land Use Management Element LU–8, ''Adopt Large Lot Zoning Policy'', was disapproved for purposes of Part 150 unless accompanied by adequate sound insulation during construction. Residential development, even at lower density, is incompatible with Part 150's purpose to prevent the introduction of non-compatible land uses. The prevention of such development is highly preferred to allowing it, even when accompanied by sound insulation.

Seven (7) of the twenty seven measures submitted are listed as ''Noise Abatement Measures''. The seven measures were approved which relate to civilian and military aircraft runups and aircraft flight procedures to mitigate aircraft noise impacts. Thirteen (13 of the twenty seven measures are listed as ''Land Use Management Measures''. Twelve of the thirteen measures were approved. Two of the measures relate to voluntary acquisition of homes in noise sensitive areas; one measure relates to purchasing avigation easements for homes within the DNL 65 dBA noise contour; one measure relates to incorporating land use policies for the Noise Compatibility Plan into local comprehensive plans; one measure will discourage the extension of sanitary sewer systems to residential areas impacted by noise; one measure recommends adopting plan review guidelines for subdivision, rezoning special use, conditional use, and variance applications; one measure recommends adopting joint airport zoning in the airport environs; two measures involve rezoning noise sensitive areas as commercial; one measure recommends informal fair disclosure; one measure recommends revising building code regulations to require sound insulation measures for development within noise contours; and one measure recommends that plat notes should state that the property lies within a high noise area. Seven (7) of the twenty seven measures are listed as ''Program Management Measures''. All seven measures were approved. Two of the measures concern active participation by the Ohio Air National Guard unit located at the airport in noise abatement procedures; one measure concerns notification of local operators of noise abatement procedures at the airport; one measure concerns the public availability of noise exposure maps; and three measures concern the periodic review and update of the approved Noise Compatibility Program.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on March 18, 1997. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, S.W., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Mr. Matthew J. Kridler, Manager, City of Springfield, Springfield City Hall, 76 East High Street, Springfield, OH 45502

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, April 18, 1997.

Robert H. Allen,

Assistant Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 97–12652 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information on the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 3, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ________, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on May 9, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28861.

Petitioner: Vertical Flite.

Sections of the FAR Affected: 14 CFR 91.119 (b) and (c).

Description of Relief Sought: To permit petitioner to operate Air and Space 18A heliplanes below the minimum altitude requirements while conducting aerial photography or contracted ''police and highway'' flights in visual meteorological conditions.

Docket No.: 28881.

Petitioner: McDonnell Douglas.

Sections of the FAR Affected: 14 CFR 25.785(d), 25.807(c)(1), 25.857(e), 25.1447(c)(1).

Description of Relief Sought: To permit carriage of up to four (4) supernumeraries in a Courier Area (aft of the cockpit door and forward of the new rigid cargo barrier), and to allow carriage of up to two (2) supernumeraries in a Courier Module area (aft of the cockpit door and forward of the 9g crash net) on the Model DC–10 freighter aircraft operating with Class E Cargo Compartments.

Docket No.: 28479.

Petitioner: Strong Enterprises.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought: To amend petitioner's current exemption which allows employees, representatives, and other volunteer experimental parachute test jumpers under Strong's control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute. The requested amendment would modify portions of the conditions and limitations contained in the exemption to include the use of a dual-harness, dual-parachute pack by tandem instructors who are certified by Strong but are not under the direct supervision of strong.

Docket No.: 28879.

Petitioner: Classic Helicopter Corporation.

Sections of the FAR Affected: 14 CFR 119.71(b).

Description of Relief Sought: To allow Mr. Nicholas Ledington-Fischer, who holds a commercial pilot certificate, to continue serving as Director of Operations without having an instrument rating.

Docket No.: 26302.

Petitioner: FlightSafety International.

Sections of the FAR Affected: 14 CFR appendix H to part 121, 135.293, 135.297, 135.299(2), 135.337(f) (1) and (2), 135.338(f) (1) and, 135.339(c), and 142.53(b).

Description of Relief Sought: To permit petitioner to continue to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check the pilots of part 135 certificate holders that contract with FSI for training. Petitioner requests an amendment to the current exemption to the extent necessary to permit FSI to substitute the line observation requirements of 14 CFR § 142.53(b) for clients in part 135 nonscheduled operations, in lieu of the requirements of 135.33(f) (1) and (2) and 135.338(f) (1) and (2).

Docket No.: 012SW.

Petitioner: Frank D. Robinson.

Sections of the FAR Affected: 14 CFR 27.695.

Description of Relief Sought: To allow certification of hydraulically boosted controls on the R44 without the necessity of considering the jamming of a control valve as a possible single failure.

Dispositions of Petitions

Docket No.: 27441.

Petitioner: Department of the Army.

Sections of the FAR Affected: 14 CFR 45.29(b)(3).

Description of Relief Sought/ Disposition: To permit petitioner to use 9-inch aircraft nationality and registration markings in lieu of 12-inch markings on its Bell Model 206B3 rotorcraft.

Grant, May 6, 1997, Exemption No. 5761B

Docket No.: 27122.

Petitioner: Air Tractor, Inc.

Sections of the FAR Affected: 14 CFR 61.31(a)(1).

Description of Relief Sought/ Disposition: To permit petitioner and pilots of Air Tractor model AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating, although the maximum gross weight of the airplanes exceeds 12,500 pounds.

Grant, May 2, 1997, Exemption No. 5651C

Docket No.: 26599.

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR 91.203.

Description of Relief Sought/ Disposition: To allow RAA-member airlines to temporarily operate certain U.S. registered aircraft in domestic airline operations without the certificates of airworthiness or registration onboard the aircraft.

Grant, April 24, 1997, Exemption No. 5515C

Docket No.: 28545.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.135(a)(3).

Description of Relief Sought/ Disposition: To allow petitioner to use electronic digital technology to present certain maintenance information and instructions to ground operations and management personnel without meeting the requirement to have the date of the last revision on each page of the information and instructions.

Grant, April 28, 1997, Exemption No. 6612

Docket No.: 25748.

Petitioner: Popular Rotorcraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91.319(a) (1) and (2).

Description of Relief Sought/ Disposition: To permit petitioner and its member flight instructors to conduct pilot and flight instructor training in an experimental gyroplane for compensation or hire.

Grant, April 30, 1997, Exemption No. 5209D

Docket No.: 25210.

Petitioner: Air Transport Association of America (ATA).

Sections of the FAR Affected: 14 CFR 63.39(b) (1) and (2), and 121.425(a)(2) (i) and (ii).

Description of Relief Sought/ Disposition:

To allow member airlines of ATA and other qualifying part 121 certificate holders to meet the qualification requirements of flight engineer training programs approved in part 121 by permitting applicants in training for that flight check (1) to take the airplane preflight inspection portion of the flight check using an advanced pictorial means instead of the airplane, and (2) to take the normal procedures portion of that flight check in an approved flight simulation device. In addition, the exemption allows applicants they are training in preparation for the flight engineer practical test to take the normal procedures portion of that test in an approved flight simulation device.

Grant, April 30, 1997, Exemption No. 4901E

Docket No: 28650.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR 141.15.
Description of Relief Sought/Disposition: To permit petitioner to provide FAA-approved part 141 ground and flight training courses to U.S. citizens at FAA-approved part 141 satellite training facilities located outside of the United States.

Denial, April 28, 1997, Exemption No. 6610

Docket No: 28656.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR 61.187(b).
Description of Relief Sought/Disposition: To permit petitioner to use flight instructors in its flight instructor course who have held a flight instructor certificate for less than 24 months preceding the date of instruction given.

Denial, April 28, 1997, Exemption No. 6613

Docket No: 28705.
Petitioner: Atlantic Aero, Inc., and Mid-Atlantic Freight, Inc.
Sections of the FAR Affected: 14 CFR 61.51(c)(3).
Description of Relief Sought/Disposition: To allow petitioners' pilots to log flight time as second-in-command (SIC) when that flight time is in certain turbopropeller-powered, single-engine aircraft during which more than one pilot is not required by either the type certificate of the aircraft or the regulations under which the flight is conducted.

Denial, April 28, 1997, Exemption No. 6613

[FR Doc. 97–12651 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues.

DATES: The meeting will be held on June 5, 1997, from 9:00 a.m. to 12:00 p.m. Arrange for presentations by May 27, 1997.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA. 22314.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Higginbotham, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 5, 1997, from 9:00 a.m. to 12:00 p.m., at the Helicopter Association International, 1635 Prince Street., Alexandria, VA. 22314.

The agenda will include:

1. Opening remarks;
2. Committee Administration;
3. New business: Status reports from working groups;
4. A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by May 27, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, May 8, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–12635 Filed 5–13–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33379]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) between Conrail's connection with CSXT's line of railroad on the east near the Interstate 70/65 undergrade, at approximately milepost 1.5, through ''IU'' Interlocking and the Indianapolis Union Station area, and the connection with Conrail's St. Louis Line, formerly the Indianapolis Union Railway Company,[1] near West Street, at approximately milepost 0.4, a distance of approximately 1.1 miles, in Marion County, IN.[2]

In its notice, CSXT stated its intention that the trackage rights would become effective on April 20, 1997. The earliest the exemption could take effect is Tuesday, May 6, 1997, 7 days after the notice of exemption was filed at the Board.

The purpose of the trackage rights is to allow CSXT to preserve its use of Conrail's trackage in downtown Indianapolis through the Indianapolis Union Station area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the

[1] CSXT, Conrail, and The Indiana Rail Road Company are surviving parties to an agreement dated September 20, 1883, whereby all three maintained the right to operate over property owned by the former Indianapolis Union Railway Company (IU). IU's properties were conveyed to Conrail in 1976 by the United States Railway Administration. The track over which CSXT operates consists of Conrail's 13.5-mile Indianapolis Belt Running Track (Belt Track) and the trackage which is the subject matter of this notice. The surviving parties have agreed to terminate the 1883 agreement because many of its provisions have become obsolete. The Board has approved CSXT's notice of exemption to discontinue its trackage rights over the Belt Track in CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—in Marion County, IN, STB Docket No. AB–55 (Sub-No. 546X) (STB served Apr. 22, 1997).

[2] The trackage rights involved in this proceeding are an extension of the trackage rights approved in CSX Transportation, Inc.—Exemption—Trackage Rights—Consolidated Rail Corporation, Finance Docket No. 31242 (ICC served Mar. 30, 1988).

exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33379, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles M. Rosenberger, Esq., 500 Water Street, Jacksonville, FL 32202.

Decided: May 6, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–12644 Filed 5–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0191.

Form Number: ATF F 5100.16.

Type of Review: Extension.

Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

Description: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 300 hours.

OMB Number: 1512–0203.

Recordkeeping Requirement ID Number: ATF REC 5110/06.

Type of Review: Extension.

Title: Distilled Spirits Plants—Excise Taxes.

Description: Collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 133.

Estimated Burden Hours Per Respondent: 26 hours.

Frequency of Response: Weekly.

Estimated Total Reporting Burden: 3,458 hours.

OMB Number: 1512–0204.

Form Number: ATF F 5100.38.

Type of Review: Extension.

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Officer of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–12612 Filed 5–13–97; 8:45 am]

BILLING CODE 4810–31–P–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 8, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Type of Review: Extension.

Title: Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and to Request Payment and/or Make Distribution Where Estate Holds No More Than $1,000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

Description: Used by legal representative of decedent's estate to establish authority to act and to request disposition of securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,575 hours.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Type of Review: Extension.

Title: Application for Disposition, United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

Description: Used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of Savings Bonds/Notes and or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 40,000 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–12613 Filed 5–13–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

May 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–001–R.

Type of Review: Extension.

Title: Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Office of Opinion Research on Behalf of all Internal Revenue Service (IRS) Operations Functions.

Description: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents: 83,841.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other (Varies).

Estimated Total Reporting Burden: 7,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–12614 Filed 5–13–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

May 8, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0169.

Form Number: IRS Forms 4461, 4461–A, and 4461–B.

Type of Review: Extension.

Title: Application for Approval of Master or Prototype and Regional Prototype Defined Contribution Plan (4461); Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan (4461–A); and Application for Approval of Master or Prototype Plan or Regional Prototype Plan (4461–B).

Description: The Internal Revenue Service (IRS) uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 4461	Form 4461–A	Form 4461–B
Recordkeeping	44 hr/29 min	44 hr/29 min	7 hr/25 min.
Learning about the law or the form	6 hr/41 min	6 hr/29 min	1 hr/16 min.
Preparing the form	9 hr/34 min	9 hr/22 min	2 hr/22 min.
Copying, assembling, and sending the form to the IRS	32 min	32 min	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 142,262 hours.

OMB Number: 1545–1531.

Notice Number: Notice 97–19.

Type of Review: Extension.

Title: Guidance for Expatriates.

Description: Notice 97–19 provides guidance for individuals affected by recent amendments to Code sections 877, 2107, and 2501, as amended by the Health Insurance Portability and Accountability Act. The Notice also provides guidance on new Code section 6039F.

Respondents: Individuals or households.

Estimated Number of Respondents: 12,300.

Estimated Burden Hours Per Respondent: 31 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,300 hours.

OMB Number: 1545–1535.

Revenue Procedure Number: Revenue Procedure 97–19.

Type of Review: Extension.

Title: Timely Mailing Treated as Timely Filing.

Description: The revenue procedure provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Burden Hours Per Respondent: 613 hours, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,069 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–12615 Filed 5–13–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

OMB Approval of Information Collection

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has submitted to and received Office of Management and Budget (OMB) approval of an emergency clearance for an information collection titled Preliminary Survey of Nonbanked Status. The OCC may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: May 14, 1997.

ADDRESSES: A copy of the submission may be requested from the OCC Contact listed later in this notice.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–0209.

Form Number: None.

Type of Review: New Collection.

Title: Preliminary Survey of Nonbanked Status.

Description: The OCC encourages national banks to provide access to financial services by all Americans. Last fall, the OCC initiated a major project to learn more about why millions of households have no banking relationships (nonbanked), and whether some banks have found ways of profitably serving them.

As part of this initiative, the OCC is planning to conduct a multi-mode survey, the Survey of Financial Activities and Attitudes (Final Survey) to learn more about how nonbanked households conduct their financial activities and what factors may keep them from using services offered by banks and other financial institutions.

This information collection concerns the OCC's Preliminary Survey of Nonbanked Status (Preliminary Survey) of 1,000 adults. The Preliminary Survey will be conducted as a portion of the University of Maryland Survey Research Center's Semiannual National Omnibus Survey scheduled for May 1997. The OCC will use the information from the Preliminary Survey primarily to inform the sampling design for the Final Survey, which is scheduled for fall 1997. The OCC needed to employ OMB's emergency approval procedures for the Preliminary Survey to have its questions included in Maryland's National Omnibus Survey. The OCC expects to provide opportunity for public comment regarding the Final Survey in summer 1997.

Respondents: Individuals and households.

Number of Respondents: 1,000.

Total Annual Responses: 1,000.

Frequency of Response: Once.

Estimated Total Annual Burden: 113.

OCC Contact: Jessie Gates or Dionne Walsh, (202)874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202)395–7340, Paperwork Reduction Project 1557–0209, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–12572 Filed 5–13–97; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 13 in Room 600, 301 4th Street, S.W., Washington, D.C., from 1:30 p.m. to 3:00 p.m. and 4:00 p.m. to 5:00 p.m.

At 1:30 p.m. the Commission will meet with U.S. Information Agency officials: Ms. Anne Sigmund, Counselor, USIA; Ambassador Kenton Keith, Director, Office of North African, Near Eastern and South Asian Affairs, USIA; Mr. Joseph Bruns, Assistant to the Director and Chief Information Officer, USIA, to discuss foreign affairs agency reorganization.

At 4:00 p.m. the Commission will meet with Mr. Patrick Kennedy, Acting Under Secretary of State for Management, to discuss foreign affairs agency reorganization.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: May 9, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–12684 Filed 5–13–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
May 14, 1997

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines, including previous temporary, ''emergency'' amendments, effective November 1, 1996, and May 1, 1997, which are re-promulgated as permanent, non-emergency amendments.

SUMMARY: Pursuant to its authority under 28 U.S.C. § 994(p), the Sentencing Commission on May 1, 1997, submitted to the Congress for review a report containing amendments to the sentencing guidelines, policy statements, and official commentary together with reasons for the amendments.

DATES: Pursuant to 28 U.S.C. § 994(p), the Commission has specified an effective date of November 1, 1997, for these amendments, subject to their acceptability to Congress.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the United States Government, is empowered by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review periodically and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. *See* 28 U.S.C. § 994(o), (p). Additionally, a number of the amendments included in this report are authorized and directed by, or otherwise respond to, a variety of enactments of the 104th Congress. Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (*i.e.,* November 1, 1997) by operation of law.

Notices of the amendments submitted to the Congress on May 1, 1997, were published on January 2, 1997 (62 F.R. 151), and February 25, 1997 (62 F.R. 8487). A public hearing on the proposed amendments was held in Washington, D.C., on March 18, 1997. After review of the hearing testimony and additional public comment, the Commission promulgated the following amendments, each having been approved by at least four voting Commissioners.

In connection with its ongoing process of guideline review, the Commission welcomes comment on any aspect of the sentencing guidelines, policy statements, and official commentary.

Authority: 28 U.S.C. § 994 (a), (o), (p), (x).

Richard P. Conaboy,
Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of Title 28, United States Code, the United States Sentencing Commission hereby submits to the Congress the following amendments to the sentencing guidelines and the reasons therefor. As authorized by such section, the Commission specifies an effective date of November 1, 1997, for these amendments.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. *Amendment:* The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 1(b) by deleting:

''As used in the guidelines, the definition of this term is somewhat different than that used in various statutes.''.

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 1(j) by inserting ''protracted'' before ''impairment''; and by deleting ''As used in the guidelines, the definition of this term is somewhat different than that used in various statutes.'' and inserting in lieu thereof ''In addition, ''serious bodily injury'' is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law.''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''For purposes of this guideline—'' before '' 'Permanent''; by inserting the following as the last sentence:

''However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).''; and by inserting after Note 1 the following additional paragraph:

'' 'The means set forth in 18 U.S.C. § 2241(a) or (b)'' are: by using force against the victim; by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnaping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, where any dangerous weapon was used, brandished, or displayed to intimidate the victim.''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by deleting Note 2; and by renumbering Notes 3 through 7 as Notes 2 through 6, respectively.

The Commentary to § 2A4.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''For purposes of this guideline—'' before ''Definitions''; and by inserting as the last sentence:

''However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which is taken into account in the specific offense characteristic under subsection (b)(5).''.

Section 2B3.1(b)(1) is amended by deleting ''(A)'' following ''If''; and by deleting ''or (B) the offense involved carjacking,'' before ''increase''.

Section 2B3.1(b) is amended by renumbering subdivisions (5) and (6) as subdivisions (6) and (7) respectively, and by inserting after subdivision (4) the following new subdivision (5):

''(5) If the offense involved carjacking, increase by 2 levels.''.

Reason for Amendment: This amendment implements, in a broader form, section 2 of the Carjacking Correction Act of 1996, Pub.L. 104–217, 110 Stat. 3020. The Act amended 18 U.S.C. § 2119(2) to include aggravated sexual abuse under 18 U.S.C. § 2241 and sexual abuse under 18 U.S.C. § 2242 within the meaning of ''serious bodily injury.'' In implementing this legislation, the Commission has elected to broaden the term ''serious bodily injury,'' as used in a number of offense conduct guidelines, so that such injury will be deemed to have occurred in the case of a sexual assault. The amendment also makes a number of conforming changes in other guidelines. In addition, this amendment amends § 2B3.1(b)(1) to provide cumulative enhancements if the offense involved both bank robbery and carjacking.

2. Amendment: Section 1B1.1(b) is amended by inserting '', cross references, and special instructions'' following ''characteristics''.

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 1(l) by inserting as the last sentence ''The term 'instant' is used in connection with 'offense,' 'federal offense,' or 'offense of conviction,' as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an offense before another court (e.g., an offense before a state court involving the same underlying conduct).''.

Section 4B1.1 is amended by deleting ''of the instant offense'' and inserting in lieu thereof ''the defendant committed the instant offense of conviction''.

Section 4B1.2(3) is amended by inserting ''of conviction'' before ''subsequent''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 2 in the second paragraph by inserting ''of conviction'' after ''instant offense''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 3(a) by inserting as the last sentence ''The term 'instant' is used in connection with 'offense,' 'federal offense,' or 'offense of conviction,' as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an offense before another court (e.g., an offense before a state court involving the same underlying conduct).''.

Reason for Amendment: This amendment has two primary purposes. First, it corrects a technical error in § 1B1.1(b). Second, it explains the purpose of the term ''instant'' as that term is employed throughout the Guidelines Manual, as a modifier of the term ''offense,'' ''federal offense,'' or ''offense of conviction.'' It also clarifies the usage of the term ''instant offense of conviction'' at several places in the Guidelines Manual.

3. Amendment: Section § 1B1.5(d) is amended by deleting ''final offense level (i.e., the greater offense level taking into account both the Chapter Two offense level and any applicable Chapter Three adjustments)'' and inserting in lieu thereof ''Chapter Two offense level, except as otherwise expressly provided''.

The Commentary to § 1B1.5 captioned ''Application Notes'' is amended in Note 1 by deleting ''§ '' before ''2D1.2(a)(1)''; and by deleting '', (2), and 2H1.1(a)(1)'' and inserting in lieu thereof ''and (2)''.

The Commentary to § 1B1.5 captioned ''Application Notes'' is amended in Note 2 by deleting in the second sentence ''greater final''; by deleting ''(i.e., the greater offense level''; by deleting ''both'' and inserting in lieu thereof ''only'';
and by deleting:
''and any applicable Chapter Three adjustments). Although the offense guideline that results in the greater offense level under Chapter Two will most frequently result in the greater final offense level, this will not always be the case. If, for example, a role or abuse of trust adjustment applies to the cross-referenced offense guideline, but not to the guideline initially applied, the greater Chapter Two offense level may not necessarily result in a greater final offense level.'',
and inserting the following in lieu thereof:
'', unless the offense guideline expressly provides for consideration of both the Chapter Two offense level and applicable Chapter Three adjustments. For situations in which a comparison involving both Chapters Two and Three is necessary, see the Commentary to §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe); 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials); 2E1.1 (Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations); and 2E1.2 (Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise).''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended by inserting after Note 6 the following additional note:

''7. For the purposes of determining whether to apply the cross references in this section, the 'resulting offense level' means the greater final offense level (i.e., the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–D).''.

The Commentary to § 2C1.7 captioned ''Application Notes'' is amended by inserting after Note 5 the following additional note:

''6. For the purposes of determining whether to apply the cross references in this section, the 'resulting offense level' means the greater final offense level (i.e., the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–D).''.

Reason for Amendment: This amendment simplifies the guidelines by restricting the cross-reference comparison to the Chapter Two offense levels, unless a different procedure is expressly specified. With respect to §§ 2C1.1, 2C1.7, 2E1.1, and 2E1.2, the amendment, and an express provision in each of these guidelines, provide a different procedure because these guidelines are the only four offense guidelines in which the inclusion of Chapter Three adjustments in the comparison is likely to make a difference.

4. Amendment: Section 1B1.10 is amended in the title by deleting ''Retroactivity'' and inserting in lieu thereof ''Reduction in Term of Imprisonment as a Result''.

Section 1B1.10(b) is amended by deleting ''sentence'' in both instances and inserting in lieu thereof ''the term of imprisonment''; and by inserting '', except that in no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served'' after ''sentenced''.

The Commentary to § 1B1.10 captioned ''Application Notes'' is amended by inserting after Note 2 the following additional notes:

''3. Under subsection (b), the amended guideline range and the term of imprisonment already served by the defendant limit the extent to which an eligible defendant's sentence may be reduced under 18 U.S.C. § 3582(c)(2). When the original sentence represented a downward departure, a comparable reduction below the amended guideline range may be appropriate; however, in no case shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

4. Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon revocation of supervised release.

5.If the limitation in subsection (b) relating to time already served precludes a reduction in the term of imprisonment to the extent the court determines otherwise would have been appropriate as a result of the amended guideline range, the court may consider any such reduction that it was unable to grant in connection with any motion for early termination of a term of supervised release under 18 U.S.C. § 3583(e)(1). However, the fact that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range shall not, without more, provide a basis for early termination of supervised release. Rather, the court should take into account the totality of circumstances relevant to a decision to terminate supervised release, including the term of supervised release that would have been appropriate in connection with a sentence under the amended guideline range.''.

The Commentary to § 1B1.10 captioned ''Background'' is amended in the third paragraph by inserting ''to determine an amended guideline range under subsection (b)'' after ''retroactively''; and by inserting before the fourth paragraph the following additional paragraph:

''The listing of an amendment in subsection (c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. The authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.''.

Reason for Amendment: This amendment makes a number of substantive and clarifying changes in the policy statement relating to retroactive application of an amendment that reduces a guideline range. The amendment provides that, in exercising discretion to reduce the term of imprisonment of an incarcerated defendant, a court may not reduce the term of imprisonment below time served (or, put differently, grant a greater reduction in imprisonment than the imprisonment time remaining to be served). In those cases in which the combination of time already served and this limitation preclude a defendant from receiving the full reduction the court would be inclined to grant as a result of an amended guideline range, the amended commentary instructs that the court may weigh the equities of such a situation in connection with a separate motion for early termination of supervised release under 18 U.S.C. § 3583(e)(1). The amendment also makes clear that, contrary to the holding in *United States* v. *Etherton,* 101 F.3d 80 (9th Cir. 1996), a reduction in the term of imprisonment imposed upon revocation of supervised release is not authorized by the policy statement. Finally, the amendment makes a number of changes in the title and text of the policy statement to improve the precision of the language, adds commentary emphasizing court discretion in applying amendments that the Commission has listed for possible retroactive application, and adds background commentary more fully describing the legal consequences flowing from a Commission decision to list an amendment for possible retroactive application.

5. Amendment: Section 2A2.2(b) is amended by inserting after subdivision (4) the following additional subdivision:

''(5) If the offense involved the violation of a court protection order, increase by 2 levels.''.

Chapter Two, Part A, Subpart 6 Is Amended in the Title by Inserting ''or Harassing'' After ''Threatening''; and by Inserting '', Stalking, and Domestic Violence'' After ''Communications''

Section 2A6.1 is amended in the title by inserting ''or Harassing'' after ''Threatening''.

Section 2A6.1 is amended by deleting subsection (a) in its entirety as follows:

''(a) Base Offense Level: 12'',
and inserting in lieu thereof:

''(a) Base Offense Level:

(1) 12; or

(2) 6, if the defendant is convicted of an offense under 47 U.S.C. § 223(a)(1) (C), (D), or (E) that did not involve a threat to injure a person or property.''.

Section 2A6.1(b) is amended by redesignating subdivision (2) as subdivision (4); and by inserting after subdivision (1) the following new subdivisions:

''(2) If the offense involved more than two threats, increase by 2 levels.

(3) If the offense involved the violation of a court protection order, increase by 2 levels.''.

Section 2A6.1(b)(4), as redesignated, is amended by deleting ''If specific offense characteristic § 2A6.1(b)(1) does not apply, and'' and inserting in lieu thereof ''If (A) subsection (a)(2) and subdivisions (1), (2), and (3) do not apply, and (B)''.

The Commentary to § 2A6.1 captioned ''Statutory Provisions'' is amended by inserting ''; 47 U.S.C. § 223(a)(1) (C)–(E)'' after ''879''.

The Commentary to § 2A6.1 captioned ''Application Note'' is amended by deleting ''Note'' and inserting in lieu thereof ''Notes''; and by inserting after Note 1 the following additional note:

''2. In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense, under the facts of the case taken as a whole. For example, if the defendant engaged in several acts of mailing threatening letters to the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider only those prior acts of threatening the victim that have a substantial and direct connection to the offense.

For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving making a threatening or harassing communication to the same victim are grouped together under § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under § 3D1.2.

If the conduct involved substantially more than two threatening communications to the same victim or a prolonged period of making harassing communications to the same victim, an upward departure may be warranted.''.

Chapter Two, Part A, Subpart 6 Is Amended by Adding After § 2A6.1 the Following New Guideline

''Section 2A6.2. Stalking or Domestic Violence

(a) Base Offense Level: 14

(b) Specific Offense Characteristic

(1) If the offense involved one of the following aggravating factors: (A) the violation of a court protection order; (B) bodily injury; (C) possession, or threatened use, of a dangerous weapon; or (D) a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim, increase by 2 levels. If the offense involved more than one of these aggravating factors, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved conduct covered by another offense guideline from Chapter Two, Part A (Offenses Against the Person), apply that offense guideline, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2261–2262.

Application Notes

1. For purposes of this guideline—

'Pattern of activity involving stalking, threatening, harassing, or assaulting the same victim' means any combination of two or more separate instances of stalking, threatening, harassing, or assaulting the same victim, whether or not such conduct resulted in a conviction. For example, a single instance of stalking accompanied by a separate instance of threatening, harassing, or assaulting the same victim constitutes a pattern of activity for purposes of this guideline.

'Stalking' means traveling with the intent to injure or harass another person and, in the course of, or as a result of, such travel, placing the person in reasonable fear of death or serious bodily injury to the person or the person's immediate family. See 18 U.S.C. § 2261A. 'Immediate family' has the meaning set forth in 18 U.S.C. § 115(c)(2).

2. Subsection (b)(1) provides for a two-level or four-level enhancement based on the degree to which the offense involved aggravating factors listed in that subsection. If the offense involved aggravating factors more serious than the factors listed in subsection (b)(1), the cross reference in subsection (c) most likely will apply, if the resulting offense level is greater, because the more serious conduct will be covered by another offense guideline from Chapter Two, Part A. For example, § 2A2.2 (Aggravated Assault) most likely would apply pursuant to subsection (c) if the offense involved assaultive conduct in which injury more serious than bodily injury occurred or if a dangerous weapon was used rather than merely possessed.

3. In determining whether subsection (b)(1)(D) applies, the court shall consider, under the totality of the circumstances, any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense. For example, if a defendant engaged in several acts of stalking the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsection (b)(1)(D) applies, the court shall look to the totality of the circumstances, considering only those prior acts of stalking the victim that have a substantial and direct connection to the offense.

Prior convictions taken into account under subsection (b)(1)(D) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving stalking, threatening, or harassing the same victim are grouped together (and with counts of other offenses involving the same victim that are covered by this guideline) under § 3D1.2 (Groups of Closely Related Counts). For example, if the defendant is convicted of two counts of stalking the defendant's ex-spouse under 18 U.S.C. § 2261A, and one count of interstate domestic violence involving an assault of the ex-spouse under 18 U.S.C. § 2261, the stalking counts would be grouped together and with the interstate domestic violence count. This grouping procedure avoids unwarranted ''double counting' with the enhancement in subsection (b)(1)(D) (for multiple acts of stalking, threatening, harassing, or assaulting the same victim) and recognizes that the stalking and interstate domestic violence counts are sufficiently related to warrant grouping.

Multiple counts that are cross referenced to another offense guideline pursuant to subsection (c) are to be grouped together if § 3D1.2 would require grouping of those counts under that offense guideline. Similarly, multiple counts cross referenced pursuant to subsection (c) are not to be grouped together if § 3D1.2 would preclude grouping of the counts under that offense guideline. For example, if the defendant is convicted of multiple counts of threatening an ex-spouse in violation of a court protection order under 18 U.S.C. § 2262, and the counts are cross referenced to § 2A6.1 (Threatening or Harassing Communications), the counts would group together because Application Note 2 of § 2A6.1 specifically requires grouping. In contrast, if the defendant is convicted of multiple counts of assaulting the ex-spouse in violation of a court protection order under 18 U.S.C. § 2262, and the counts are cross referenced to § 2A2.2 (Aggravated Assault), the counts probably would not group together inasmuch as § 3D1.2(d) specifically precludes grouping of counts covered by § 2A2.2 and no other provision of § 3D1.2 would likely apply to require grouping.

Multiple counts involving different victims are not to be grouped under § 3D1.2.

5. If the defendant received an enhancement under subsection (b)(1) but that enhancement does not adequately reflect the extent or seriousness of the conduct involved, an upward departure may be warranted. For example, an upward departure may be warranted if the defendant stalked the victim on many occasions over a prolonged period of time.''.

Reason for Amendment: This is a five-part amendment. First, this amendment addresses the new offense of interstate stalking, 18 U.S.C. § 2261A, which was enacted as section 1069 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, 110 Stat. 2422. That offense makes it unlawful to travel across a state line or within federal jurisdiction with the intent to injure or harass another person and, in the course of, or as a result of, such travel, to place that person in reasonable fear of death or serious bodily injury to that person or that person's immediate family.

The amendment adds a new guideline, § 2A6.2 (Stalking or Domestic Violence), to cover the stalking offense. The new guideline provides for a base offense level of 14 and an enhancement for the presence of one or more aggravating factors that are often part of a stalking offense, including the violation of a court protection order and the presence of a pattern of stalking, harassing, threatening, or assaultive conduct. The new guideline also provides for a cross reference to other Chapter Two guidelines if the offense involved more serious conduct, such as aggravated assault or kidnapping, that would produce a greater offense level. In addition, the new guideline permits the consideration of prior stalking, harassing, threatening, or assaultive conduct if that conduct is directly and substantially related to the offense.

Second, the amendment changes the manner in which the offenses of interstate domestic violence, 18 U.S.C. § 2261, and interstate violation of a protection order, 18 U.S.C. § 2262, are treated under the guidelines. Instead of being referenced to the guidelines that may cover underlying conduct, the amendment brings those offenses under the ambit of the new guideline, § 2A6.2. This change recognizes that the aggravating factors accounted for in the new guideline often are present in these offenses as well.

Third, the amendment adds an enhancement to § 2A2.2 (Aggravated Assault), if the offense involved the violation of a court protection order, to ensure an appropriately severe offense level for stalking, domestic violence, and other cases that are sentenced under the aggravated assault guideline and involve this factor.

Fourth, the amendment addresses several new harassing telecommunications offenses, 47 U.S.C. § 223(a)(1)(C)–(E), which were enacted in section 502 of the Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56. Those offenses make it unlawful to make a telephone call or utilize a telecommunications device, whether or not conversation or communication ensues, without disclosing one's identity and with the intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication; make or cause the telephone of another to repeatedly or continuously ring, with the intent to harass any person at the called number; or make repeated telephone calls or repeatedly initiate conversation with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication.

The amendment incorporates these new offenses into § 2A6.1 (Threatening Communications). Recognizing that these offenses carry only a two-year maximum term of imprisonment, the amendment provides an alternative offense level of 6 (as compared to 12), if the defendant is convicted of any of these offenses and there was no threat to injure a person or property. The amendment also adds enhancements if the offense involved more than two threats or the violation of a court protection order.

Fifth, this amendment addresses a circuit conflict regarding the enhancement in § 2A6.1 that provides a 6-level increase if the offense involved any conduct evidencing an intent to carry out a threat. Specifically, the conflict is whether or not conduct which occurred prior to the making of the threat can evidence an intent to carry out the threat. Compare United States v. Hornick, 942 F.2d 105 (2d Cir. 1991) (''a person cannot take action that will constitute proof of his intent to carry out a threat until after the threat has been made'') cert. denied, 502 U.S. 1061 (1992) with United States v. Taylor, 88 F.3d 938 (11th Cir. 1996) (''the essential inquiry for § 2A6.1(b)(1) is whether the facts of the case, taken as a whole, establish a sufficiently direct connection between the defendant's pre-threat conduct and his threat''); *United States* v. *Sullivan,* 75 F.3d 297 (7th Cir. 1996)(same); *United States* v. *Gary,* 18 F.3d 1123 (4th Cir.) (same), cert. denied 513 U.S. 844 (1994); *United States* v. *Hines,* 26 F.3d 1469 (9th Cir. 1994)(same).

The amendment essentially adopts the Eleventh Circuit's view by adding an application note to both §§ 2A6.1 and 2A6.2 to provide that conduct which occurred prior to the offense shall be considered in determining specified enhancements in those guidelines if the prior conduct is substantially and directly connected to the offense.

6. *Amendment:* The Commentary to § 2A2.4 captioned ''Application Notes'' is amended in Note 1 by inserting the following after ''(Aggravated Assault).'':

''Conversely, the base offense level does not reflect the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. § 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply § 3C1.2 (Reckless Endangerment During Flight).''.

Reason for Amendment: This amendment clarifies the interaction of this guideline with the enhancement under § 3C1.2 (Reckless Endangerment During Flight), particularly when the defendant is convicted under 18 U.S.C. § 758 of fleeing an immigration checkpoint at high speed.

7. *Amendment:* Section 2B1.1(b) is amended by inserting after subdivision (6) the following additional subdivision:

''(7) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit any foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by inserting ''1831, 1832,'' before ''2113(b)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the first paragraph the following additional paragraphs:

'''Trade secret' is defined in 18 U.S.C. § 1839(3).

'Foreign instrumentality' and 'foreign agent' are defined in 18 U.S.C. § 1839 (1) and (2), respectively.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 2 by inserting after the fourth paragraph the following additional paragraph:

''In an offense involving unlawfully accessing, or exceeding authorized access to, a 'protected computer' as defined in 18 U.S.C. § 1030(e)(2) (A) or (B), 'loss' includes the reasonable cost to the victim of conducting a damage assessment, restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by inserting after Note 14 the following additional notes:

''15. In cases where the loss determined under subsection (b)(1) does not fully capture the harmfulness of the conduct, an upward departure may be warranted. For example, the theft of personal information or writings (e.g., medical records, educational records, a diary) may involve a substantial invasion of a privacy interest that would not be addressed by the monetary loss provisions of subsection (b)(1).

16. In cases involving theft of information from a 'protected computer', as defined in 18 U.S.C. § 1030(e)(2) (A) or (B), an upward departure may be warranted where the defendant sought the stolen information to further a broader criminal purpose.''.

Section 2B1.3 is amended by inserting after subsection (c) the following additional subsection:

''(d) Special Instruction

(1) If the defendant is convicted under 18 U.S.C. § 1030(a)(5), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.''.

The Commentary to § 2B1.3 captioned ''Statutory Provisions'' is amended by inserting ''1030(a)(5),'' before ''1361,''.

The Commentary to § 2B1.3 captioned ''Application Notes'' is amended in Note 4 by inserting ''or interference with a telecommunications network'' following ''line''; by inserting '', with attendant, life-threatening delay in the delivery of emergency medical treatment or disruption of other important governmental or private services'' following ''hours''; by deleting ''instances'' and inserting in lieu thereof ''cases''; by deleting ''would'' and inserting in lieu thereof ''may''; and by inserting as the last sentence ''See §§ 5K2.2 (Physical Injury), 5K2.7 (Disruption of Governmental Function), and 5K2.14 (Public Welfare).''.

The Commentary to § 2B1.3 is amended by inserting at the end the following:

''Background: Subsection (d) implements the instruction to the Commission in section 805(c) of Public Law 104–132.''.

Section 2B2.3(b) is amended by inserting after subdivision (2) the following additional subdivision: ''(3) If the offense involved invasion of a protected computer resulting in a loss exceeding $2000, increase the offense level by the number of levels from the table in § 2F1.1 corresponding to the loss.''.

The Commentary to § 2B2.3 captioned ''Statutory Provision'' is amended by deleting ''Provision'' and inserting in lieu thereof ''Provisions''; and by inserting ''18 U.S.C. § 1030(a)(3);'' before ''42 U.S.C.''.

The Commentary to § 2B2.3 captioned ''Application Note'' is amended in Note 1 by inserting ''For purposes of this guideline—'' before '' 'Firearm' ''; and by inserting after the first paragraph the following additional paragraph:

'' 'Protected computer' means a computer described in 18 U.S.C. § 1030(e)(2) (A) or (B).''.

The Commentary to § 2B2.3 captioned ''Application Note'' is amended by deleting ''Note'' and inserting ''Notes'' and by inserting after Note 1 the following additional note:

"2. Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

The Commentary to § 2B3.2 captioned "Statutory Provisions" is amended by inserting "1030(a)(7)," following "877,".

The Commentary to § 2B3.2 captioned "Background" is amended by inserting as the last sentence the following:

"This guideline also applies to offenses under 18 U.S.C. § 1030(a)(7) involving a threat to impair the operation of a 'protected computer.' ".

Section 2F1.1 is amended by inserting after subsection (b) the following additional subsection:

"(c) Special Instruction

(1) If the defendant is convicted under 18 U.S.C. § 1030(a)(4), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.".

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting "1030(a)(4)," before "1031,".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting at the end the following additional paragraph:

"Subsection (c) implements the instruction to the Commission in section 805(c) of Public Law 104–132.".

Reason for Amendment: This amendment makes a number of changes in the theft, property destruction, trespass, extortion, and fraud guidelines to more effectively punish computer-related offenses. The amendment also addresses new offenses under 18 U.S.C. § 1030(a)(7), prohibiting extortion by threats of damage to a non-public government computer or a computer of a financial institution; 18 U.S.C. § 1831, prohibiting "economic espionage"; and 18 U.S.C. § 1832, prohibiting theft of "trade secrets," as broadly defined at 18 U.S.C. § 1839. Offenses under 18 U.S.C. § 1030(a)(7) are referenced to § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage); offenses under 18 U.S.C. §§ 1031 and 1832 are referenced to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

Special instructions have been added to §§ 2B1.3 and 2F1.1 to provide that the minimum guideline sentence for those convicted under 18 U.S.C. § 1030(a) (4) and (5) is six months' imprisonment. These provisions implement a directive to the Commission in section 805(c) of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1305.

8. Amendment: Section 2B3.1(b)(2)(F) is amended by deleting "an express" and inserting in lieu thereof "a".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 6 by deleting "An 'express" and inserting in lieu thereof " 'A"; by inserting after the first sentence the following additional sentence:

"Accordingly, the defendant does not have to state expressly his intent to kill the victim in order for the enhancement to apply.";

By deleting "an express" following "constitute" and inserting in lieu thereof "a"; by deleting "the underlying" and inserting in lieu thereof "this"; and by deleting "significantly greater fear than that necessary to constitute an element of the offense of robbery" and inserting in lieu thereof "a fear of death".

Reason for Amendment: This amendment addresses a circuit court conflict regarding the application of the "express threat of death" enhancement in § 2B3.1 (Robbery). The amendment adopts the majority appellate view which holds that the enhancement applies when the combination of the defendant's actions and words would instill in a reasonable person in the position of the immediate victim (e.g., a bank teller) a greater amount of fear than necessary to commit the robbery. See, e.g., *United States* v. *Robinson,* 86 F.3d 1197, 1202 (D.C. Cir. 1996) (enhancement applies if (1) a reasonable person in the position of the immediate victim would very likely believe the defendant made a threat and the threat was to kill, and (2) the victim likely thought his life was in peril); *United States* v. *Murray,* 65 F.3d 1161, 1167 (4th Cir. 1995) ("any combination of statements, gestures, or actions that would put an ordinary victim in reasonable fear for his or her life is an express threat of death").

9. Amendment: Section 2B5.1(b) is amended by inserting after subdivision (3) the following additional subdivision:

"(4) If any part of the offense was committed outside the United States, increase by 2 levels.".

The Commentary to § 2B5.1 captioned "Statutory Provisions" is amended by deleting "471" and inserting in lieu thereof "470".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by redesignating Note 1 as Note 2; and by inserting the following new Note 1:

"1. For purposes of this guideline, 'United States' means each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.".

Reason for Amendment: This amendment addresses section 807(h) of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1308, which requires the Commission to amend the sentencing guidelines to provide an appropriate enhancement for a defendant convicted of an international counterfeiting offense under 18 U.S.C. § 470. The amendment adds a specific offense characteristic in § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to provide a two-level enhancement if the offense occurred outside the United States.

10. *Amendment:* Section 2D1.1(b) is amended by redesignating subdivision (4) as subdivision (6) and inserting after subdivision (3) the following additional subdivisions:

"(4) If (A) the offense involved the importation of methamphetamine or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under § 3B1.2 (Mitigating Role), increase by 2 levels.

(5) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.".

Section 2D1.1(c) is amended in subdivision (1) by deleting "30 KG" before "or more of Methamphetamine" and inserting in lieu thereof "15 KG".

Section 2D1.1(c) is amended in subdivision (2) by deleting "10 KG but less than 30 KG" before "of Methamphetamine" and inserting in lieu thereof "5 KG but less than 15 KG".

Section 2D1.1(c) is amended in subdivision (3) by deleting "3 KG but less than 10 KG" before "of Methamphetamine" and inserting in lieu thereof "1.5 G but less than 5 KG".

Section 2D1.1(c) is amended in subdivision (4) by deleting "1 KG but less than 3 KG" before "of Methamphetamine" and inserting in lieu thereof "500 G but less than 1.5 KG".

Section 2D1.1(c) is amended in subdivision (5) by deleting "700 G but less than 1 KG" before "of Methamphetamine" and inserting in lieu thereof "350 G but less than 500 G".

Section 2D1.1(c) is amended in subdivision (6) by deleting "400 G but less than 700 G" before "of Methamphetamine" and inserting in lieu thereof "200 G but less than 350 G".

Section 2D1.1(c) is amended in subdivision (7) by deleting "100 G but less than 400 G" before "of Methamphetamine" and inserting in lieu thereof "50 G but less than 200 G".

Section 2D1.1(c) is amended in subdivision (8) by deleting "80 G but less than 100 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''40 G but less than 50 G''.

Section 2D1.1(c) is amended in subdivision (9) by deleting ''60 G but less than 80 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''30 G but less than 40 G''.

Section 2D1.1(c) is amended in subdivision (10) by deleting ''40 G but less than 60 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''20 G but less than 30 G''.

Section 2D1.1(c) is amended in subdivision (11) by deleting ''20 G but less than 40 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''10 G but less than 20 G''.

Section 2D1.1(c) is amended in subdivision (12) by deleting ''10 G but less than 20 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''5 G but less than 10 G''.

Section 2D1.1(c) is amended in subdivision (13) by deleting ''5 G but less than 10 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''2.5 G but less than 5 G''.

Section 2D1.1(c) is amended in subdivision (14) by deleting ''5 G'' before ''of Methamphetamine'' and inserting in lieu thereof ''2.5 G''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the ''Drug Equivalency Tables'' in the subdivision captioned ''Cocaine and Other Schedule I and II Stimulants'' in the entry beginning ''1 gm of Methamphetamine ='' by deleting ''1 kg'' before ''of marihuana'' and inserting in lieu thereof ''2 kg''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by inserting after Note 18 the following additional notes:

''19. If the offense involved importation of methamphetamine, and an adjustment from subsection (b)(2) applies, do not apply subsection (b)(4).

20. Under subsection (b)(5), the enhancement applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 5124, 6903(b). In some cases, the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release).''.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the second paragraph by inserting as the last sentence ''Where necessary, this scheme has been modified in response to specific congressional directives to the Commission.''.

Reason for Amendment: This multi-part amendment responds to the Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104–237, 110 Stat. 3099, including the directives to the Commission in sections 301 and 303 of that Act. First, as directed by section 301 of the Act, the amendment increases penalties for methamphetamine trafficking offenses. This penalty increase is accomplished by reducing by one-half the quantity of a mixture or substance containing methamphetamine corresponding to each offense level in the Drug Quantity Table. This part of the amendment makes no change, however, in the quantities of methamphetamine (actual) (i.e., ''pure'' methamphetamine) and ''Ice'' methamphetamine that correspond to the various offense levels. The Commission has arrived at these particular changes after careful analysis of recent sentencing data, including its own intensive study of methamphetamine offenses, information provided by the Strategic Intelligence Section of the Drug Enforcement Administration concerning recent methamphetamine trafficking levels, dosage unit size, price, and drug quantity, and a variety of other information.

Second, in response to the directive in section 303 of the Act, this amendment provides an enhancement of two levels, with an invited upward departure in more extreme cases, for environmental violations occurring in association with an illicit manufacturing or other drug trafficking offense.

Third, in response to evidence of a recent, substantial increase in the importation of methamphetamine and precursor chemicals used to manufacture methamphetamine, the amendment provides an enhancement of two levels directed at such activity. An exception to this enhancement is provided for defendants who have a mitigating role in the offense under § 3B1.2 (Mitigating Role).

11. *Amendment:* Section 2D1.1(d) is amended by deleting ''Reference'' and inserting in lieu thereof ''References''; and by inserting after subdivision (1) the following additional subdivision:

''(2) If the defendant was convicted under 21 U.S.C. § 841(b)(7) (of distributing a controlled substance with intent to commit a crime of violence), apply § 2X1.1 (Attempt, Solicitation or Conspiracy) in respect to the crime of violence that the defendant committed, or attempted or intended to commit, if the resulting offense level is greater than that determined above.''.

Section 2D1.1(c)(10) is amended by deleting the period after ''Schedule III substances'' and inserting in lieu thereof a semicolon; and by inserting at the end the following additional subdivision:
''2,500 or more units of Flunitrazepam.''.

Section 2D1.1(c)(11) is amended by deleting the period after ''Schedule III substances'' and inserting in lieu thereof a semicolon; and by inserting at the end the following additional subdivision:

''At least 1,250 but less than 2,500 units of Flunitrazepam.''.

Section 2D1.1(c)(12) is amended by deleting the period after ''Schedule III substances'' and inserting in lieu thereof a semicolon; and by inserting at the end the following additional subdivision:

''At least 625 but less than 1,250 units of Flunitrazepam.''.

Section 2D1.1(c)(13) is amended by deleting the period after ''Schedule III substances'' and inserting in lieu thereof a semicolon; and by inserting at the end the following additional subdivision:

''At least 312 but less than 625 units of Flunitrazepam.''.

Section 2D1.1(c)(14) is amended by inserting after ''Schedule III substances;'' the following additional subdivision:

''At least 156 but less than 312 units of Flunitrazepam;'';
and by inserting ''(except Flunitrazepam)'' after ''Schedule IV substances''.

Section 2D1.1(c)(15) is amended by inserting after ''Schedule III substances;'' the following additional subdivision:

''At least 62 but less than 156 units of Flunitrazepam;'';
and by inserting ''(except Flunitrazepam)'' after ''Schedule IV substances''.

Section 2D1.1(c)(16) is amended by inserting after ''Schedule III substances;'' the following additional subdivision:

''Less than 62 units of Flunitrazepam;'';

and by inserting ''(except Flunitrazepam)'' after ''Schedule IV substances''.

Section 2D1.1(c)(17) is amended by inserting ''(except Flunitrazepam)'' after ''Schedule IV substances''.

The Commentary to § 2D1.1 captioned ''Statutory Provisions'' is amended by inserting ''(7),'' following ''(3),''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the ''Drug Equivalency Tables'' by inserting before the subdivision captioned ''Schedule I or II Depressants **'' the following additional subdivision:

''Flunitrazepam **

1 unit of Flunitrazepam = 16 gm of marihuana

** Provided, that the combined equivalent weight of flunitrazepam, all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 99.99 kilograms of marihuana.

The minimum offense level from the Drug Quantity Table for flunitrazepam individually, or in combination with any Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances is level 8.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the ''Drug Equivalency Tables'' in the subdivision captioned ''Schedule I or II Depressants'' by inserting an additional asterisk following ''**'' in both instances; and by inserting ''(except flunitrazepam)'' following ''Schedule IV substances''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the ''Drug Equivalency Tables'' in the subdivision captioned ''Schedule III Substances'' by inserting an additional asterisk following ''* * *'' in both instances; and by inserting ''(except flunitrazepam)'' following ''Schedule IV substances''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the ''Drug Equivalency Tables'' in the subdivision captioned ''Schedule IV Substances'' is amended by inserting ''(except flunitrazepam)'' following ''Substances''; by inserting an additional asterisk following ''****'' in both instances; by inserting ''(except flunitrazepam)'' following ''Substance''; and by inserting ''(except flunitrazepam)'' before ''and V''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned ''Schedule V Substances'' by inserting an additional asterisk following ''*****'' in both instances.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 17 by inserting as the last sentence:

''Similarly, in the case of a controlled substance for which the maximum offense level is less than level 38 (e.g., the maximum offense level in the Drug Quantity Table for flunitrazepam is level 20), an upward departure may be warranted if the drug quantity substantially exceeds the quantity for the highest offense level established for that particular controlled substance.''.

Section 2D2.1(a)(2) is amended by inserting ''flunitrazepam,'' following ''cocaine,''.

The Commentary to § 2D2.1 is amended by inserting before ''Background:'' the following:

''*Application Note:*

1. The typical case addressed by this guideline involves possession of a controlled substance by the defendant for the defendant's own consumption. Where the circumstances establish intended consumption by a person other than the defendant, an upward departure may be warranted.''.

Reason for Amendment: This amendment implements the directive to the Commission in the Drug-Induced Rape Prevention and Punishment Act of 1996, Pub. L. 104–305, 110 Stat. 3807. Section 2 of the Act directs the Commission to amend the guidelines to reflect the serious nature of offenses involving flunitrazepam. This amendment reflects the increases in statutory maximum penalties for offenses involving trafficking and simple possession, respectively, of flunitrazepam. In addition, the amendment contains a cross reference to cover the new offense created under this Act involving the distribution of a controlled substance to an individual in order to commit a crime of violence against that individual.

12. Amendment: Section 2D1.11(d) is amended by deleting subdivisions (1)–(9) in their entirety and inserting in lieu thereof the following:

''(1) List I Chemicals .... Level 30.

17.8 KG or more of Benzaldehyde;
20 KG or more of Benzyl Cyanide;
20 KG or more of Ephedrine;
200 G or more of Ergonovine;
400 G or more of Ergotamine;
20 KG or more of Ethylamine;
44 KG or more of Hydriodic Acid;
320 KG or more of Isosafrole;
4 KG or more of Methylamine;
500 KG or more of N-Methylephedrine;
500 KG or more of N-Methylpseudoephedrine;
12.6 KG or more of Nitroethane;
200 KG or more of Norpseudoephedrine;
20 KG or more of Phenylacetic Acid;
200 KG or more of Phenylpropanolamine;
10 KG or more of Piperidine;
320 KG or more of Piperonal;
1.6 KG or more of Propionic Anhydride;
20 KG or more of Pseudoephedrine;
320 KG or more of Safrole;
400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone.

(2) List I Chemicals .... Level 28.

At least 5.3 KG but less than 17.8 KG of Benzaldehyde;
At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 6 KG but less than 20 KG of Ephedrine;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;
At least 6 KG but less than 20 KG of Ethylamine;
At least 13.2 KG but less than 44 KG of Hydriodic Acid;
At least 96 KG but less than 320 KG of Isosafrole;
At least 1.2 KG but less than 4 KG of Methylamine;
At least 150 KG but less than 500 KG of N-Methylephedrine;
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
At least 3.8 KG but less than 12.6 KG of Nitroethane;
At least 60 KG but less than 200 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 60 KG but less than 200 KG of Phenylpropanolamine;
At least 3 KG but less than 10 KG of Piperidine;
At least 96 KG but less than 320 KG of Piperonal;
At least 480 G but less than 1.6 KG of Propionic Anhydride;
At least 6 KG but less than 20 KG of Pseudoephedrine;
At least 96 KG but less than 320 KG of Safrole;
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

11 KG or more of Acetic Anhydride;
1175 KG or more of Acetone;
20 KG or more of Benzyl Chloride;
1075 KG or more of Ethyl Ether;
1200 KG or more of Methyl Ethyl Ketone;
10 KG or more of Potassium Permanganate;
1300 KG or more of Toluene.

(3) List I Chemicals .... Level 26.

At least 1.8 KG but less than 5.3 KG of Benzaldehyde;
At least 2 KG but less than 6 KG of Benzyl Cyanide;
At least 2 KG but less than 6 KG of Ephedrine;
At least 20 G but less than 60 G of Ergonovine;
At least 40 G but less than 120 G of Ergotamine;
At least 2 KG but less than 6 KG of Ethylamine;
At least 4.4 KG but less than 13.2 KG of Hydriodic Acid;
At least 32 KG but less than 96 KG of Isosafrole;
At least 400 G but less than 1.2 KG of Methylamine;
At least 50 KG but less than 150 KG of N-Methylephedrine;
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
At least 1.3 KG but less than 3.8 KG of Nitroethane;
At least 20 KG but less than 60 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 20 KG but less than 60 KG of Phenylpropanolamine;
At least 1 KG but less than 3 KG of Piperidine;
At least 32 KG but less than 96 KG of Piperonal;
At least 160 G but less than 480 G of Propionic Anhydride;
At least 2 KG but less than 6 KG of Pseudoephedrine;
At least 32 KG but less than 96 KG of Safrole;
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 3.3 KG but less than 11 KG of Acetic Anhydride;
At least 352.5 KG but less than 1175 KG of Acetone;
At least 6 KG but less than 20 KG of Benzyl Chloride;
At least 322.5 KG but less than 1075 KG of Ethyl Ether;
At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
At least 3 KG but less than 10 KG of Potassium Permanganate;
At least 390 KG but less than 1300 KG of Toluene.

(4) List I Chemicals .... Level 24.

At least 1.2 KG but less than 1.8 KG of Benzaldehyde;
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
At least 1.4 KG but less than 2 KG of Ephedrine;
At least 14 G but less than 20 G of Ergonovine;
At least 28 G but less than 40 G of Ergotamine;
At least 1.4 KG but less than 2 KG of Ethylamine;
At least 3.08 KG but less than 4.4 KG of Hydriodic Acid;
At least 22.4 KG but less than 32 KG of Isosafrole;
At least 280 G but less than 400 G of Methylamine;
At least 35 KG but less than 50 KG of N-Methylephedrine;
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;
At least 879 G but less than 1.3 KG of Nitroethane;
At least 14 KG but less than 20 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 14 KG but less than 20 KG of Phenylpropanolamine;
At least 700 G but less than 1 KG of Piperidine;
At least 22.4 KG but less than 32 KG of Piperonal;
At least 112 G but less than 160 G of Propionic Anhydride;
At least 1.4 KG but less than 2 KG of Pseudoephedrine;
At least 22.4 KG but less than 32 KG of Safrole;
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 1.1 KG but less than 3.3 KG of Acetic Anhydride;
At least 117.5 KG but less than 352.5 KG of Acetone;
At least 2 KG but less than 6 KG of Benzyl Chloride;
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;
At least 1 KG but less than 3 KG of Potassium Permanganate;
At least 130 KG but less than 390 KG of Toluene.

(5) List I Chemicals .... Level 22.

At least 712 G but less than 1.2 KG of Benzaldehyde;
At least 800 G but less than 1.4 KG of Benzyl Cyanide;
At least 800 G but less than 1.4 KG of Ephedrine;
At least 8 G but less than 14 G of Ergonovine;
At least 16 G but less than 28 G of Ergotamine;
At least 800 G but less than 1.4 KG of Ethylamine;
At least 1.76 KG but less than 3.08 KG of Hydriodic Acid;
At least 12.8 KG but less than 22.4 KG of Isosafrole;
At least 160 G but less than 280 G of Methylamine;
At least 20 KG but less than 35 KG of N-Methylephedrine;
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
At least 503 G but less than 879 G of Nitroethane;
At least 8 KG but less than 14 KG of Norpseudoephedrine;
At least 800 G but less than 1.4 KG of Phenylacetic Acid;
At least 8 KG but less than 14 KG of Phenylpropanolamine;
At least 400 G but less than 700 G of Piperidine;
At least 12.8 KG but less than 22.4 KG of Piperonal;
At least 64 G but less than 112 G of Propionic Anhydride;
At least 800 G but less than 1.4 KG of Pseudoephedrine;
At least 12.8 KG but less than 22.4 KG of Safrole;
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 726 G but less than 1.1 KG of Acetic Anhydride;
At least 82.25 KG but less than 117.5 KG of Acetone;
At least 1.4 KG but less than 2 KG of Benzyl Chloride;
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
At least 700 G but less than 1 KG of Potassium Permanganate;
At least 91 KG but less than 130 KG of Toluene.

(6) List I Chemicals .... Level 20.

At least 178 G but less than 712 G of Benzaldehyde;
At least 200 G but less than 800 G of Benzyl Cyanide;
At least 200 G but less than 800 G of Ephedrine;
At least 2 G but less than 8 G of Ergonovine;
At least 4 G but less than 16 G of Ergotamine;
At least 200 G but less than 800 G of Ethylamine;
At least 440 G but less than 1.76 KG of Hydriodic Acid;
At least 3.2 KG but less than 12.8 KG of Isosafrole;
At least 40 G but less than 160 G of Methylamine;
At least 5 KG but less than 20 KG of N-Methylephedrine;
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
At least 126 G but less than 503 G of Nitroethane;
At least 2 KG but less than 8 KG of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 2 KG but less than 8 KG of Phenylpropanolamine;
At least 100 G but less than 400 G of Piperidine;
At least 3.2 KG but less than 12.8 KG of Piperonal;
At least 16 G but less than 64 G of Propionic Anhydride;
At least 200 G but less than 800 G of Pseudoephedrine;
At least 3.2 KG but less than 12.8 KG of Safrole;
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 440 G but less than 726 G of Acetic Anhydride;
At least 47 KG but less than 82.25 KG of Acetone;
At least 800 G but less than 1.4 KG of Benzyl Chloride;
At least 43 KG but less than 75.25 KG of Ethyl Ether;
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;
At least 400 G but less than 700 G of Potassium Permanganate;
At least 52 KG but less than 91 KG of Toluene.

(7) List I Chemicals .... Level 18.

At least 142 G but less than 178 G of Benzaldehyde;
At least 160 G but less than 200 G of Benzyl Cyanide;
At least 160 G but less than 200 G of Ephedrine;
At least 1.6 G but less than 2 G of Ergonovine;
At least 3.2 G but less than 4 G of Ergotamine;
At least 160 G but less than 200 G of Ethylamine;
At least 352 G but less than 440 G of Hydriodic Acid;
At least 2.56 KG but less than 3.2 KG of Isosafrole;
At least 32 G but less than 40 G of Methylamine;
At least 4 KG but less than 5 KG of N-Methylephedrine;
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
At least 100 G but less than 126 G of Nitroethane;
At least 1.6 KG but less than 2 KG of Norpseudoephedrine;
At least 160 G but less than 200 G of Phenylacetic Acid;
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;
At least 80 G but less than 100 G of Piperidine;
At least 2.56 KG but less than 3.2 KG of Piperonal;
At least 12.8 G but less than 16 G of Propionic Anhydride;
At least 160 G but less than 200 G of Pseudoephedrine;
At least 2.56 KG but less than 3.2 KG of Safrole;
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 110 G but less than 440 G of Acetic Anhydride;
At least 11.75 KG but less than 47 KG of Acetone;
At least 200 G but less than 800 G of Benzyl Chloride;
At least 10.75 KG but less than 43 KG of Ethyl Ether;
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;
At least 100 G but less than 400 G of Potassium Permanganate;
At least 13 KG but less than 52 KG of Toluene.

(8) List I Chemicals .... Level 16.

3.6 KG or more of Anthranilic Acid;
At least 107 G but less than 142 G of Benzaldehyde;
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 120 G but less than 160 G of Ephedrine;
At least 1.2 G but less than 1.6 G of Ergonovine;
At least 2.4 G but less than 3.2 G of Ergotamine;
At least 120 G but less than 160 G of Ethylamine;
At least 264 G but less than 352 G of Hydriodic Acid;
At least 1.92 KG but less than 2.56 KG of Isosafrole;
At least 24 G but less than 32 G of Methylamine;
4.8 KG or more of N-Acetylanthranilic Acid;
At least 3 KG but less than 4 KG of N-Methylephedrine;
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
At least 75 G but less than 100 G of Nitroethane;
At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine;
At least 120 G but less than 160 G of Phenylacetic Acid;
At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine;
At least 60 G but less than 80 G of Piperidine;
At least 1.92 KG but less than 2.56 KG of Piperonal;
At least 9.6 G but less than 12.8 G of Propionic Anhydride;
At least 120 G but less than 160 G of Pseudoephedrine;
At least 1.92 KG but less than 2.56 KG of Safrole;
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 88 G but less than 110 G of Acetic Anhydride;
At least 9.4 KG but less than 11.75 KG of Acetone;
At least 160 G but less than 200 G of Benzyl Chloride;
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;
At least 80 G but less than 100 G of Potassium Permanganate;
At least 10.4 KG but less than 13 KG of Toluene.

(9) List I Chemicals .... Level 14.

At least 2.7 KG but less than 3.6 KG of Anthranilic Acid;
At least 71.2 G but less than 107 G of Benzaldehyde;
At least 80 G but less than 120 G of Benzyl Cyanide;
At least 80 G but less than 120 G of Ephedrine;
At least 800 MG but less than 1.2 G of Ergonovine;
At least 1.6 G but less than 2.4 G of Ergotamine;
At least 80 G but less than 120 G of Ethylamine;
At least 176 G but less than 264 G of Hydriodic Acid;
At least 1.44 G but less than 1.92 KG of Isosafrole;
At least 16 G but less than 24 G of Methylamine;
At least 3.6 KG but less than 4.8 KG of N-Acetylanthranilic Acid;
At least 2.25 KG but less than 3 KG of N-Methylephedrine;
At least 2.25 KG but less than 3 KG of N-Methylpseudoephedrine;
At least 56.25 G but less than 75 G of Nitroethane;
At least 800 G but less than 1.2 KG of Norpseudoephedrine;
At least 80 G but less than 120 G of Phenylacetic Acid;
At least 800 G but less than 1.2 KG of Phenylpropanolamine;
At least 40 G but less than 60 G of Piperidine;
At least 1.44 KG but less than 1.92 KG of Piperonal;
At least 7.2 G but less than 9.6 G of Propionic Anhydride;
At least 80 G but less than 120 G of Pseudoephedrine;
At least 1.44 G but less than 1.92 KG of Safrole;
At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

At least 66 G but less than 88 G of Acetic Anhydride;
At least 7.05 KG but less than 9.4 KG of Acetone;
At least 120 G but less than 160 G of Benzyl Chloride;
At least 6.45 KG but less than 8.6 KG of Ethyl Ether;
At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone;
At least 60 G but less than 80 G of Potassium Permanganate;
At least 7.8 KG but less than 10.4 KG of Toluene.

(10) List I Chemicals .... Level 12.

Less than 2.7 KG of Anthranilic Acid;
Less than 71.2 G of Benzaldehyde;
Less than 80 G of Benzyl Cyanide;
Less than 80 G of Ephedrine;
Less than 800 MG of Ergonovine;
Less than 1.6 G of Ergotamine;
Less than 80 G of Ethylamine;
Less than 176 G of Hydriodic Acid;
Less than 1.44 G of Isosafrole;
Less than 16 G of Methylamine;
Less than 3.6 KG of N-Acetylanthranilic Acid;
Less than 2.25 KG of N-Methylephedrine;
Less than 2.25 KG of N-Methylpseudoephedrine;
Less than 56.25 G of Nitroethane;
Less than 800 G of Norpseudoephedrine;
Less than 80 G of Phenylacetic Acid;
Less than 800 G of Phenylpropanolamine;
Less than 40 G of Piperidine;
Less than 1.44 KG of Piperonal;
Less than 7.2 G of Propionic Anhydride;
Less than 80 G of Pseudoephedrine;
Less than 1.44 G of Safrole;
Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

List II Chemicals

Less than 66 G of Acetic Anhydride;
Less than 7.05 KG of Acetone;
Less than 120 G of Benzyl Chloride;
Less than 6.45 KG of Ethyl Ether;
Less than 7.2 KG of Methyl Ethyl Ketone;
Less than 60 G of Potassium Permanganate;
Less than 7.8 KG of Toluene.''.

Section 2D1.11(d) is amended in Note ''E'' (List I Chemical Equivalency Table) by deleting ''Isoafrole'' and inserting in lieu thereof ''Isosafrole''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 4(a) in the first sentence by deleting ''three kilograms'' and inserting in lieu thereof ''300 grams''; in the fourth sentence by deleting ''24'' and inserting in lieu thereof ''26''; and in the fifth sentence by deleting ''24'' and inserting in lieu thereof ''26''.

Reason for Amendment: This amendment implements section 302 of the Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104–237, 110 Stat. 3099, which directs the Commission to increase by at least two levels the offense levels for offenses involving list I chemicals under 21 U.S.C. §§ 841(d)(1) and (2) and 960(d)(1) and (3). Pursuant to the emergency amendment authority of that Act, this amendment previously was promulgated as a temporary measure effective May 1, 1997. The amendment also corrects the spelling of ''Isosafrole'' and corrects and conforms an illustration in an application note.

13. Amendment: Section 2D1.12 is amended by redesignating subsection (b) as subsection (c); and by inserting the following new subsection (b):

''(b) Specific Offense Characteristic

(1) If the defendant (A) intended to manufacture methamphetamine, or (B) knew, believed, or had reasonable cause to believe that prohibited equipment was to be used to manufacture methamphetamine, increase by 2 levels.''.

The Commentary to § 2D1.12 captioned ''Application Notes'' is amended in Note 2 by deleting ''(b)(1)'' and inserting in lieu thereof ''(c)(1)''.

Section 2D2.1(a)(3) is amended by inserting ''or a list I chemical'' after ''controlled substance''.

Reason for Amendment: This amendment implements the directive to the Commission in section 203 of the Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104-237, 110 Stat. 3099, to ensure that possession of equipment used to make methamphetamine is treated as a significant violation. Additionally, the amendment includes list I chemicals under § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), in response to section 201 of the Act, which amends 21 U.S.C. § 844 to include list I chemicals.

14. Amendment: Section 2H4.1(a) is amended by deleting ''(Apply the greater):'' and inserting in lieu thereof '':22''; and by deleting subdivisions (1) and (2).

Section 2H4.1 is amended by inserting after subsection (a) the following additional subsection:

''(b) Specific Offense Characteristics

(1)(A) If any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; or (B) if any victim sustained serious bodily injury, increase by 2 levels.

(2) If a dangerous weapon was used, increase by 2 levels.

(3) If any victim was held in a condition of peonage or involuntary servitude for (A) more than one year, increase by 3 levels; (B) between 180 days and one year, increase by 2 levels; or (C) more than 30 days but less than 180 days, increase by 1 level.

(4) If any other felony offense was committed during the commission of, or in connection with, the peonage or involuntary servitude offense, increase to the greater of:

(A) 2 plus the offense level as determined above, or

(B) 2 plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level 43.''.

The Commentary to § 2H4.1 captioned ''Statutory Provisions'' is amended by inserting ''241,'' before ''1581''.

The Commentary to § 2H4.1 captioned ''Application Note'' is amended by deleting ''Note'' and inserting in lieu thereof ''Notes''; by deleting Note 1 and inserting in lieu thereof:

''1. For purposes of this guideline—

'A dangerous weapon was used' means that a firearm was discharged, or that a firearm or dangerous weapon was otherwise used.

Definitions of 'firearm,' 'dangerous weapon,' 'otherwise used,' 'serious bodily injury,' and 'permanent or life-threatening bodily injury' are found in

the Commentary to § 1B1.1 (Application Instructions).'';
and by inserting after Note 1 the following additional notes:

''2. 'Any other felony offense', as used in subsection (b)(4), means any conduct that constitutes a felony offense under federal, state, or local law (other than an offense that is itself covered by this subpart). When there is more than one such other offense, the most serious such offense (or group of closely related offenses in the case of offenses that would be grouped together under § 3D1.2(d)) is to be used. See Application Note 3 of § 1B1.5 (Interpretation of References to other Offense Guidelines).

3. If the offense involved the holding of more than ten victims in a condition of peonage or involuntary servitude, an upward departure may be warranted.''.

The Commentary to § 2H4.1 captioned ''Background'' is deleted in its entirety.

Reason for Amendment: This amendment implements section 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009–573, which directs the Commission to review the guideline for peonage, involuntary servitude, and slave trade offenses and amend the guideline pursuant to that review. Pursuant to the emergency amendment authority of that Act, this amendment previously was promulgated as a temporary measure effective May 1, 1997.

15. Amendment: Section 2L1.1(a)(1) is amended by deleting ''20'' and inserting in lieu thereof ''23''.

Section 2L1.1(a)(2) is amended by deleting ''9'' and inserting in lieu thereof ''12''.

Section 2L1.1(b) is amended by deleting subdivision (1) and inserting in lieu thereof:

''(1) If (A) the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), and (B) the base offense level is determined under subsection (a)(2), decrease by 3 levels.''.

Section 2L1.1(b)(2) is amended in the column captioned ''Increase in Level'' by deleting ''2'' in subdivision (A) and inserting in lieu thereof ''3''; by deleting ''4'' in subdivision (B) and inserting in lieu thereof ''6''; and by deleting ''6'' in subdivision (C) and inserting in lieu thereof ''9''.

Section 2L1.1 is amended by deleting subsection (b)(3) and inserting in lieu thereof:

''(3) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.''.

Section 2L1.1(b) is amended by inserting after subdivision (3) the following additional subdivisions:

''(4) (Apply the greatest):

(A) If a firearm was discharged, increase by 6 levels, but if the resulting offense level is less than level 22, increase to level 22.

(B) If a dangerous weapon (including a firearm) was brandished or otherwise used, increase by 4 levels, but if the resulting offense level is less than level 20, increase to level 20.

(C) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18.

(5) If the offense involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18.

(6) If any person died or sustained bodily injury, increase the offense level according to the seriousness of the injury:

Death or degree of injury	Increase in level
(1) Bodily Injury	Add 2 levels.
(2) Serious Bodily Injury	Add 4 levels.
(3) Permanent or Life-Threatening Bodily Injury.	Add 6 levels.
(4) Death	Add 8 levels.''.

Section 2L1.1 is amended by inserting after subsection (b) the following additional subsection:

''(c) Cross Reference

If any person was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the special maritime and territorial jurisdiction of the United States, apply the appropriate murder guideline from Chapter Two, Part A, Subpart 1.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 1 by inserting at the beginning ''For purposes of this guideline—'';
by deleting the first sentence as follows:

'''For profit' means for financial gain or commercial advantage, but this definition does not include a defendant who commits the offense solely in return for his own entry or transportation.'',
and inserting in lieu thereof:

'''The offense was committed other than for profit' means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.'';
by making the second sentence the second paragraph; by deleting ''The number'' and inserting in lieu thereof ''Number''; and by inserting at the end the following additional paragraphs:

'''Aggravated felony' is defined in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States).

'Child' has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).

'Spouse' has the meaning set forth in 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).

'Immigration and naturalization offense' means any offense covered by Chapter Two, Part L.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by deleting Note 3; and by redesignating Notes 4 and 5 as Notes 3 and 4, respectively.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 4, as redesignated, by deleting ''dangerous or inhumane treatment, death or bodily injury, possession of a dangerous weapon, or'' following ''involved''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by deleting Note 6.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by inserting after Note 4, as redesignated, the following additional notes:

''5. Prior felony conviction(s) resulting in an adjustment under subsection (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

6. Reckless conduct to which the adjustment from subsection (b)(5) applies includes a wide variety of conduct (e.g., transporting persons in the trunk or engine compartment of a motor vehicle, carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, or harboring persons in a crowded, dangerous, or inhumane condition). If subsection (b)(5) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from § 3C1.2 (Reckless Endangerment During Flight). Additionally, do not apply the adjustment in subsection (b)(5) if the only reckless conduct that created a substantial risk of death or serious bodily injury is conduct for which the defendant received an enhancement under subsection (b)(4).''.

The Commentary to § 2L1.1 captioned ''Background'' is amended by deleting the second and third sentences as follows:

''A specific offense characteristic provides a reduction if the defendant did not commit the offense for profit. The offense level increases with the number of unlawful aliens smuggled, transported, or harbored.''.

The Commentary to § 2L1.1 captioned ''Background'' is amended in the last sentence by inserting ''smuggling, transporting, or harboring'' following ''scale''.

Reason for Amendment: This amendment implements section 203 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009, which directs the Commission to amend the guidelines for offenses related to smuggling, transporting, or harboring illegal aliens. Pursuant to the emergency amendment authority of that Act, this amendment previously was promulgated as a temporary measure effective May 1, 1997. This version of the amendment changes § 2L1.1(b)(1)(A)(pertaining to a reduction for non-profit offenses) to narrow somewhat the class of cases that would qualify for the reduced offense level under that provision.

16. Amendment: Section 2L1.2 is amended by deleting subsection (b) and inserting in lieu thereof:

''(b) Specific Offense Characteristic

(1) If the defendant previously was deported after a criminal conviction, or if the defendant unlawfully remained in the United States following a removal order issued after a criminal conviction, increase as follows (if more than one applies, use the greater):

(A) If the conviction was for an aggravated felony, increase by 16 levels.

(B) If the conviction was for (i) any other felony, or (ii) three or more misdemeanor crimes of violence or misdemeanor controlled substance offenses, increase by 4 levels.''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by redesignating Notes 1 and 2 as Notes 2 and 3, respectively; by deleting in Note 3, as redesignated, ''without criminal conviction'' after ''deportation''; and by inserting the following as the new Note 1:

''1. For purposes of this guideline—

'Deported after a conviction,' means that the deportation was subsequent to the conviction, whether or not the deportation was in response to such conviction. An alien has previously been 'deported' if he or she has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

'Remained in the United States following a removal order issued after a conviction,' means that the removal order was subsequent to the conviction, whether or not the removal order was in response to such conviction.

'Aggravated felony,' is defined at 8 U.S.C. § 1101(a)(43) without regard to the date of conviction of the aggravated felony.

'Crime of violence' and 'controlled substance offense' are defined in § 4B1.2. For purposes of subsection (b)(1)(B), 'crime of violence' includes offenses punishable by imprisonment for a term of one year or less.

'Firearms offense' means any offense covered by Chapter Two, Part K, Subpart 2, or any similar offense under state or local law.

'Felony offense' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by deleting Notes 3 and 4; by redesignating Note 5 as Note 4; in Note 4, as redesignated, by deleting ''(b)(1) or (b)(2)'' and inserting in lieu thereof ''(b)''; and by inserting after Note 4, as redesignated, the following new note:

''5. Aggravated felonies that trigger the adjustment from subsection (b)(1)(A) vary widely. If subsection (b)(1)(A) applies, and (A) the defendant has previously been convicted of only one felony offense; (B) such offense was not a crime of violence or firearms offense; and (C) the term of imprisonment imposed for such offense did not exceed one year, a downward departure may be warranted based on the seriousness of the aggravated felony.'.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by deleting Notes 6 and 7.

Reason for Amendment: This amendment implements sections 321 and 334 of the Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009—627, 635. Section 321 of the Act adds to the definition of ''aggravated felony'' crimes of rape and sexual abuse of a minor, as well as any crime of violence for which the term of imprisonment is at least one year. This amendment conforms the definition of ''aggravated felony'' in the guidelines with the amended definition in the Immigration and Nationality Act.

Section 334 directs the Sentencing Commission to promulgate amendments to the guidelines for the crimes of unlawfully remaining and illegally entering the United States corresponding to changes made in statutory penalties for these offenses in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1796. This amendment enhances penalties for those who unlawfully enter or remain in the United States following conviction for an aggravated felony, any other felony, or three misdemeanor crimes of violence or controlled substance offenses. The amendment also makes clarifying changes to the commentary.

17. Amendment: Section 2L2.1(a) is amended by deleting '9' and inserting in lieu thereof '11'.

Section 2L2.1(b) is amended by deleting subdivision (1) and inserting in lieu thereof:

''(1) If the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), decrease by 3 levels.''.

Section 2L2.1(b)(2) is amended in the column captioned ''Increase in Level'' by deleting ''2'' in subdivision (A) and inserting in lieu thereof ''3''; by deleting ''4'' in subdivision (B) and inserting in lieu thereof ''6''; and by deleting ''6'' in subdivision (C) and inserting in lieu thereof ''9''.

Section 2L2.1(b) is amended by inserting after subdivision (3) the following additional subdivision:

''(4) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.''.

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended by deleting Note 1 and inserting in lieu thereof:

''1. For purposes of this guideline''

''The offense was committed other than for profit'' means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.

''Immigration and naturalization offense'' means any offense covered by Chapter Two, Part L.

''Child'' has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).

'Spouse' has the meaning set forth in section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).''.

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended by inserting after Note 3 the following additional notes:

"4. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

5. If the offense involved substantially more than 100 documents, an upward departure may be warranted.".

Section 2L2.2(a) is amended by deleting "6" and inserting in lieu thereof "8".

Section 2L2.2(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by inserting after subdivision (1) the following additional subdivision:

"(2) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.".

The Commentary to § 2L2.2 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes"; by redesignating Note 1 as Note 2; and by inserting the following as the new Note 1:

"1. For purposes of this guideline—

'Immigration and naturalization offense' means any offense covered by Chapter Two, Part L.".

The Commentary to § 2L2.2 captioned "Application Notes", as amended, is amended by inserting after Note 2 the following additional note:

"3. Prior felony conviction(s) resulting in an adjustment under subsection (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).".

Reason for Amendment: This amendment implements section 211 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009, which directs the Commission to amend the guidelines for offenses related to the fraudulent use of government-issued documents. Pursuant to the emergency amendment authority of that Act, this amendment previously was promulgated as a temporary measure effective May 1, 1997. This version of the amendment changes § 2L2.1(b)(1)(pertaining to a reduction for non-profit offenses) to narrow somewhat the class of cases that would qualify for the reduced offense level under that provision.

18. Amendment: Section 3A1.1(a) is amended by inserting "of conviction" after "the offense".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 by inserting at the beginning the following new paragraph:

"For purposes of subsection (b), 'victim' includes any person who is a victim of the offense of conviction and any conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct).".

Reason for Amendment: This amendment addresses a circuit court conflict regarding whether "victim of the offense" in § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) refers only to a victim of the defendant's offense of conviction or, more broadly, to a victim of any relevant conduct. The amendment adopts the majority appellate view, which holds that a sentencing court should consider the defendant's relevant conduct when determining whether the vulnerable victim enhancement applies. See, e.g., United States v. Haggard, 41 F.3d 1320, 1326 (9th Cir. 1994) (proper to consider harm caused to victims beyond the defendant's offense of conviction); United States v. Yount, 960 F.2d 955 (11th Cir. 1992).

This amendment also clarifies a possible ambiguity regarding the scope of conduct to be considered when applying the hate crime motivation enhancement in § 3A1.1(a). Consistent with Congress's intent to punish a defendant whose primary objective in committing the hate crime was to harm a member of a particular class of individuals, this amendment clarifies that the enhancement in subsection (a) is limited to victims of the defendant's offense of conviction.

19. Amendment: Section 3A1.4 is amended in the title by deleting "International".

Section 3A1.4(a) is amended by deleting "international" and inserting in lieu thereof "a federal crime of".

The Commentary to § 3A1.4 captioned "Application Notes" is amended in Note 1 in the first sentence by deleting "international" and inserting in lieu thereof "a federal crime of"; in the second sentence by deleting "'International" and inserting in lieu thereof "'Federal crime of"; and by deleting "2331" and inserting in lieu thereof "2332b(g)".

Reason for Amendment: Section 730 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1303, requires the Commission to amend the sentencing guidelines so that the adjustment in § 3A1.4 (relating to international terrorism) applies more broadly to "Federal crimes of terrorism," as defined in 18 U.S.C. § 2332b(g). Pursuant to this provision, the Commission promulgated § 3A1.4 (Terrorism) as an emergency amendment, effective November 1, 1996. Under the terms of the congressionally granted authority, this amendment is temporary unless repromulgated in the next amendment cycle under regularly applicable amendment procedures. See Pub. L. No. 100–182, § 21, set forth as an editorial note under 28 U.S.C. § 994. This amendment repromulgates § 3A1.4, as set forth in the 1996 Interim Publication of the Guidelines Manual.

20. *Amendment:* The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 1 by deleting in the third sentence "such testimony or statements should be evaluated in a light most favorable to the defendant." and inserting in lieu thereof:

"the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 3(i) by deleting "conduct prohibited by 18 U.S.C. §§ 1501–1516." and inserting in lieu thereof "other conduct prohibited by obstruction of justice provisions under Title 18, United States Code (e.g., 18 U.S.C. §§ 1510, 1511).".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by deleting "The following is a non-exhaustive list of examples of the" and inserting in lieu thereof "Some"; by deleting "that, absent a separate count of conviction for such conduct," and inserting in lieu thereof "ordinarily"; by deleting ", but ordinarily can appropriately be sanctioned by the determination of the particular" and inserting in lieu thereof "but may warrant a greater"; and by inserting the following after "guideline range":

". However, if the defendant is convicted of a separate count for such conduct, this enhancement will apply and increase the offense level for the underlying offense (i.e., the offense with respect to which the obstructive conduct occurred). See Application Note 7, below.

The following is a non-exhaustive list of examples of the types of conduct to which this application note applies".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 6 by deleting the last two sentences of Note 6.

The Commentary to § 3C1.1 captioned "Application Notes" is amended by redesignating Note 7 as Note 8; and by inserting the following as new Note 7:

''7. Where the defendant is convicted both of the obstruction offense and the underlying offense (the offense with respect to which the obstructive conduct occurred), the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of § 3D1.2 (Groups of Closely Related Counts). The offense level for that group of closely related counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.''.

Reason for Amendment: This amendment addresses a circuit court conflict regarding the meaning of the last sentence of Application Note 1 in § 3C1.1. The issue is whether that sentence requires the use of a heightened standard of proof when the court applies an enhancement for perjury. Compare *United States* versus *Montague,* 40 F.3d 1251 (D.C. Cir. 1994) (applying the clear and convincing standard) with *United States* versus *Zajac,* 62 F.3d 145 (6th Cir.) (applying the preponderance of the evidence standard), cert. denied 116 S. Ct. 681 (1995). The amendment changes the last sentence of Application Note 1 so that it no longer suggests the use of a heightened standard of proof. Instead, it clarifies that the court should be mindful that not all inaccurate testimony or statements reflect a willful attempt to obstruct justice.

The amendment also (A) modifies subdivision (i) of Application Note 3 in § 3C1.1 to make the language more precise; (B) in response to concerns expressed in a Seventh Circuit opinion, clarifies the meaning of the phrase ''absent a separate count of conviction'' by adding an additional sentence at the end of Application Note 4, see United States v. Giacometti, 28 F.3d 698 (7th Cir. 1994); and (C) clarifies that the guidance in the last two sentences of Application Note 6 applies to a broader set of cases than the cases described in the first two sentences of Application Note 6.

21. Amendment: Section § 4B1.2(1) is amended by deleting ''(1)'' and inserting in lieu thereof ''(a)''; by inserting a comma following ''law'' and following ''one year''; by deleting ''(i)'' and inserting in lieu thereof ''(1)''; and by deleting ''(ii)'' and inserting in lieu thereof ''(2)''.

Section § 4B1.2(2) is amended by deleting ''(2)'' and inserting in lieu thereof ''(b)''; by deleting ''a'' following ''under''; and by deleting ''prohibiting'' and inserting in lieu thereof '', punishable by a term of imprisonment of more than one year, that prohibits''.

Section § 4B1.2(3) is amended by deleting ''(3)'' and inserting in lieu thereof ''(c)''; by deleting ''(A)'' and inserting in lieu thereof ''(1)''; and by deleting ''(B)'' and inserting in lieu thereof ''(2)''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by inserting at the beginning ''For purposes of this guideline—''; and by deleting ''The terms ''crime'' and inserting in lieu thereof '' 'Crime'; and by inserting at the end the following new paragraphs:

'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included as 'crimes of violence' if (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another.

'Crime of violence' does not include the offense of unlawful possession of a firearm by a felon. Where the instant offense is the unlawful possession of a firearm by a felon, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) provides an increase in offense level if the defendant had one or more prior felony convictions for a crime of violence or controlled substance offense; and, if the defendant is sentenced under the provisions of 18 U.S.C. § 924(e), § 4B1.4 (Armed Career Criminal) will apply.

Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. § 841(d)(1)) is a 'controlled substance offense.'

Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. § 843(a)(6)) is a 'controlled substance offense.'

Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. § 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. § 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

Possessing a firearm during and in relation to a crime of violence or drug offense (18 U.S.C. § 924(c)) is a 'crime of violence' or 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense during and in relation to which the firearm was carried or possessed) was a 'crime of violence' or 'controlled substance offense.' (Note that if the defendant also was convicted of the underlying offense, the two convictions will be treated as related cases under § 4A1.2 (Definitions and Instruction for Computing Criminal History)).

'Prior felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended by deleting Notes 2 and 3; and by inserting after Note 1 the following new Note 2:

''2. Section 4B1.1 (Career Offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was convicted. Therefore, in determining whether an offense is a crime of violence or controlled substance for the purposes of § 4B1.1 (Career Offender), the offense of conviction (i.e., the conduct of which the defendant was convicted) is the focus of inquiry.''

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended by redesignating Note 4 as Note 3.

Reason for Amendment: This amendment addresses a circuit court conflict regarding whether the offenses of possessing a listed chemical with intent to manufacture a controlled substance or possessing a prohibited flask or equipment with intent to manufacture a controlled substance are ''controlled substance offenses'' under the career offender guideline. Compare *United States* v. *Calverley*, 11 F.3d 505 (5th Cir. 1993) (possession of a listed chemical with intent to manufacture a controlled substance is a controlled substance offense under § 4B1.2) with *United States* v. *Wagner*, 994 F.2d 1467, 1475 (10th Cir. 1993) (possession of a listed chemical with intent to manufacture a controlled substance is not a controlled substance offense). This amendment makes each of these offenses a ''controlled substance offense'' under the career offender guideline. This decision is based on the Commission's view that there is such a close connection between possession of a listed chemical or prohibited flask or equipment with intent to manufacture a controlled substance and actually manufacturing a controlled substance that the former offenses are fairly considered as controlled substance trafficking offenses.

The amendment also clarifies that certain other offenses are ''crimes of violence'' or ''controlled substance offenses'' if the offense of conviction established that the underlying offense was a ''crime of violence'' or ''controlled substance offense.'' See *United States* v. *Baker*, 16 F.3d 854 (8th Cir. 1994); *United States* v. *Vea-Gonzalez*, 999 F.2d 1326 (9th Cir. 1993), effectively overruled on other grounds by *Custis* v. *United States*, 114 S.Ct. 1732 (1994). Additionally, the amendment makes the following nonsubstantive changes to § 4B1.2 to improve the internal consistency of the guidelines: (A) adding the phrase ''punishable by a term of imprisonment of more than one year, that prohibits'' in subsection (2) to make it consistent with subsection (1); and (B) conforming the second paragraph of Application Note 2 of § 4B1.2 to the language of §§ 2K1.3 and 2K2.1.

22. Amendment: Section 5B1.3 is amended by deleting it in its entirety and inserting in lieu thereof:

Section 5B1.3. Conditions of Probation

(a) Mandatory Conditions—

(1) For any offense, the defendant shall not commit another federal, state or local offense (see 18 U.S.C. § 3563(a));

(2) For a felony, the defendant shall pay a fine, make restitution, or work in community service as directed by the court unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the conditions set forth under discretionary conditions (see 18 U.S.C. § 3563(a));

(3) For any offense, the defendant shall not unlawfully possess a controlled substance (see 18 U.S.C. § 3563(a)) ;

(4) For a domestic violence crime as defined in 18 U.S.C. § 3561(b) by a defendant convicted of such an offense for the first time, the defendant shall attend a public, private, or non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (see 18 U.S.C. § 3563(a));

(5) For any offense, the defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (see 18 U.S.C. § 3563(a));

(6) (A) The defendant shall make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013;

(7) The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments (see 18 U.S.C. § 3563(a));

(8) If the court has imposed a fine, the defendant shall pay the fine or adhere to a court-established payment schedule (see 18 U.S.C. § 3563(a)).

(b) The court may impose other conditions of probation to the extent that such conditions (1) Are reasonably related to (A) the nature and circumstances of the offense and the history and characteristics of the defendant; (B) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (C) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (D) the need to protect the public from further crimes of the defendant; and (E) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (2) involve only such deprivations of liberty or property as are reasonably necessary for the purposes of sentencing indicated in 18 U.S.C. § 3553(a) (see 18 U.S.C. § 3563(b)).

(c) The following ''standard'' conditions are recommended for probation. Several of the conditions are expansions of the conditions required by statute:

(1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) The defendant shall support the defendant's dependents and meet other family responsibilities (including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or any other possession or territory of the United States requiring payments by the defendant for the support and maintenance of any child or of a child and the parent with whom the child is living);

(5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) The defendant shall notify the probation officer at least ten days prior to any change of residence or employment;

(7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;

(8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) The defendant shall notify the probation officer within seventy-two

hours of being arrested or questioned by a law enforcement officer;

(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

(14) The defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment;

(d) The following 'special' conditions of probation are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

(1) Possession of Weapons

If the instant conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the instant offense—a condition prohibiting the defendant from possessing a firearm or other dangerous weapon.

(2) Debt Obligations

If an installment schedule of payment of restitution or fines is imposed—a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

(3) Access to Financial Information

If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine—a condition requiring the defendant to provide the probation officer access to any requested financial information.

(4) Substance Abuse Program Participation

If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol—a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol.

(5) Mental Health Program Participation

If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment—a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

(e) Additional Conditions

The following 'special conditions' may be appropriate on a case-by-case basis:

(1) Community Confinement

Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of probation.

(2) Home Detention

Home detention may be imposed as a condition of probation but only as a substitute for imprisonment. See § 5F1.2 (Home Detention).

(3) Community Service

Community service may be imposed as a condition of probation. See § 5F1.3 (Community Service).

(4) Occupational Restrictions

Occupational restrictions may be imposed as a condition of probation. See § 5F1.5 (Occupational Restrictions).

(5) Curfew

A condition imposing a curfew may be imposed if the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to provide just punishment for the offense, to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order.

(6) Intermittent Confinement

Intermittent confinement (custody for intervals of time) may be ordered as a condition of probation during the first year of probation.''.

Section 5B1.4 is deleted in its entirety.

Section 5D1.3 is amended by deleting it in its entirety and inserting in lieu thereof:

''Section 5D1.3. Conditions of Supervised Release

(a) Mandatory Conditions:

(1) The defendant shall not commit another federal, state or local offense (see 18 U.S.C. § 3583(d));

(2) The defendant shall not unlawfully possess a controlled substance (see 18 U.S.C. § 3583(d));

(3) The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. § 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (see 18 U.S.C. § 3583(d));

(4) The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (see 18 U.S.C. § 3583(d));

(5) If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (see 18 U.S.C. § 3624(e));

(6)(A) The defendant shall make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013.

(b) The court may impose other conditions of supervised release to the extent that such conditions (1) Are reasonably related to (A) the nature and circumstances of the offense and the history and characteristics of the defendant; (B) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (C) the need to protect the public from further crimes of the defendant; and (D) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (2) involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth above and are consistent with any pertinent policy statements issued by the Sentencing Commission.

(c) The following 'standard' conditions are recommended for supervised release. Several of the conditions are expansions of the conditions required by statute:

(1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) The defendant shall report to the probation officer as directed by the

court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) The defendant shall support the defendant's dependents and meet other family responsibilities (including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or any other possession or territory of the United States requiring payments by the defendant for the support and maintenance of any child or of a child and the parent with whom the child is living);

(5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) The defendant shall notify the probation officer at least ten days prior to any change of residence or employment;

(7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;

(8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

(14) The defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment;

(15) The defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay any unpaid amount of restitution, fines, or special assessments.

(d) The following 'special' conditions of supervised release are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

(1) Possession of Weapons

If the instant conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the instant offense—a condition prohibiting the defendant from possessing a firearm or other dangerous weapon.

(2) Debt Obligations

If an installment schedule of payment of restitution or fines is imposed—a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

(3) Access to Financial Information

If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine—a condition requiring the defendant to provide the probation officer access to any requested financial information.

(4) Substance Abuse Program Participation

If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol—a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol.

(5) Mental Health Program Participation

If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment—a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

(e) Additional Conditions

The following 'special conditions' may be appropriate on a case-by-case basis:

(1) Community Confinement

Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of supervised release. See § 5F1.1 (Community Confinement).

(2) Home Detention

Home detention may be imposed as a condition of supervised release, but only as a substitute for imprisonment. See § 5F1.2 (Home Detention).

(3) Community Service

Community service may be imposed as a condition of supervised release. See § 5F1.3 (Community Service).

(4) Occupational Restrictions

Occupational restrictions may be imposed as a condition of supervised release. See § 5F1.5 (Occupational Restrictions).

(5) Curfew

A condition imposing a curfew may be imposed if the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to provide just punishment for the offense, to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order.''.

Reason for Amendment: The purposes of this amendment are twofold. First, the amendment revises the pertinent guidelines to reflect statutorily required conditions of probation and supervised release added by Section 203 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1227, and other laws. Second, the amendment revises §§ 5B1.3, 5B1.4, 5D1.3, and 8B1.1 so as to better distinguish among the statutorily required, standard, and special conditions of probation and supervised release.

23. Amendment: Section 5D1.2(a) is amended by deleting ''If'' and inserting in lieu thereof ''Subject to subsection (b), if''.

Section 5D1.2(b) is amended by deleting ''Provided, that'' and inserting in lieu thereof ''Except as otherwise provided,''; and by deleting ''in no event'' and inserting in lieu thereof ''not''

The Commentary to § 5D1.2 is amended by inserting the following before ''Background'':

''*Application Notes:*

1. A defendant who qualifies under § 5C1.2 (Applicability of Statutory Minimum Sentence in Certain Cases) is not subject to any statutory minimum sentence of supervised release. See 18 U.S.C. § 3553(f). In such a case, the term of supervised release shall be determined under subsection (a).

2. Upon motion of the Government, a defendant who has provided substantial assistance in the investigation or prosecution of another person who has committed an offense may be sentenced to a term of supervised release that is less than any minimum required by statute or the guidelines. See 18 U.S.C. § 3553(e), § 5K1.1 (Substantial Assistance to Authorities).''.

The Commentary to § 5C1.2 captioned ''Application Notes'' is amended by inserting after Note 8 the following additional note:

''9. A defendant who meets the criteria under this section is exempt from any otherwise applicable statutory minimum sentence of imprisonment and statutory minimum term of supervised release.''.

Reason for Amendment: This amendment amends § 5D1.2 (Term of Supervised Release) to make clear that a defendant who qualifies under the ''safety valve'' (§ 5C1.2, 18 U.S.C. § 3553(f)), or who is the beneficiary of a Government substantial assistance motion under 18 U.S.C. § 3553(e), is not subject to any statutory minimum term of supervised release. This issue has arisen in a number of hotline calls. This amendment also clarifies that the requirement in subsection (a), with respect to the length of a term of supervised release, is subject to the requirement in subsection (b) that the term be not less than any statutorily required term of supervised release.

24. Amendment: Section 5E1.1 is amended by deleting it in its entirety and inserting in lieu thereof:

''§ 5E1.1. Restitution

(a) In the case of an identifiable victim, the court shall—

(1) Enter a restitution order for the full amount of the victim's loss in the case of an identifiable victim of the offense, if such order is authorized under 18 U.S.C. § 2248, § 2259, § 2264, § 2327, § 3663, or § 3663A; or

(2) Impose a term of probation or supervised release with a condition requiring restitution for the full amount of the victim's loss, in the case of an identifiable victim of the offense, if the offense is not an offense for which restitution is authorized under 18 U.S.C. § 3663(a)(1) but otherwise meets the criteria for an order of restitution under that section.

(b) Provided, that the provisions of subsection (a) do not apply—

(1) When full restitution has been made; or

(2) In the case of a restitution order under § 3663; a restitution order under 18 U.S.C. § 3663A that pertains to an offense against property described in 18 U.S.C. § 3663A(c)(1)(A)(ii); or a condition of restitution imposed pursuant to subsection (a)(2) above, to the extent the court finds, from facts on the record, that (A) The number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(c) If a defendant is ordered to make restitution to an identifiable victim and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

(d) In the case where there is no identifiable victim and the defendant was convicted under 21 U.S.C. § 841, § 848(a), § 849, § 856, § 861, or § 863, the court, taking into consideration the amount of public harm caused by the offense and other relevant factors, shall order an amount of community restitution not to exceed the fine imposed under § 5E1.2.

(e) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. See 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (A) return of property; (B) replacement of property; or (C) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. See 18 U.S.C. § 3664(f)(4).

(f) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(g) Special Instruction

(1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former § 5E1.1 (set forth in Appendix C, amendment 568) in lieu of this guideline in any other case.

Commentary

Application Note:

1. The court shall not order community restitution under subsection (d) if it appears likely that such an award would interfere with a forfeiture under Chapter 46 or 96 of Title 18, United States Code, or under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*). See 18 U.S.C. § 3663(c)(4).

Furthermore, a penalty assessment under 18 U.S.C. § 3013 or a fine under Subchapter C of Chapter 227 of Title 18, United States Code, shall take precedence over an order of community restitution under subsection (d). See 18 U.S.C. § 3663(c)(5).

Background: Section 3553(a)(7) of Title 18, United States Code, requires the court, ''in determining the particular sentence to be imposed,'' to consider ''the need to provide restitution to any victims of the offense.'' Orders of restitution are authorized under 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, and 3663A. For offenses for which an order of restitution is not authorized, restitution may be imposed as a condition of probation or supervised release.

Subsection (d) implements the instruction to the Commission in section 205 of the Antiterrorism and Effective Death Penalty Act of 1996. This provision directs the Commission to develop guidelines for community restitution in connection with certain drug offenses where there is no identifiable victim but the offense causes ''public harm.''

To the extent that any of the above-noted statutory provisions conflict with the provisions of this guideline, the applicable statutory provision shall control.''.

Section 8B1.1 is amended by deleting it in its entirety and inserting in lieu thereof:

''Section 8B1.1. Restitution—Organizations

(a) The court shall—

(1) Enter a restitution order for the full amount of the victim's loss in the case of an identifiable victim of the offense, if such order is authorized under 18 U.S.C. § 2248, § 2259, § 2264, § 2327, § 3663, or § 3663A; or

(2) Impose a term of probation or supervised release with a condition requiring restitution for the full amount of the victim's loss, in the case of an identifiable victim of the offense, if the offense is not an offense for which restitution is authorized under 18 U.S.C. § 3663(a)(1) but otherwise meets the criteria for an order of restitution under that section.

(b) Provided, that the provisions of subsection (a) do not apply—

(1) When full restitution has been made; or

(2) In the case of a restitution order under § 3663; a restitution order under 18 U.S.C. § 3663A that pertains to an offense against property described in 18 U.S.C. § 3663A(c)(1)(A)(ii); or a condition of restitution imposed pursuant to subsection (a)(2) above, to the extent the court finds, from facts on the record, that (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(c) If a defendant is ordered to make restitution to an identifiable victim and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

(d) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. See 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (A) return of property; (B) replacement of property; or (C) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. See 18 U.S.C. § 3664(f)(4).

(e) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(f) Special Instruction

(1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former § 8B1.1 (set forth in Appendix C, amendment 568) in lieu of this guideline in any other case.

Commentary

Background: Section 3553(a)(7) of title 18, United States Code, requires the court, 'in determining the particular sentence to be imposed,' to consider 'the need to provide restitution to any victims of the offense.' Orders of restitution are authorized under 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, and 3663A. For offenses for which an order of restitution is not authorized, restitution may be imposed as a condition of probation.''.

Reason for Amendment: This amendment conforms the provisions of §§ 5E1.1 and 8B1.1 to section 204 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1227, which includes procedures for payment of full restitution to a victim of the offense. The amendment also implements the directive to the Commission in section 205 of the Act to issue guidelines to assist courts in determining an appropriate amount of ''community restitution'' when the defendant is convicted of certain drug offenses and there is no identifiable victim of the offense. As a starting point, the Commission has elected to issue a guideline that permits broad court discretion to determine an amount of community restitution not exceeding the fine imposed. Over time, the Commission intends to evaluate and refine this guideline in light of sentencing experience.

25. Amendment: Section § 5E1.2(b) is amended by deleting ''Except as provided in subsections (f) and (i) below, or otherwise required by statute, the fine imposed shall be within the range'' and inserting in lieu thereof ''The applicable fine guideline range is that''.

Section 5E1.2(c)(1) is amended by inserting ''guideline'' following ''fine''.

Section 5E1.2(c)(2) is amended by inserting ''guideline'' following ''fine''.

Section 5E1.2(d) is amended in subdivision (6) by deleting ''and''; by renumbering subdivision (7) as subdivision (8); and by inserting after subdivision (6) the following new subdivision (7):

''(7) The expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed; and''.

Section 5E1.2 is amended by deleting ''(e)''; by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g) respectively; and by deleting section (i).

The Commentary to § 5E1.2 captioned ''Application Notes'' is amended in Note 7 by deleting:

''Subsection (i) provides for an additional fine sufficient to pay the costs of any imprisonment, probation, or supervised release ordered, subject to the defendant's ability to pay as prescribed in subsection (f). In making a determination as to the amount of any fine to be imposed under this provision,''

and inserting in lieu thereof ''In considering subsection (d)(7),''.

Reason for Amendment: This amendment indirectly addresses a circuit court conflict regarding whether a court may impose a fine for costs of imprisonment and/or supervision when it has not imposed any punitive fine. Compare, United States v. Labat, 915 F.2d 603 (10th Cir. 1990) (requiring imposition of punitive fine before costs of imprisonment fine can be imposed) with United States v. Sellers, 42 F.3d 116 (2d Cir. 1994) (not requiring imposition of punitive fine before ordering costs of imprisonment fine), cert. denied, 116 S.Ct. 93 (1995).

Recognizing that a fine for costs of imprisonment and/or supervision is not statutorily required and rarely is imposed, the Commission has elected to dispense with the requirement that courts determine a separate, additional fine for such costs. Instead, the amendment provides that the court shall take such costs into consideration in determining the appropriate amount of a punitive fine.

Because, under the amended procedure, it no longer will be necessary to determine a separate fine increment for costs associated with implementing the sentence, the issue on which the circuit courts have differed should not arise. This procedure also should substantially simplify fine calculations, thereby allowing court and probation officer resources to be used more efficiently and productively.

26. Amendment: The Commentary to § 5E1.3 captioned ''Background'' is amended by deleting it in its entirety and inserting in lieu thereof:

''*Application Notes:*

1. This guideline applies only if the defendant is an individual. See § 8E1.1 for special assessments applicable to organizations.

2. The following special assessments are provided by statute (18 U.S.C. 3013):

For Offenses Committed By Individuals On Or After April 24, 1996:

(A) $100, if convicted of a felony;

(B) $25, if convicted of a Class A misdemeanor;

(C) $10, if convicted of a Class B misdemeanor;

(D) $5, if convicted of a Class C misdemeanor or an infraction.

For Offenses Committed By Individuals On Or After November 18, 1988 But Prior To April 24, 1996:

(E) $50, if convicted of a felony;

(F) $25, if convicted of a Class A misdemeanor;

(G) $10, if convicted of a Class B misdemeanor;

(H) $5, if convicted of a Class C misdemeanor or an infraction.

For Offenses Committed By Individuals Prior To November 18, 1988:

(I) $50, if convicted of a felony;

(J) $25, if convicted of a misdemeanor.

3. A special assessment is required by statute for each count of conviction.

Background: Section 3013 of Title 18, United States Code, added by The Victims of Crimes Act of 1984, Pub. L. No. 98–473, Title II, Chap. XIV, requires courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation.''.

The Commentary to § 8E1.1 captioned ''Background'' is amended by deleting it in its entirety and inserting in lieu thereof the following:

''*Application Notes:*

1. This guideline applies if the defendant is an organization. It does not apply if the defendant is an individual. See § 5E1.3 for special assessments applicable to individuals.

2. The following special assessments are provided by statute (see 18 U.S.C. § 3013):

For Offenses Committed By Organizations On Or After April 24, 1996:

(A) $400, if convicted of a felony;

(B) $125, if convicted of a Class A misdemeanor;

(C) $50, if convicted of a Class B misdemeanor; or

(D) $25, if convicted of a Class C misdemeanor or an infraction.

For Offenses Committed By Organizations On Or After November 18, 1988 But Prior To April 24, 1996:

(E) $200, if convicted of a felony;

(F) $125, if convicted of a Class A misdemeanor;

(G) $50, if convicted of a Class B misdemeanor; or

(H) $25, if convicted of a Class C misdemeanor or an infraction.

For Offenses Committed By Organizations Prior To November 18, 1988:

(I) $200, if convicted of a felony;

(J) $100, if convicted of a misdemeanor.

3. A special assessment is required by statute for each count of conviction.

Background: Section 3013 of Title 18, United States Code, added by The Victims of Crimes Act of 1984, Pub. L. No. 98–473, Title II, Chap. XIV, requires courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation.''.

Reason for Amendment: This amendment conforms §§ 5E1.3 (Special Assessments) and 8E1.1 (Special Assessments—Organizations) to changes made by section 210 of the Antiterrorism and Effective Death Penalty Act, Pub. L. 104–132, 110 Stat. 1240, and section 601(r)(4) of Pub. L. 104–294, 110 Stat. 3502. As amended, the felony assessments for offenses committed after April 24, 1996, are raised to $100 for individuals and $400 for organizations.

27. Amendment: Section 6A1.1 is amended by deleting ''(c)(1)'' and inserting in lieu thereof ''(b)(1)''.

The Commentary to 6A1.1 is amended by deleting ''(c)(1)'' and inserting in lieu thereof ''(b)(1)''.

Section 6A1.2 is amended by deleting ''See Model Local Rule for Guideline Sentencing prepared by the Probation Committee of the Judicial Conference (August 1987).'' and insert in lieu thereof ''Rule 32 (b)(6), Fed. R. Crim. P.''.

The Commentary to § 6A1.2 captioned ''Application Note'' is amended in Note 1 by deleting ''111 S. Ct. 2182'' and inserting in lieu thereof ''501 U.S. 129, 135–39''.

The Commentary to § 6A1.2 captioned ''Background'' is amended by inserting ''in writing'' following ''respond''; and by deleting:

''The potential complexity of factors important to the sentencing determination normally requires that the position of the parties be presented in writing. However, because courts differ greatly with respect to their reliance on written plea agreements and with respect to the feasibility of written statements under guidelines, district courts are encouraged to consider the approach that is most appropriate under local conditions. The Commission intends to reexamine this issue in light of experience under the guidelines.'',

and inserting in lieu thereof ''Rule 32 (b)(6), Fed. R. Crim. P.''.

Section 6A1.3(a) is amended in the second sentence by deleting ''reasonable'' before ''dispute''.

Section § 6A1.3(b) is amended by inserting ''at a sentencing hearing'' following ''factors''; by deleting ''(a)(1)'' and inserting in lieu thereof ''(c)(1)''; and by deleting ''(effective Nov. 1, 1987), notify the parties of its tentative findings and provide a reasonable opportunity for the submission of oral written objections before imposition of sentence.''.

The Commentary to § 6A1.3 is amended in the seventh sentence of the first paragraph by deleting ''reasonable'' before ''dispute''.

The Commentary to § 6A1.3 is amended by deleting the last paragraph in its entirety.

Reason for Amendment: This amendment makes a number of technical and conforming changes to the policy statements in Chapter Six, Part A (Sentencing Procedures) to reflect changes in Rule 32, Fed. R. Crim. P.

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Wednesday
May 14, 1997

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 1, et al.

Federal Acquisition Regulation; Part 15 Rewrite: Contracting by Negotiation; Competitive Range Determinations; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53

[FAR Case 95–029]

RIN 9000–AH21

Federal Acquisition Regulation; Part 15 Rewrite: Contracting by Negotiation; Competitive Range Determinations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments and withdrawal of proposed rules.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to combine Phases I and II of the rewrite of Federal Acquisition Regulation (FAR) Part 15, Contracting by Negotiation, and subsume FAR Case 96–303, Competitive Range Determinations. Phase I addresses acquisition techniques and source selection. Phase II addresses issues relating to contract pricing and unsolicited proposals. Conforming changes have also been made to other FAR parts. The FAR Part 15 Phase I proposed rule, published in the **Federal Register** at 61 FR 48380, September 12, 1996, is revised, and the Competitive Range Determinations proposed rule, published in the **Federal Register** at 61 FR 40116, July 31, 1996, is withdrawn. The resolution of public comments, received in response to those proposed rules, has resulted in changes that are of such significance that publication of a new proposed rule, with opportunity for public comment, is deemed appropriate. Furthermore, this proposed rule includes Phase II of the FAR Part 15 rewrite, which was previously unpublished. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before July 14, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

Please cite FAR case 95–029 in all correspondence related to this case.

E-Mail comments submitted over the Internet should be addressed to: 95–029B@www.gsa.gov

It is requested that the comments be separated into two distinct groupings: (1) Group A—those comments that relate to Subparts 15.00, 15.1, 15.2, 15.3, 15.4, and 15.6 and conforming revisions to Part 1, 5, 6, 14, 36, 52, and 53 and (2) Group B—those comments that relate to Subpart 15.5 and conforming revisions to Part 4, 7, 11, 16, 42, 43, and 52.

FOR FURTHER INFORMATION CONTACT: Jerry Olson at (202) 501–3221 or Melissa Rider at (703) 602–0131 on substantive issues on Subpart 15.5 and conforming revisions to Part 4, 7, 11, 16, 42, 43, and 52. Ralph DeStefano at (202) 501–1758 or Melissa Rider at (703) 602–0131 on substantive issues on Subparts 15.0, 15.1, 15.2, 15.3, 15.4, and 15.6 and conforming revisions to Part 1, 5, 6, 14, 36, 52, and 53. For general information, contact the FAR Secretariat, Room 4035, (202) 501–4755. Please cite FAR case 95–029.

SUPPLEMENTARY INFORMATION:

A. Background

On January 29, 1996, the FAR Council tasked an ad hoc interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite was to be accomplished in two phases. Phase I, consisting of the rewrite of FAR Subparts 15.000, 15.1, 15.2, 15.3, 15.4, 15.6, and 15.10, covering acquisition techniques and source selection, was published for public comment in the **Federal Register** at 61 FR 48380 on September 12, 1996. Two public meetings were held to discuss the proposed rule: in Washington, DC, on November 8, 1996, and in Kansas City, MO, on November 18, 1996. The public comment period closed on November 26, 1996. The Government received 1541 comments from 100 respondents and considered the comments in drafting revisions to the rule. Due to the significant changes made as a result of resolving public comments, the FAR Council decided to publish a revised proposed rule. The revised proposed rule, however, has been expanded to include previously unpublished, Phase II, proposed changes—covering Subparts 15.5, 15.7, 15.8, and 15.9. It also incorporates changes made as a result of public comments submitted in response to FAR Case 96–303, Competitive Range Determinations.

Case Summary

This proposed rule modifies concepts and processes in the current FAR Part 15, introduces new policies, and incorporates changes in pricing and unsolicited proposal policy. In addition, a more appropriate sequencing of information has been adopted to facilitate use. The proposed rule does not alter the full and open competition provisions of FAR Part 6. The goals of this rewrite are to infuse innovative techniques into the source selection process, simplify the process, and facilitate the acquisition of best value. The rewrite emphasizes the need for contracting officers to use effective and efficient acquisition methods, and eliminates regulations that impose unnecessary burdens on industry and on Government contracting officers.

The comments considered in drafting this proposed rule include: comments received during public meetings held on January 25, 1996, November 8, 1996, and November 18, 1996; comments received in response to three advance notices of proposed rulemaking (60 FR 63023, December 8, 1995; 60 FR 65360, December 19, 1995; and 60 FR 67113, December 28, 1995); comments received in response to publication of the Phase I proposed rule in the **Federal Register** (61 FR 48380, September 12, 1996); comments received in response to publication of the Competitive Range Determinations proposed rule in the **Federal Register** (61 FR 40116, July 31, 1996); comments received over the Acquisition Reform Network (an Internet forum); comments received from members of Congress and Congressional staff, Government agencies, the DAR Council, the Civilian Agency Acquisition Council, and the Office of Federal Procurement Policy (OFPP); comments received in response to other notices of the rewrite in various print media and conferences; and comments received from Government fora such as the Front-line Professional's Forum and the Federal Procurement Executive Association.

Several public comments requested that a definition of ''neutral'' past performance rating be included in the final rule. This proposed rule provides only general guidelines for establishing a neutral rating, since what constitutes ''neutral'' seems to change with the circumstances of each individual source selection. However, suggestions from the general public for a more rigorous definition are solicited and will be considered by the FAR Council in drafting the final rule.

Summary of Changes

This proposed rule reengineers the processes used to contract by negotiation, with the intent of reducing the resources necessary for source selection and reducing cycle time to contract award. The goals of the FAR Part 15 Rewrite are to ensure that the Government, when contracting by negotiation, receives the best value, and that offerors are treated fairly by—

• Enhancing communications between the Government and industry—allowing industry to better understand the requirement and Government to better understand industry's proposals;

• Emphasizing that no offeror, otherwise eligible to submit a proposal in response to a Government solicitation, will be excluded from the competitive range without its proposal being initially reviewed and evaluated;

• Evaluating all proposals received based upon the criteria in the solicitation;

• Reducing the bid and proposal costs for industry by providing early feedback as to whether a proposal is truly competitive;

• Streamlining the post-competitive range process by enhancing the ability of the parties to communicate and document understandings reached during discussions; and

• Debriefing offerors excluded from the competitive range as to why their proposals were not competitive.

Although there are changes from the September 12, 1996, proposed rule throughout the Phase I portion of this revised proposed rule, some of the more important ones are—

• Deletion of the Model Contract Format, that will be added to the DFARS as a test;

• Clarification of the standard for admission into the competitive range;

• Deletion of language on including in the solicitation an estimated number for limiting the competitive range for efficiency;

• More structured guidance on communications, including increasing the scope of discussions;

• More structured guidance on accepting late proposals; and

• Establishment of a common cut-off date and time for receipt of final proposal revisions.

Phase II revisions were not included in the September 12, 1996, proposed rule. They address unsolicited proposals, make-or-buy programs, negotiating contract prices, and profit, and are included in this proposed rule. Subparts 15.5, 15.7, 15.8, and 15.9 were renamed and resequenced to articulate more clearly policies and procedures relative to contract pricing; and to recognize requirements associated with the acquisition of commercial items. Specific changes include—

Cost or Pricing Data

• The separate exception for modifications to contracts for commercial items has been removed and simplified text has been moved to the standards for the commercial item exception at 15.503–1(c)(3).

• The waiver exception at 15.503–1(b)(4) has been modified to specifically state that cost and pricing data are not to be obtained when a waiver has been granted by the head of the contracting activity.

Field Pricing

• Field pricing coverage was revised to reflect the need for greater flexibility and teamwork in today's acquisition environment. The emphasis in the proposed coverage is on only obtaining field pricing assistance when the contracting officer needs additional information to determine a fair and reasonable price. When field pricing assistance is needed, the requests should be limited to selected areas where assistance is needed, with full technical and audit reviews as the exception. Emphasis is placed on early and direct communications between the contracting officer and the field agencies to define the information needed.

• In those instances when a full field pricing review is necessary, the technical and audit reports generated as a result of the field pricing reviews will be forwarded to the contracting officer, but the separate reports need not be consolidated into a single document.

Forms and Tables

• In the interest of providing flexibility in preparing solicitations and offers, the forms currently used as cover sheets for submitting cost or pricing data (SF 1411) and information other than cost or pricing data (SF 1448) were eliminated. Neither provides much information, beyond identification of the offeror and general information about the accompanying proposal. One item found on both forms, which is still considered necessary, is the statement allowing the Government to examine the offeror's records. For cost or pricing data, this statement was added in Table 15–2 to the list of information to be provided on the first page of the proposal. For information other than cost or pricing data, the statement is required by 15.803–5(a)(ii).

• The existing Table 15–2, Instructions for Submitting Cost or Pricing Data, was reorganized to make it more understandable, and was moved to the end of Part 15, so it would not disrupt the flow of the part. The existing Table 15–3 was eliminated because it did not provide information beyond that already found in the text of Subpart 15.8. Instead, the revised coverage makes it clear that the format in Table 15–2 may be tailored by contracting officers for submission of information other than cost or pricing data to reflect the instant acquisition situation.

Unbalanced Pricing

• The unbalanced pricing coverage was simplified and relocated to reflect its use as a proposal analysis technique designed to assess risk and protect the Government's economic interest. The revised coverage intentionally omits the mention of any step-by-step analysis of ''mathematical'' or ''material'' criteria, because historically they have not led to clear or consistent interpretations of unbalancing. Instead, the focus of the revised coverage is shifted to the relative value and risk to the Government.

Unsolicited Proposals Coverage

• The unsolicited proposal coverage has been revised to focus on submission of new ideas and concepts in response to Broad Agency Announcements, Small Business Innovation Research Topics, Small Business Technology Research Topics, or Program Research and Development Announcements and to highlight the use of communications between industry and the Government.

Fee Limitations

• The requirement for a separate determination and findings supporting cost-plus-fixed-fee contracts has been eliminated; the fee limitations at 15.809–3(d) have been strictly aligned with statute; and the contracting officer's signature on the price negotiation memorandum or other documentation of the negotiated price will now serve as a determination that fee limits have not been exceeded.

Guidelines for Cost Realism

• New coverage on cost realism has been added at 15.806–4 to explicitly recognize the requirement for a cost realism analysis to support award of competitive cost reimbursement contracts.

B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the analysis may be obtained from the FAR

Secretariat at the General Services Administration, 1800 F Street, NW., Room 4035, Washington, DC 20405. The analysis is summarized as follows:

This proposed rule modifies fundamental concepts and processes that are presently in FAR Part 15, and introduces new policies and incorporates changes in pricing and unsolicited proposal policy not contained in the initial proposed rule. In addition, a more appropriate sequencing of information has been adopted to facilitate use. This proposed rule does not alter the full and open competition provisions of FAR Part 6. The goals of this rewrite are to infuse innovative techniques into the source selection process, simplify the process, and facilitate the acquisition of best value. The rewrite emphasizes the need for contracting officers to use effective and efficient acquisition methods, and eliminates regulations that impose unnecessary burdens on industry and on Government contracting officers.

The proposed rule will apply to all large and small entities (including educational and nonprofit entities), that offer supplies or services to the Government in negotiated acquisitions. Aspects of the proposed rule which may impact small entities are: making a shift in competitive range policy to encourage retaining only the most highly rated proposals rather than all those with a reasonable chance of award; allowing the contracting officer to limit the competitive range in the interest of efficiency; prohibiting cost analysis when contracting on a fixed-price basis without cost incentives, unless the contracting officer has reason to believe that the proposed prices are not reasonable; requiring that evaluation factors established for solicitations provide for meaningful evaluations of competing proposals; permitting early disclosure of adverse past performance information; allowing early and continuing communication between the Government and industry to ensure industry's understanding of Government requirements and the Government's understanding of offerors' proposals; allowing the Government to reveal the cost or price estimates that its analysis, market research, and other reviews have identified for an acquisition; and allowing plain paper formats to substitute for Government forms in support of electronic contracting processes. The rule proposes to streamline source selection procedures, thereby creating a more efficient process that benefits both private and public sectors.

The Office of Federal Procurement Policy (OFPP) believes the proposed rule reduces Government regulations that establish requirements for the way the Government deals with those seeking to do business with it. Such deregulation reflects the spirit and intent of the Regulatory Flexibility Act. OFPP further believes that the changes are good for small businesses; that there are many small businesses that do not do business with the Government because of the complexity of offering, evaluation, and award, that will benefit from these changes.

Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and cite FAR case 95–029 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule revises existing information collection requirements, resulting in a decrease in the estimated burden. Accordingly, a request for amendment of information collection requirements under approved Office of Management and Budget (OMB) Control Numbers 9000–0037, 9000–0044, and 9000–0048 will be submitted to OMB under 44 U.S.C. 3501, *et seq.* at the final rule stage. The title of each information collection requirement, the affected FAR Part 15-related cite, and the hours currently approved by OMB for each information collection requirement are: 9000–0037, Standard Form 1417, Presolicitation Notice and Response, FAR 15.404(b), 7,882 hours; 9000–0044, Bid/Offer Acceptance Period, 52.215–19, 2,190 hours; and 9000–0048, Authorized Negotiators, 52.215–11, 8,415 hours. As a result of this proposed rule, a decrease in the total information collection requirement is expected, because increased efficiencies in the source selection process are expected to result in a decrease in the number of proposal revisions from offerors.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53

Government procurement.

Dated: May 6, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, proposed rule 96–503, Competitive Range Determinations, published at 61 FR 40116, July 31, 1996, is withdrawn, and proposed rule 95–029 which appeared at 61 FR 48380, September 12, 1996, is revised and it is proposed that 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITIONS REGULATIONS SYSTEM

2. Section 1.102–2 is amended by adding paragraph (c)(3) to read as follows:

1.102–2 Performance standards.

* * * * *

(c) * * *

(3) The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially, but need not be treated the same.

* * * * *

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Section 2.101 is amended by inserting, in alphabetical order, the definition ''Best value'' to read as follows:

2.101 Definitions.

* * * * *

Best value means the outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4. Subpart 4.10 is added to read as follows:

Subpart 4.10—Contract Line Items

4.1001 Policy.

Contracts may identify the items or services to be acquired as separately identified line items. Contract line items should provide unit prices or lump sum prices for separately identifiable contract deliverables, and associated delivery schedules or performance periods. Line items may be further subdivided or stratified for administrative convenience (*e.g.*, to provide for traceable accounting classification citations).

PART 6—COMPETITION REQUIREMENTS

5. Section 6.101 is amended by revising paragraph (b) to read as follows:

6.101 Policy.

* * * * *

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C. 2304 and 41 U.S.C. 253).

PART 7—ACQUISITION PLANNING

6. Section 7.105 is amended by revising (b)(5) to read as follows:

7.105 Contents of written acquisition plans.

(b) * * *

(5) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see subpart 32.7).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

7. Subpart 11.8 is added to read as follows:

Subpart 11.8—Testing

11.801 Preaward testing.

Preaward testing or product demonstration, when required by the solicitation, need not be conducted in accordance with a formal test plan. The results of such tests or demonstrations may be used to rate the proposal, to determine technical acceptability, or otherwise to evaluate the proposal.

PART 14—SEALED BIDDING

14.201–6 [Amended]

8. Section 14.201–6 is amended by removing and reserving paragraph (n).

9. Section 14.404–1 is amended in paragraph (e)(1) by removing the reference ''15.103'' and inserting ''paragraph (f) of this subsection'' in its place; and by adding paragraph (f) to read as follows:

14.404–1 Cancellation of invitations after opening.

* * * * *

(f) When the agency head has determined, in accordance with 14.404–1(e)(1), that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate and make award without issuing a new solicitation provided—

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The negotiated price is the lowest negotiated price offered by any responsible bidder.

10. Part 15 is revised to read as follows:

PART 15—CONTRACTING BY NEGOTIATION

Subpart 15.0—Scope

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 15.0—Scope

15.000 Scope of part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. Negotiated procedures may include bargaining. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

15.001 Definitions.

As used in this part—

Communications are all interchanges after receipt of proposals between the Government and an offeror, including discussions conducted after the competitive range is established.

Discussions are negotiations that occur after establishment of the competitive range that may, at the contracting officer's discretion, result in the offeror being allowed to revise its proposal.

Negotiation is a procedure that, after receipt and evaluation of proposals from offerors, permits bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

Proposal modification is a change made to a proposal before the solicitation's closing date and time, made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of a contracting officer, as the result of discussions.

15.002 Negotiated acquisition.

(a) *Sole-source acquisitions.* When contracting in a sole source environment, the RFP should be tailored to remove unnecessary information and requirements *e.g.*, evaluation criteria, and voluminous proposal preparation instructions.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition, unless otherwise noted.

15.101 Best value continuum.

An agency can obtain best value in negotiated procurements by using any one or a combination of source selection approaches. In different types of procurements, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

15.101–1 Tradeoff process.

(a) This process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror.

(b) When using the tradeoff process, the following applies:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation.

(2) The solicitation shall state whether all evaluation factors other than cost or price when combined are significantly more important than, approximately equal to, or significantly less important than cost or price.

(3) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher-priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.408.

15.101–2 Lowest price technically acceptable source selection process.

(a) This process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following applies:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. Past performance shall be evaluated as a non-cost factor in accordance with 15.405, unless the contracting officer has determined that the evaluation of past performance is not appropriate (15.404(d)(3)(iii)).

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Communications may occur (see 15.406).

15.102 Multi-step source selection technique.

(a) Multi-step source selection may be appropriate when the submission of full proposals at the beginning of a source selection would be burdensome for offerors to prepare and for Government personnel to evaluate. Using the multi-step techniques described in this section, agencies may seek limited information initially, make one or more competitive range determinations, and request full proposals from those remaining in the competitive range.

(b) The agency shall issue a solicitation that describes the supplies or services to be acquired, identifies the criteria that will be used in making the source selection decision, and identifies the information that must be submitted in response to the first-step solicitation. While the solicitation will not require the submission of full proposals in first step, it shall require, at minimum, the submission of statements of qualifications, proposed technical concepts, and past performance and pricing information. The solicitation also shall outline what submissions are expected in future steps. The solicitation must disclose all significant factors and subfactors, including cost or price, that the agency will consider in evaluating proposals, and their relative importance. The solicitation must contain sufficient information to permit potential offerors to make informed decisions about whether to participate in the acquisition, and shall advise them that failure to participate in the first step will preclude participation in any subsequent step.

(c) The agency shall evaluate all responses in accordance with the criteria stated in the solicitation, and shall advise each offeror either that it has been selected to participate in the next step of the acquisition or that it has been excluded from the competitive range. Those not determined to be in the competitive range shall be informed in accordance with 15.603 that they will not be permitted to participate in any subsequent step, and shall be debriefed as required by 15.605 and 15.606. The agency shall seek additional information in any subsequent step sufficient to permit an award without further discussion or another competitive range determination. The process ends at contract award or cancellation of the acquisition.

15.103 Oral presentations.

Oral presentations by offerors to the Government may be used to substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see 15.208) and content (see 15.406). Oral presentations provide an opportunity for dialogue among the parties in competitive and sole source acquisitions. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(a) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(b) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact on small businesses.

(c) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The location, date, and time for the oral presentations;

(5) The restrictions governing the time permitted for each oral presentation; and

(6) The scope and content of communications that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, *e.g.*, state whether or not discussions will be permitted during oral presentations (see 15.406(d)).

(d) The contract file shall contain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, written minutes, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority.

(e) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(f) If, during an oral presentation, the Government conducts discussions as defined in 15.001, the Government must comply with 15.406 and 15.407.

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Exchanging information with industry prior to releasing a solicitation;

(b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and

(c) Receiving proposals and information.

15.201 Presolicitation exchanges with industry.

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby enhancing the Government's ability to obtain quality products and services at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents and information exchange approaches; and any other industry concerns or questions (see 3.104 regarding procurement integrity requirements). Some techniques to promote early exchanges of information are—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research, as described in part 10;

(4) One-on-one meetings with potential offerors (see paragraph (f) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) RFIs;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of procurement matters at 5.205(c), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but needs to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements may be disclosed at any time. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as possible, in order to avoid creating an unfair competitive advantage. When a presolicitation or preproposal conference is conducted, materials distributed at the conference should be made available to all potential offerors, upon request.

15.202 Advisory multi-step source selection.

(a) The agency may publish a presolicitation notice (see 5.204) that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation, and should invite responses. Information sought may be limited to a statement of qualifications and other appropriate information (*e.g.,* proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition.

(b) The agency shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The agency shall advise respondents considered not to be viable competitors of the general basis for that opinion. The agency shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

15.203 Requests for proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the—

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract—

(i) The solicitation may authorize offerors to propose alternative terms and conditions, including the contract line item number (CLIN) structure; and

(ii) When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements);

(3) Information required to be in the offeror's proposal; and

(4) Factors and significant subfactors that will be used to evaluate the proposal.

(b) An RFP may be issued for OMB Circular A–76 studies. See subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) Electronic commerce may be used to issue RFPs, and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see subpart 4.5).

(d) Contracting officers may issue RFPs and/or authorize receipt of proposals modifications or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the contracting officer should consider factors such as—

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used in sole source follow-on acquisitions and other appropriate circumstances. Letter RFPs should be as complete as possible and, as a minimum, should contain the following:

(1) RFP number and date;

(2) Name, address, and telephone number of contracting officer;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Contract terms and conditions;

(7) Instructions to offerors and evaluation criteria for other than sole-source actions;

(8) Proposal due date and time; and

(9) Other relevant information; *e.g.*, incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government and a notice is not required under 5.202 (*e.g.,* perishable items and support of contingency operations or other emergency situations).

(1) The contract files supporting oral solicitations should include—

(i) A description of the requirement;

(ii) Rationale for use of an oral solicitation;

(iii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iv) The solicitation number provided to the prospective offerors.

(2) The information furnished to potential offerors under oral solicitations should include appropriate items from paragraph (e) of this section.

15.204 Contract format.

The use of a standard contract format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The standard format need not be used in the following:

(a) Construction and architect-engineer contracts (see part 36).

(b) Subsistence contracts.

(c) Supplies or services requiring special contract formats prescribed elsewhere in this chapter that are inconsistent with the standard format.

(d) Letter requests for proposals (see 15.203(e)).

(e) Contracts exempted by the agency head or designee.

15.204–1 Uniform contract format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15–1 of this section.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see 15.204–2 through 15.204–5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain in the contract file a completed Section K, Representations, certifications, and other statements of offerors. Section K shall be incorporated by reference in the contract.

TABLE 15—1.—UNIFORM CONTRACT FORMAT

Section	Title
	Part I—The Schedule
A	Solicitation/contract form.
B	Supplies or services and prices/costs.
C	Description/specifications/work statement.
D	Packaging and marking.
E	Inspection and acceptance.
F	Deliveries or performance.

TABLE 15—1.—UNIFORM CONTRACT FORMAT—Continued

Section	Title
G	Contract administration data.
H	Special contract requirements.
	Part II—Contract Clauses
I	Contract clauses.
	Part III—List of Documents, Exhibits, and Other Attachments
J	List of attachments
	Part IV—Representations and Instructions
K	Representations, certifications, and other statements of offerors or quoters.
L	Instructions, conditions, and notices to offerors or respondents.
M	Evaluation factors for award.

15.204–2 Part I—The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form*. (1) Prepare RFPs on Optional Form (OF) 308, Solicitation and Offer—Negotiated Acquisition, unless otherwise permitted by this chapter (see use of modified standard forms, part 53).

(2) If the Standard Form (SF) 18, Request for Quotations (53.301–18) is used for an RFI, the form may be modified to incorporate Section A of the uniform contract format.

(3) When other than OF 308 or SF 18 is used, include the following information on the first page of the solicitation.

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror or respondent to an RFI to provide its name and complete address, including street, city, county, state, and zip code.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services; *e.g.*, item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/work statement.* Include any description or specifications needed in addition to Section B (see part 11).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see subpart 11.4, Delivery or Performance Schedules, and 47.301–1).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

15.204–3 Part II—Contract Clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this chapter and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

15.204–4 Part III—List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

15.204–5 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as—

(1) Administrative;

(2) Management;

(3) Technical;

(4) Past performance; and

(5) Cost or pricing data (see Table 15–2 of 15.508).

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see 15.404(e)). The contracting officer shall insert one of the phrases in 15.404(f).

15.205 Issuing solicitations.

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in parts 5 and 6. When using other than electronic contracting methods, the contracting officer shall furnish copies of unclassified solicitations to small businesses upon request and shall prepare a reasonable number of copies for distribution to other eligible parties. The agency may charge for solicitation sets, if permitted by agency regulations.

(b) A master solicitation (see 14.203–3) may be used for negotiated acquisitions.

15.206 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment.

(c) At a minimum, the following information should be included in each amendment:

(1) Name and address of issuing activity;

(2) Solicitation number and date;

(3) Amendment number and date;

(4) Number of pages;

(5) Description of the change being made;

(6) Government point of contact and phone number; and

(7) Revision to solicitation closing date, if applicable.

(d) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(e) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(f) If, based on market research or otherwise, in the judgment of the contracting officer, an amendment issued after offers are received is so substantial that it is beyond what prospective offerors could have reasonably anticipated and that additional sources likely would have submitted offers, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(g) If the proposal considered to be most advantageous to the Government (determined according to the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided, that this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see 15.208(b) and 15.407(d)).

15.207 Handling proposals and information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. See 3.104 regarding the disclosure of source selection information (41 U.S.C. 423). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If a proposal received by the contracting officer electronically or by facsimile is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under 15.208(a), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for timely submission of proposals, and any requested revisions or modifications to them, to the Government office designated in the solicitation. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time, at the designated office on the date that proposals, requested revisions, or modifications are due.

(b) Proposals, modifications, and final revisions received in the designated Government office after the exact time specified are late.

(c) Late proposals, modifications, and final revisions may be accepted by the contracting officer provided—

(1) The contracting officer extends the due date for all offerors; or

(2) The contracting officer determines in writing, on the basis of a review of the circumstances, that the lateness was caused by actions, or inactions, of the Government; or

(3) In the judgment of the contracting officer, the offeror demonstrates by submission of factual information that the circumstances causing the late submission were beyond the immediate control of the offeror.

(d) The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late and whether or not it will be considered, unless contract award is imminent and the notice prescribed in 15.603(b) would suffice.

(e) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer shall document the contract file when such oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals shall only be returned at the offeror's request and expense.

15.209 Solicitation provisions and contract clauses.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215–1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions. If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(b) The contracting officer shall insert the clause at 52.215–2, Audit and Records-Negotiation, in solicitations and contracts except—

(1) Acquisitions not exceeding the simplified acquisition threshold;

(2) Acquisitions for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133);

(3) Facilities acquisitions, where the contracting officer shall use the clause with its Alternate I;

(4) Cost-reimbursement contracts with educational institutions and other nonprofit organizations, where the contracting officer shall use the clause with its Alternate II; or

(5) When the examination of records by the Comptroller General is waived in accordance with 25.901; in this case the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215–3, Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215–4, Type of

Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215–5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215–6, Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215–7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are used (see 14.213).

(h) The contracting officer shall insert the clause at 52.215–8, Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at 15.204.

15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) Optional Form 308, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) Optional Form 309, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Standard Form 30, Amendment of Solicitation/Modification of Contract, may be used to amend solicitations of negotiated contracts. Standard Form 33, Solicitation, Offer, and Award, may be used to issue RFPs and RFIs.

(d) To promote identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals.

Subpart 15.3—Unsolicited Proposals

15.300 Scope of subpart.

This subpart sets forth policies and procedures concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

15.301 Definitions.

Advertising material, as used in this subpart, means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.

Commercial item offer, as used in this subpart means an offer of a commercial item that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial items that are being offered for further development and may be submitted as an unsolicited proposal.

Contribution, as used in this subpart, means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

Unsolicited proposal, as used in this subpart, means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

15.302 Policy.

It is the policy of the Government to encourage the submission of new and innovative ideas in response to Broad Agency Announcements, Small Business Innovation Research topics, Small Business Technology Transfer Research topics, Program Research and Development Announcements, or any other Government-initiated solicitation or program. When the new and innovative ideas do not fall under topic areas publicized under those programs or techniques, the ideas may be submitted as unsolicited proposals.

15.303 General.

(a) Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the Government to be made available to Government agencies for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the Government will enter into a contract with the offeror for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the offeror.

(b) Advertising material, commercial item offers, or contributions, as defined in 15.301, or routine correspondence on technical issues are not unsolicited proposals.

(c) A valid unsolicited proposal must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

15.304 Agency liaison.

(a) Preliminary contact with agency technical or other appropriate personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties (see 15.201). Agencies shall make available to potential offerors of unsolicited proposals at least the following information:

(1) Definition (see 15.301) and content (see 15.305) of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors (see subpart 9.1), and organizational conflicts of interest (see subpart 9.5).

(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming solicitations; Broad Agency Announcements; Small Business Innovation Research programs; Small Business Technology Transfer Research programs; Program Research and Development Announcements; or grant programs.

(4) Agency contact points for information regarding advertising, contributions, and other types of transactions frequently mistaken for unsolicited proposals.

(5) Information sources on agency objectives and areas of potential interest.

(6) Procedures for submission and evaluation of unsolicited proposals.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to 15.309.

(b) Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

15.305 Content of unsolicited proposals.

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; *e.g.*, profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including—

(1) Concise title and abstract (approximately 200 words) of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; *e.g.*, facilities, equipment, materials, or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;

(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and

(7) The names of agency technical or other agency personnel already contacted regarding the proposal.

15.306 Agency procedures.

(a) Agencies shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) Agencies shall establish contact points (see 15.304) to coordinate the receipt and handling of unsolicited proposals.

15.306–1 Receipt and initial review.

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the proposal—

(1) Is a valid unsolicited proposal, meeting the requirements of 15.303(c);

(2) Should have been submitted in response to an existing agency requirement (see 15.302);

(3) Is related to the agency mission;

(4) Contains sufficient technical and cost information;

(5) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and

(6) Complies with the marking requirements of 15.309.

(b) If the proposal meets these requirements, the contact point shall promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point shall promptly inform the offeror of the reasons for rejection and of the proposed disposition of the unsolicited proposal.

15.306–2 Evaluation.

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the legend required by 15.309(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique, innovative and meritorious methods, approaches or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who is critical in achieving the proposal objectives; and

(6) The realism of the proposed cost.

(b) The evaluators shall notify the coordinating office of their recommendations when the evaluation is completed, and the cognizant contracting officer shall be included in the evaluation and disposition process.

15.307 Criteria for acceptance and negotiation of an unsolicited proposal.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. Agency contact points shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement;

(3) Does not relate to the activity's mission; or

(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

(b) The contracting officer may commence negotiations on a sole-source basis only when—

(1) An unsolicited proposal has received a favorable comprehensive evaluation;

(2) A justification and approval has been obtained (see 6.302–1(a)(2)(i) for research proposals or other appropriate provisions of subpart 6.3, and 6.303–2(b));

(3) The agency technical office sponsoring the contract furnishes the necessary funds; and

(4) The contracting officer has complied with the synopsis requirements of subpart 5.2.

15.308 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.309) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.309 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets *[insert numbers or other identification of sheets]*.

(b) The offeror shall also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(c) The coordinating office shall return to the offeror any unsolicited proposal marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The coordinating office shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

Unsolicited Proposal Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) The notice in paragraph (d) of this section is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record nor to improperly deny the public access to a record where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the coordinating office shall—

(1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;

(2) Change the beginning of this legend to read ''All Government and non-Government personnel * * *.'';

(3) Delete the words ''shall not be disclosed outside the Government and''; and

(4) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (paragraph (a) of this section), the modified cover sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for outside evaluation.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The coordinating office shall—

(1) Clearly mark the cover sheet with the legend in paragraph (d) or as modified in paragraph (f) of this section;

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government; and

(3) Obtain the certifications required by 3.104–9 and a listing of all persons authorized access to proprietary information by the activity performing the evaluation.

Subpart 15.4—Source Selection

15.400 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

15.401 Definitions.

Deficiency, as used in this subpart is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Weakness, as used in this subpart, is a flaw that increases the risk of unsuccessful contract performance. A ''significant weakness'' is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.402 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

15.403 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes an appropriate mix of contracting, legal, logistics, technical, and other expertise to assure a comprehensive evaluation of offers;

(2) Approve the source selection strategy before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(2));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(2));

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control communications with offerors in accordance with 15.406; and

(3) Award the contract(s).

15.404 Evaluation factors and subfactors.

(a) The criteria upon which the award decision is based shall consist of evaluation factors and subfactors and shall be tailored to the acquisition.

(b) Evaluation factors and subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) If a multi-step solicitation technique will be used, the factors and subfactors (if any) that apply shall be set forth in the notice or solicitation.

(d) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B));

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(B)); and

(3)(i) Except as set forth in paragraph (d)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed $1,000,000.

(ii) Except as set forth in paragraph (d)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed $100,000. Agencies should develop phase-in schedules for past performance that meet or exceed this schedule.

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92–5).

(e) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2) (A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204–5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(f) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.405 Proposal evaluation.

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, weaknesses, and risks shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis (but see 15.504–1(d)(3)), and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.503–1(c)(1)(i)(B)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. Cost realism analyses may also be used on fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts (see 15.504–1(d)(3)). The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered (41 U.S.C. 401). This comparative assessment of past performance information is separate from the responsibility determination required under subpart 9.1.

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and provide offerors an opportunity to identify past contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The contracting officer shall determine the relevancy of similar past performance information.

(iii) The evaluation may take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement. Such information may be relevant to the instant acquisition.

(iv) Firms lacking any relevant past performance history shall receive a neutral evaluation for past performance. The evaluation approach shall reflect the circumstances of each acquisition. A neutral evaluation is one that neither rewards nor penalizes offerors without relevant performance history (41 U.S.C. 405). While a neutral evaluation will not affect an offeror's rating, it may affect the offeror's ranking if a significant number of the other offerors participating in the acquisition have past performance ratings either above or below satisfactory.

(3) *Technical evaluation.* When tradeoffs are performed, the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal against the evaluation criteria.

(4) Cost information may be provided to members of the technical evaluation team.

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

15.406 Communications with offerors.

(a) *Communications and award without discussions.* (1) If award will be made without conducting discussions, communications with offerors may be used to resolve minor or clerical errors or to clarify certain aspects of proposals (*e.g.,* the relevancy of an offeror's past performance information and adverse past performance information on which the offeror has not previously had an opportunity to comment).

(2) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at 52.215–1) (10 U.S.C. 2305(b)(4)(A)(ii) and 41 U.S.C. 253b(d)(1)(B)).

(b) *Communications with offerors before establishment of the competitive range.* If a competitive range is to be established, these communications—

(1) May only be held with those offerors whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (*e.g.,* perceived deficiencies, weaknesses, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information on which the offeror has not previously had an opportunity to comment.

(c) *Competitive range.* (1) Agencies shall evaluate all proposals in accordance with 15.405(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of those proposals most highly rated, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with 15.405(a) and 15.406(c)(1), the contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency (see the provision at 52.215–1(f)), the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals (10 U.S.C. 2305(b)(4) and 41 U.S.C. 253b(d)).

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with 15.603.

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see 15.605 and 15.606).

(d) *Communications with offerors after establishment of the competitive range.* (1) Such communications are discussions, tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) The contracting officer shall, subject to paragraph (e) of this section and 15.407(a), indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as, cost, price, performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered to enhance materially the proposal's potential for award. The scope and extent of discussion are a matter of contracting officer judgment. In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums, that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(e) *Limits on communications.* Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 423(h)(1)(2));

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 423(h)(1)(2).

15.407 Proposal revisions.

(a) If, after discussions have begun, an offeror in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or the offeror has been afforded an opportunity to submit a proposal revision (see 15.406(d)). If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request proposal revisions that clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

15.408 Source selection.

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not provide quantification of the tradeoffs that led to the decision.

Subpart 15.5—Contract Pricing

15.500 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

15.501 Definitions.

Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254(d)) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.506–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as: vendor quotations; nonrecurring costs; information on changes in production methods and in production or purchasing volume; data supporting projections of business prospects and objectives and related operations costs; unit-cost trends such as those associated with labor efficiency; make-or-buy decisions; estimated resources to attain business goals; and information on management decisions that could have a significant bearing on costs. Cost or pricing data may include parametric estimates of elements of cost or price, from appropriate validated calibrated parametric models.

Cost realism means an assessment of whether or not the costs in an offeror's proposal are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the various elements of the offeror's technical proposal.

Forward pricing rate agreement means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. Such rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

Forward pricing rate recommendation means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

Information other than cost or pricing data means any type of information that is not required to be certified in accordance with 15.506–2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

Price, as used in this subpart, means cost plus any fee or profit applicable to the contract type.

Subcontract, as used in this subpart, also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

15.502 Pricing policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.503–4, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.503–3(b).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.503–1(b) (1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at 15.501.

(3) *Cost or pricing data.* The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers shall not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and consumes additional contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.503 Obtaining cost or pricing data.

15.503–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a) Cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements.* The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards at paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards at paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards at paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards at paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards at paragraph (c)(3) of this subsection).

(c) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers in response to the Government's expressed requirement and if—

(A) Award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, *e.g.,* circumstances indicate that—

(*1*) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(*2*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition and is reasonable and is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to set a price.

(3) *Commercial items.* Any acquisition for an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (c) (1) or (2) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data.

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract or the waiver specifically includes that subcontract.

15.503–2 Other circumstances where cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of cost or pricing data.

(b) Cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

15.503–3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism. However, the contracting officer should not obtain more information than is necessary for determining the reasonableness of the price or evaluating cost realism. To the extent necessary to determine the reasonableness of the price the contracting officer shall require submission of information from the offeror. Unless an exception under 15.503–1(b) (1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(c)(2)).

(2) The contractor's format for submitting such information should be used (see 15.503–5(b)(2)).

(3) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.506–2.

(b) *Adequate price competition.* When adequate price competition exists (see 15.503–1(c)(1)), generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional information is necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)).* (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(3) Information obtained relating to commercial items that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed outside the Government.

15.503–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.503–1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.503–1(b)(4) should be considered. The threshold for obtaining cost or pricing data is $500,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see waivers at 15.503–1(b)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases (*e.g.*, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection, or the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

(2) Unless prohibited because an exception at 15.503–1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.506–2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.501 and shall not be certified in accordance with 15.506–2.

(d) The requirements of this section also apply to contracts entered into by an agency on behalf of a foreign government.

15.503–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the policy at 15.502, the contracting officer shall specify in the solicitation (see 15.508 (l) and (m))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Any information other than cost or pricing data that is required; and

(4) Necessary preaward or postaward access to offeror's records.

(b)(1) Unless required to be submitted on one of the termination forms specified in subpart 49.6, the contracting officer may require submission of cost or pricing data in the format indicated at Table 15–2 of 15.508, specify an alternative format, or permit submission in the contractor's format.

(2) Information other than cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential and the format has been described in the solicitation.

15.504 Proposal analysis.

15.504–1 Proposal analysis techniques.

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this section may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and 15.504–3).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. When appropriate, price analysis shall be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.

(5) The contracting officer may request the advice and assistance of other experts to assure an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a series of five desk references to guide pricing and negotiation personnel. The five desk references are: Price Analysis, Cost Analysis, Quantitative Techniques for Contract Pricing, Advanced Issues in Contract

Pricing, and Federal Contract Negotiation Techniques. The references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. Copies of the desk references are available on CD–ROM which also contains the FAR, the FTR and various other regulations and training materials. The CD–ROM may be purchased by annual subscription (updated quarterly), or individually (reference ''List ID GSAFF,'' Stock No. 722–009–0000–2). The individual CD–ROMs or subscription to the CD–ROM may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by telephone (202) 512–1800 or facsimile (202) 512–2550, or by mail order from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Free copies of the desk references are available on the World Wide Web, Internet address: http://www.gsa.gov/staff/v/guides/instructions.htm.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances surrounding the acquisition. Examples of such techniques include, but are not limited to the following:

(i) Comparison of proposed prices received in response to the solicitation.

(ii) Comparison of previously proposed prices and contract prices with current proposed prices for the same or similar end items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

(iii) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost or pricing data and evaluation of cost elements, including—

(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(C) Reasonableness of estimates generated by appropriately validated/calibrated parametric models or cost-estimating relationships; and

(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government's request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in part 31 and, when applicable, the requirements and procedures in 48 CFR Chapter 99 (Appendix of the FAR looseleaf edition), Cost Accounting Standards.

(v) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.507–2).

(d) *Cost realism analysis.* (1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(2) Cost realism analyses shall be performed on competitive cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(i) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.

(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) *Technical analysis.* (1) The contracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(f) *Unit prices.* (1) Unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (*e.g.,* manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected (10 U.S.C. 2304 and 41 U.S.C. 254(d)(5)(A)(i)). Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in all other negotiated contracts when appropriate.

(g) *Unbalanced pricing.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines the lack of balance poses an unacceptable risk to the Government.

15.504–2 Information to support proposal analysis.

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. Such requests shall be tailored to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) Field pricing assistance generally is directed at obtaining technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts. Field pricing assistance may also include information relative to the business, technical, production or other capabilities and practices of an offeror. The type of information and level of detail requested will vary in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis.

(3) When field pricing assistance is requested, contracting officers are encouraged to team with appropriate field experts throughout the acquisition process, including negotiations. Early communication with these experts will assist in determining the extent of assistance required, the specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field pricing assistance on a contractor's request for equitable adjustment, the contracting officer shall provide the information listed in 43.204(b)(5).

(5) Field pricing information and other reports may include proprietary or source selection information (see 3.104–4 (j) and (k)). Such information shall be appropriately identified and protected accordingly.

(b) *Reporting field pricing information.* (1) Depending upon the extent and complexity of the field pricing review, results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Whenever circumstances permit, the contracting officer and field pricing experts are encouraged to use telephonic and/or electronic means to request and transmit pricing information.

(ii) When it is necessary to have written technical and audit reports, the contracting officer shall request that the audit agency concurrently forward the audit report to the requesting contracting officer and the administrative contracting officer (ACO). The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel shall be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, shall be made a part of the official contract file (see 4.807(f)).

(c) *Audit assistance for prime or subcontracts.* (1) The contracting officer may contact the cognizant audit office directly, particularly when an audit is the only field pricing support required. The audit office shall send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor shall not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) The contracting officer should be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report shall be issued.

(2) The contracting officer shall not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs (41 U.S.C. 254d and 10 U.S.C. 2313).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit should be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not

preclude the contracting officer or the ACO, or their representatives from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.* The ACO or the auditor, as appropriate, shall notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any cost or pricing data considered essential to conduct a satisfactory review or audit. Oral notifications shall be confirmed promptly in writing, including a description of deficient or denied data or records. The contracting officer immediately shall take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer shall withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

15.504–3 Subcontract pricing considerations.

(a) The contracting officer is responsible for the determination of price reasonableness for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's cost or pricing data.

(b) The prime contractor or subcontractor shall—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (c) of this subsection, submit subcontractor cost or pricing data to the Government as part of its price proposal.

(c) Any contractor or subcontractor that is required to submit cost or pricing data also shall obtain and analyze cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the cost or pricing data threshold, unless an exemption in 15.503–1(b) applies to that action.

(1) The contractor shall submit, or cause to be submitted by the subcontractor(s), cost or pricing data to the Government for subcontracts that are the lower of either—

(i) $10,000,000 or more; or

(ii) Both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) The contracting officer may require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor cost or pricing data below the thresholds in paragraph (c)(1) of this subsection that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor cost or pricing data shall be submitted in the format provided in Table 15–2 of 15.508.

(4) Subcontractor cost or pricing data shall be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. The contractor shall update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit cost or pricing data for the prospective subcontractor most likely to receive award to the Government.

15.504–4 Profit.

(a) *General.* This section prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(1) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and the contract type.

(2) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industrial base.

(3) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance.

(b) *Policy.* (1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year—

(i) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) Agencies may use another agency's structured approach.

(c) *Contracting officer responsibilities.* (1) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before the allowability of facilities capital cost of money, this cost was included in profits or fees. Therefore, before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective

amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.508(i)).

(4)(i) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 2306(e) and 41 U.S.C. 254(b):

(A) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(B) For architect-engineering services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(ii) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective.

(6) If a change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

(d) *Profit-analysis factors*—(1) *Common factors.* Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1) (i) through (vi) of this subsection shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i) (A) through (D) of this subsection shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition.* This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk.* (A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small businesses, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

15.505 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's purchasing system, the contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Government and the contractor.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.

15.506 Documentation.

15.506–1 Prenegotiation objectives.

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the contracting officer shall document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

15.506–2 Certificate of Current Cost or Pricing Data.

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and shall include the executed certificate in the contract file.

Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.501 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.503–4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of __________* are accurate, complete, and current as of __________**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm ____________________

Signature ____________________

Name ____________________

Title ____________________

Date of execution*** ____________________

* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (*e.g.*, RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.*, actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) If cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

15.506–3 Documenting the negotiation.

(a) The contract file shall document the principal elements of the negotiated agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include the following:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (*e.g.*, purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

(6) If cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price; or

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.

(7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(b) Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the analysis to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

15.507 Special cost or pricing areas.

15.507–1 Defective cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum shall reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.508 (b) and (c) and set forth in the provision at 52.215–22, Price Reduction for Defective Cost or Pricing Data, and 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider the time by which the cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Cost or pricing data were required, however, the prime contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b) (5) and (6) of this subsection, the contracting officer shall allow an offset for any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (*e.g.*, the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the cost or pricing data were available before the date of agreement on price but were not submitted. Such offsets need not be in the same cost groupings (*e.g.*, material, direct labor, or indirect costs).

(6) An offset shall not be allowed if—

(i) The understated data was known by the contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(ii) The Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the price reduction modification or demand, the contracting officer shall separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review that indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor.

(e) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215–22, Price Reduction for Defective Cost or Pricing Data, and 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except firm-fixed-price contracts, and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.508 (b) and (c). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.507–2 Make-or-buy programs.

(a) *General.* The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. When make-or-buy programs are required, the Government may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in part 44.

(b) *Definitions.*

Buy item means an item or work effort to be produced or performed by a subcontractor.

Make item means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

Make-or-buy program means that part of a contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

(c) *Acquisitions requiring make-or-buy programs.* (1) Contracting officers may require prospective contractors to submit make-or-buy program plans for negotiated acquisitions requiring cost or pricing data whose estimated value is $10 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under $10 million only if the contracting officer—

(i) Determines that the information is necessary; and

(ii) Documents the reasons in the contract file.

(d) *Solicitation requirements.* When prospective contractors are required to submit proposed make-or-buy programs, the solicitation shall include—

(1) A statement that the program and required supporting information must accompany the offer; and

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, and women-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved.

(e) *Program requirements.* To support a make-or-buy program, the following information shall be supplied by the contractor in its proposal:

(1) *Items and work included.* The information required from a contractor in a make-or-buy program shall be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) The offeror's program should include or be supported by the following information:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as ''must make,'' ''must buy'' or ''can either make or buy.''

(iii) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy.''

(iv) Reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration given to the evaluation factors described in the solicitation and be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(vi) Identification of proposed subcontractors, if known, and their location and size status (see also subpart 19.7 for subcontracting plan requirements).

(vii) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(viii) Any other information the contracting officer requires in order to evaluate the program.

(f) *Evaluation, negotiation, and agreement.* Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215–21, Changes or Additions to Make-or-Buy Program.

(2) Contracting officers normally shall not agree to proposed ''make items'' when the products or services are not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices or when they are regularly manufactured or provided by the contractor, but available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. However, the contracting officer may agree to these as ''make items'' if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215–21, Changes or Additions to Make-or-Buy Program (see 15.508(a)). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

(g) *Incorporating make-or-buy programs in contracts.* The contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

15.507–3 Forward pricing rate agreements.

(a) When certified cost or pricing data are required, offerors are required to describe any forward pricing rate agreements (FPRA's) in each specific pricing proposal to which the rates apply and to identify the latest cost or pricing data already submitted in accordance with the agreement. All data submitted in connection with the agreement, updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity shall be reported promptly to the ACO. If the ACO determines that a changed condition invalidates the agreement, the ACO shall notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers shall not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a forward pricing rate agreement or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action shall cover the data supplied to support the FPRA or other advance agreement, and all other data supporting the action.

(d) When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of a FPRA or FPRR, field pricing information will include support for rates utilized.

(e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to assure the validity of the rates.

15.507–4 Should-cost review.

(a) *General.* (1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews—program should-cost review (see paragraph (b) of this subsection) and overhead should-cost review (see paragraph (c) of this subsection). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

(b) *Program should-cost review.* (1) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually associated with the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

(i) Some initial production has already taken place;

(ii) The contract will be awarded on a sole-source basis;

(iii) There are future-year production requirements for substantial quantities of like items;

(iv) The items being acquired have a history of increasing costs;

(v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(vi) Sufficient time is available to plan and adequately conduct the should-cost review; and

(vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(5) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan or acquisition plan updates (see subpart 7.1) and in the solicitation.

(c) *Overhead should-cost review.* (1) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) Major system or program.

(vi) Corporate reorganizations, mergers, acquisitions, or takeovers.

(vii) Other conditions (*e.g.*, changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

15.507–5 Estimating systems.

(a) Using an acceptable estimating system for proposal preparation benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor shall be a consideration in subsequent proposal analyses and negotiations.

15.508 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.215–21, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract. If a less economical ''make'' or ''buy'' categorization is selected for one or more items of significant value, the contracting officer shall use the clause with—

(1) Its Alternate I, if a fixed-price incentive contract is contemplated; or

(2) Its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

(b) The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–22, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.503–4).

(c) The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.503–4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) The contracting officer shall insert the clause at 52.215–24, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) The contracting officer shall insert the clause at 52.215–25, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

(f) The contracting officer shall insert the clause at 52.215–26, Integrity of Unit Prices, in solicitations and contracts for other than—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Construction or architect-engineer services under part 36;

(3) Utility services under part 41;

(4) Service contracts where supplies are not required;

(5) Acquisitions of commercial items; and

(6) Contracts for petroleum products. The contracting officer shall insert the clause with its Alternate I when contracting without full and open competition or when prescribed by agency regulations.

(g) The contracting officer shall insert the clause at 52.215–27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(h) The contracting officer shall insert the provision at 52.215–30, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see subpart 31.2).

(i) If the prospective contractor does not propose facilities capital cost of money in its offer, the contracting officer shall insert the clause at 52.215–31, Waiver of Facilities Capital Cost of Money, in the resulting contract.

(j) The contracting officer shall insert the clause at 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(k) The contracting officer shall insert the clause at 52.215–40, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

(l) Considering the hierarchy at 15.502, the contracting officer may insert the provision at 52.215–41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the provision with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.503–3.

(m) Considering the hierarchy at 15.502, the contracting officer may insert the clause at 52.215–42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.503–3.

Table 15–2.—Instructions for Submitting Cost or Pricing Data

This document provides instructions for preparing a contract pricing proposal when cost or pricing data are required.

Notices

1. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later information comes into your possession, it should be promptly submitted to the Contracting Officer demonstrating how the information relates to your price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

2. By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically

referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

General Instructions

1. You must provide the following information on the first page of your pricing proposal:

(a) Solicitation, contract and/or modification number;

(b) Name and address of offeror;

(c) Name and telephone number of point of contact;

(d) Name of contract administration office (if available);

(e) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);

(f) Proposed cost, profit or fee, and total;

(g) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;

(h) Whether your organization is subject to cost accounting standards, whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR part 31, Cost Principles, and, if not, an explanation;

(i) The following statement:

This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.503–5(b)(1) and Table 15–2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

(j) Date of submission; and

(k) Name, title and signature of authorized representative.

2. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

3. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 15.501). You must clearly identify this data as ''Cost or Pricing Data.'' In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including—

a. The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

b. The nature and amount of any contingencies included in the proposed price.

4. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the ''Formats for Submission of Line Item Summaries'' section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.

5. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.

6. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.

7. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

8. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.506–2, submit a Certificate of Current Cost or Pricing Data.

Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, *etc.*). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in 15.503–4. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in subparagraph A(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.

(1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, *etc.*) exceeding, or expected to exceed, the appropriate threshold set forth at 15.503–4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see 31.205–26(e)).

(2) *All Other.* Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, *etc.*) exceeding the threshold set forth in 15.503–4 and not otherwise exempt, in accordance with 15.503–1(b) (*i.e.*, adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either $10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required, it must be included along with your own cost or pricing data submission, as part of your initial pricing proposal. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. *Direct Labor.* Provide a time-phased (*e.g.*, monthly) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. *Indirect Costs.* Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. *Other Costs.* List all other costs not otherwise included in the categories described above (*e.g.*, special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. *Royalties.* If royalties exceed $1,500, you must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

(4) Patent application serial numbers, or other basis on which the royalty is payable.

(5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).

(6) Percentage or dollar rate of royalty per unit.

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see FAR 27.204 and 31.205–37).

F. *Facilities Capital Cost of Money*. When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB–CMF and show the calculation of the proposed amount (see 31.205–10).

Formats for Submission of Line Item Summaries

A. NEW CONTRACTS (INCLUDING LETTER CONTRACTS)

Cost elements (1)	Proposed contract estimate—total cost (2)	Proposed contract estimate—unit cost (3)	Reference (4)

Column and Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.*, under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.

(3) Optional, unless required by the Contracting Officer.

(4) Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

B. CHANGE ORDERS, MODIFICATIONS, AND CLAIMS

Cost elements (1)	Estimated cost of all work deleted (2)	Cost of deleted work already performed (3)	Net cost to be deleted (4)	Cost of work added (5)	Net cost of change (6)	Reference (7)

Column and Instruction

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) − Column (3) = Column (4).

(5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) − Column (4) = Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

C. PRICE REVISION/REDETERMINATION

Cutoff date (1)	Number of units completed (2)	Number of units to be completed (3)	Contract amount (4)	Redetermination proposal amount (5)	Difference (6)	Cost elements (7)	Incurred cost—preproduction (8)	Incurred cost—completed units (9)	Incurred cost—work in process (10)	Total incurred cost (11)	Estimated cost to complete (12)	Estimated total cost (13)	Reference (14)

(Use as applicable)

Column and Instruction

(1) Enter the cutoff date required by the contract, if applicable.

(2) Enter the number of units completed during the period for which experienced costs of production are being submitted.

(3) Enter the number of units remaining to be completed under the contract.

(4) Enter the cumulative contract amount.

(5) Enter your redetermination proposal amount.

(6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) − Column (5) = Column (6).

(7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.

(8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

(9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.

(10) Enter in Column (10) the costs of work in process as determined from your records

or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, *etc*. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.

(11) Enter total incurred costs (Total of Columns (8), (9), and (10)).

(12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.

(13) Enter total estimated cost (Total of Columns (11) and (12)).

(14) Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

Subpart 15.6—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.601 Definition.

Day, as used in this subpart, has the meaning set forth at 33.101.

15.602 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.606, 15.607, 15.608, and 15.609, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d) (1) and (2).

15.603 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that

(i) The Government will not consider subsequent revisions of the offeror's proposal; and

(ii) No response is required unless a basis exists to challenge the small business size status of the apparent successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see subpart 19.805–2).

(b) *Postaward notices.* (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award (if the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice). However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

15.604 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the Optional Form 307 (OF 307), Contract Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and the contracting officer's signature. In addition, if the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the OF 307 and the signature of the contractor's authorized representative.

15.605 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b (f)–(h)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If delayed until after award, the debriefing shall include all information normally provided in a postaward debriefing (see 15.606(d)). However, if an offeror requests a delayed debriefing under this section, the date the offeror knew or should have known the basis of a protest for the purposes of 4 CFR 21.2(a)(2) shall be the date the offeror received notice of its exclusion from the competition.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under 15.606. In that event, the contracting officer shall include the information at 15.606(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.606(e).

(g) An official summary of the debriefing shall be included in the contract file.

15.606 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request.

(3) An offeror that was notified of exclusion from the competition (15.605(a)), but failed to submit a timely request, is not entitled to a debriefing. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, shall be debriefed within this time period.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) When accommodating a request for delayed debriefing pursuant to 15.605(a)(ii), the date the offeror knew or should have known the basis of its protest for purposes of 4 CFR 21.2(a)(2) shall be the date on which the offeror received notice of its exclusion from competition.

(iii) When accommodating any untimely debriefing request, the date the offeror knew or should have known the basis for its protest for the purposes of 4 CFR 21.2(a)(2) shall be the earlier of the date on which the offeror received notice of its exclusion from further competition or the date the offeror received notice of award.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror (including unit prices);

(3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

15.607 Protests against award.

(a) Protests against award in negotiated acquisitions shall be handled in accordance with part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new solicitation on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to all prospective offerors for the new solicitation; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting office shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.608 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at 14.407–4.

15.609 Forms.

(a) Optional Form 307, Contract Award, may be used to award negotiated contracts. If the form or the Standard Form 26 is not used, the award document shall incorporate the agreement and award language from the form.

(b) Standard Form 26, Award/Contract, also may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate.

PART 16—TYPES OF CONTRACTS

11. Section 16.306 is amended by revising paragraph (c) as follows:

16.306 Cost-plus-fixed-fee contracts.

* * * * *

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless all limitations in 16.301–3 are complied with.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

12. Section 36.520 is added to read as follows:

36.520 Contracting by negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236–28, Preparation of Offers—Construction, when contracting by negotiation.

PART 42—CONTRACT ADMINISTRATION

13. Section 42.1502 is amended by revising the first sentence of paragraph (a) to read as follows:

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $1,000,000 (regardless of the date of contract award) and for each contract in excess of $100,000 beginning not later than January 1, 1998 (regardless of the date of contract award), at the time the work under the contract is completed. * * *

14. Subpart 42.17 is added to read as follows:

Subpart 42.17—Forward Pricing Rate Agreements

42.1701 Procedures.

(a) Negotiation of forward pricing rate agreements (FPRAs) may be requested by the contracting officer or the contractor or initiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRAs should be negotiated only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.506–3) and forward copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.507–3(c)).

(c) The FPRA shall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to assure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

15. Section 43.301 is amended in paragraph (a)(1) by removing ''shall'' and inserting ''may''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Section 52.212–1 is amended by revising the provision date and paragraph (f) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(f) *Late offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers are ''late.'' Late proposals, modifications, and final revisions may be accepted by the Contracting Officer provided—

(1) The Contracting Officer extends the due date for all offerors; or

(2) The Contracting Officer determines in writing on the basis of a review of the circumstances that the lateness was caused by actions, or inactions, of the Government; or

(3) In the judgment of the Contracting Officer, the offeror demonstrates by submission of factual information that the circumstances causing the late submission were beyond the immediate control of the offeror.

* * * * *

17. Section 52.215–1 is added to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

As prescribed in 15.209(a), insert the following provision:

Instructions to Offerors—Competitive Acquisition (Date)

(a) *Definitions.* (1) *Time,* if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(2) *In writing* or *written* is any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) *Proposal revision* is a change to a proposal made after the solicitation closing date at the request of the Contracting Officer as the result of discussions.

(4) *Discussions* are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

(5) *Proposal modification* is a change made to a proposal before the solicitation's closing date and time, made in response to an amendment, or made to correct a mistake at any time before award.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (*e.g.*, electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Offerors are responsible for submitting proposals, and any modifications or final

revisions, to the Government office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that proposals or revisions are due. Proposals, modifications, or final revisions, that are received in the designated Government office after the time for receipt are ''late.'' Late proposals, modifications, and final revisions may be accepted by the Contracting Officer provided—

(i) The Contracting Officer extends the due date for all offerors; or

(ii) The Contracting Officer determines in writing on the basis of a review of the circumstances that the lateness was caused by actions, or inactions, of the Government; or

(iii) In the judgment of the Contracting Officer, the offeror demonstrates by submission of factual information that the circumstances causing the late submission were beyond the immediate control of the offeror.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars, unless otherwise permitted by the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Period for acceptance of proposals.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part— for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with— the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications as described in FAR 15.406(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Communications with offerors after receipt of a proposal do not necessarily constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(10) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

Alternate I (DATE). As prescribed in 15.209(a), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

52.215–2 [Amended]

18. Section 52.215–2 is amended in the introductory text by removing the reference ''15.106(b)'' and inserting ''15.209(b)''.

19. Sections 52.215–3 through 52.215–8 are revised to read as follows:

52.215–3 Request for Information or Solicitation for Planning Purposes.

As prescribed in 15.209(c), insert the following provision:

Request for Information or Solicitation for Planning Purposes (Date)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205–18, Bid and proposal costs, of the Federal Acquisition Regulation.

(b) Although ''proposal'' and ''offeror'' are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

52.215–4 Type of Business Organization.

As prescribed in 15.209(d), insert the following provision:

Type of Business Organization (Date)

The offeror or respondent, by checking the applicable box, represents that—

(a) It operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or a ☐ corporation incorporated under the laws of the State of _______________,

(b) If the offeror or respondent is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _______________ (country).

(End of provision)

52.215–5 Facsimile Proposals.

As prescribed in 15.209(e), insert the following provision:

Facsimile Proposals (Date)

(a) *Definition. Facsimile proposal,* as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(End of provision)

52.215–6 Place of Performance.

As prescribed in 15.209(f), insert the following provision:

Place of Performance (Date)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or quotation.

(b) If the offeror or respondent checks ''intends'' in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street Address, City, State, Zip Code)

____

____

Name and Address of Owner and Operator of the Plant County, or Facility if Other than Offeror

____

____

(End of provision)

52.215–7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.209(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Date)

The offeror certifies that annual representations and certifications [*check the appropriate block*]:

☐ (a) Dated _________ [*insert date of signature on submission*] that are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this proposal, except as follows [*insert changes that affect only this proposal; if ''none,'' so state*]:

☐ (b) Are enclosed.

(End of provision)

52.215–8 Order of Precedence—Uniform Contract Format.

As prescribed in 15.209(h), insert the following clause:

Order of Precedence—Uniform Contract Format (Date)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Performance requirements (including the specifications and special terms and conditions negotiated for the contract).

(c) Other documents, exhibits, and attachments.

(d) Contract clauses.

(e) Representations and other instructions.

(End of clause)

52.215–9 through 52.215–20 [Removed and Reserved]

20. Sections 52.215–9 through 52.215–20 are removed and reserved.

21. Sections 52.215–21 through 52.215–27 are revised to read as follows:

52.215–21 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.508(a), insert the following clause:

Changes or Additions to Make-or-Buy Program (Date)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any ''make'' items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

(End of clause)

Alternate I (Date). As prescribed in 15.508(a)(1) add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of ''make'' or ''buy'' for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation, and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (Date). As prescribed in 15.508(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of ''make'' or ''buy'' for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

52.215–22 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.508(b), insert the following clause:

Price Reduction for Defective Cost or Pricing Data (Date)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or an earlier date agreed upon by the parties, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price or an earlier date agreed upon by the parties.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.508(c), insert the following clause:

Price Reduction for Defective Cost or Pricing Data—Modifications (Date)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.503–4, except that this clause does not apply to any modification if an exception under FAR 15.503–1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or an earlier date agreed upon by the parties, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price, or an earlier date agreed upon by the parties.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215–24 Subcontractor Cost or Pricing Data.

As prescribed in 15.508(d), insert the following clause:

Subcontractor Cost or Pricing Data (Date)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.503–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.503–4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.503–1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.506–2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.503–4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215–25, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)

52.215–25 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.508(e), insert the following clause:

Subcontractor Cost or Pricing Data—Modifications (Date)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.503–4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.503–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.503–4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.503–1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.506–2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.503–4 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

52.215–26 Integrity of Unit Prices.

As prescribed in 15.508(f), insert the following clause:

Integrity of Unit Prices (Date)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.,* manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

(End of clause)

Alternate I (Date). As prescribed in 15.508(f), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

52.215–27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.508(g), insert the following clause:

Termination of Defined Benefit Pension Plans (Date)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.508(c).

(End of clause)

52.215–30 [Amended]

22. Section 52.215–30 is amended in the introductory text by removing the reference ''15.904(a)'' and inserting ''15.508(h)''.

52.215–31 [Amended]

23. Section 52.215–31 is amended in the introductory text by removing the reference ''15.904(b)'' and inserting ''15.508(i)''.

24. Sections 52.215–39 through 52.215–42 are revised to read as follows:

52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.508(j), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Date)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.508(c). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205–6(o).

(End of clause)

52.215–40 Notification of Ownership Changes.

As prescribed in 15.508(k), insert the following clause:

Notification of Ownership Changes (Date)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.508(k).

(End of clause)

52.215–41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.508(l), insert the following provision:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Date)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with FAR Table 15–2.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.506–2.

(End of clause)

Alternate I (DATE). As prescribed in 15.508(l), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

Alternate II (DATE). As prescribed in 15.508(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) The Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (DATE). As prescribed in 15.508(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.]*

Alternate IV (DATE). As prescribed in 15.508(l), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: [*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.503–3.]*

52.215–42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

As prescribed in 15.508(m), insert the following clause:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Date)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.503–4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If—

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with FAR Table 15–2.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.506–2.

(End of clause)

Alternate I (DATE). As prescribed in 15.508(m), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

Alternate II (DATE). As prescribed in 15.508(m), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (DATE). As prescribed in 15.508(m), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format]*

Alternate IV (DATE). As prescribed in 15.508(m), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: [*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.503–3.*]

25. Section 52.236–28 is added to read as follows:

52.236–28 Preparation of Proposals—Construction.

As prescribed in 36.520, insert the following provision:

Preparation of Proposals—Construction (Date)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words ''no proposal'' in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

PART 53—FORMS

26. Section 53.213 is amended by revising paragraph (a) to read as follows:

53.213 Simplified acquisition procedures (SFs 18, 30, 44, 1165, and 1449, and OFs 336, 347 and 348).

* * * * *

(a) *SF 18 (REV. 6/95), Request for Quotations, or SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107. SF 1449, as prescribed in 53.212, or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in 13.107.

* * * * *

27. Section 53.214 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (d) to read as follows:

53.214 Sealed bidding.

* * * * *

(a) *SF 26, Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.408–1(d)(1). * * *

* * * * *

(d) *SF 1447 (5/88), Solicitation/Contract.* SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. * * *

28. Section 53.215–1 is revised to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *SF 26 (REV. 4/85), Award/Contract.* SF 26, prescribed in 53.214(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.609(b).

(b) *SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals and for amending requests for information, as specified in 15.210(c).

(c) *SF 33 (REV. 4/85), Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either OF 307, SF 33, or SF 26, as specified in 53.214(c) and 15.609 (a) and (b).

(d) *OF 17 (REV. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(d).

(e) *OF 307 (XX/97), Contract Award.* OF 307 may be used to award negotiated contracts as specified in 15.609(a).

(f) *OF 308 (XX/97), Solicitation and Offer-Negotiated Acquisition.* OF 308 may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF 307, as specified in 15.609(a).

(g) *OF 309 (XX/97), Amendment of Solicitation.* OF 309 may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).

29. Section 53.243 is amended by revising the introductory paragraph to read as follows:

53.243 Contract modifications (SF 30).

SF 30 (REV 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in—

(a) Amending invitation for bids, as specified in 14.208;

(b) Modifying purchase and delivery orders, as specified in 13.503(b); and

(c) Modifying contracts, as specified in 42.1203(f), 43.301, 49.602–5, and elsewhere in this chapter. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.210(c). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

* * * * *

30. Sections 53.302–307 through 53.302–309 are added to read as follows:

BILLING CODE 6820–EP–U

53.302–307 Optional Form 307, Contract Award.

CONTRACT AWARD

PAGE OF PAGES

1. CONTRACT NUMBER	2. EFFECTIVE DATE	3. SOLICITATION NUMBER	4. REQUISITION/PROJECT NUMBER

5. ISSUED BY CODE	6. ADMINISTERED BY *(If other than Item 5)* CODE
7. NAME AND ADDRESS OF CONTRACTOR CODE	8. PAYMENT WILL BE MADE BY
9. DUNS NUMBER	10 SUBMIT INVOICES *(4 copies unless otherwise specified)* TO ☐ ITEM 5 ☐ ITEM 6 ☐ ITEM 8 ☐ OTHER *(Specify)*

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶

14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.	**15. AWARD.** The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.
☐ a. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. *(Check if applicable)*	
b. SIGNATURE OF PERSON AUTHORIZED TO SIGN	a. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*
c. NAME OF SIGNER	
d. TITLE OF SIGNER	b. NAME OF CONTRACTING OFFICER
e. DATE	c. DATE

OPTIONAL FORM 307 (REV.)

BILLING CODE 6820–EP–C

53.302–308 Optional Form 308, Solicitation and Offer—Negotiated Acquisition.

SOLICITATION AND OFFER - NEGOTIATED ACQUISITION

PAGE OF PAGES

I. SOLICITATION

1. SOLICITATION NUMBER	2. DATE ISSUED	3. OFFERS DUE BY	4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE

5. ISSUED BY	6. ADDRESS OFFER TO *(If other than Item 5)*

7. FOR INFORMATION CALL *(No collect calls)*

a. NAME	b. TELEPHONE		c. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. BRIEF DESCRIPTION

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

10a. PERSONS AUTHORIZED TO NEGOTIATE	10b. TITLE	10c. TELEPHONE	
		AREA CODE	NUMBER

11. NAME AND ADDRESS OF OFFEROR	12a. SIGNATURE OF PERSON AUTHORIZED TO SIGN		
	12b. NAME OF SIGNER		
	12c. TITLE OF SIGNER		
	12d. DATE	12e. TELEPHONE	
		AREA CODE	NUMBER

OPTIONAL FORM 308 ()

BILLING CODE 6820–EP–C

53.302–309 Optional Form 309, Amendment of Solicitation.

AMENDMENT OF SOLICITATION
(Negotiated Procurements)

PAGE OF PAGES

NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

I. AMENDMENT

1. SOLICITATION NUMBER
2. SOLICITATION DATE
3. AMENDMENT NUMBER
4. AMENDMENT DATE
5. ISSUED BY

6. DUE DATE

THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AND TIME IS INSERTED BELOW.

a. DATE
b. TIME

7. FOR INFORMATION CALL *(No collect calls)*

a. NAME
b. TELEPHONE — AREA CODE / PHONE NUMBER
c. E-MAIL ADDRESS

8. DESCRIPTION OF AMENDMENT

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

II. ACKNOWLEDGMENT OF AMENDMENT

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

9. NAME AND ADDRESS OF OFFEROR
10a. OFFEROR *(Signature of person authorized to sign)*
10b. NAME OF SIGNER
10c. TITLE OF SIGNER
10d. DATE

OPTIONAL FORM 309

BILLING CODE 6820–EP–C

Chapter 1—[Amended]

31. In the following table, revise the references as follows:

Location	Remove	Insert
1.106	15.106	15.209.
1.106	15.404	15.2.
1.106	52.215–6	52.215–4.
1.106	52.215–11	52.215–1(c)(2)(iv).
1.106	52.215–19	52.215–1(d).
1.106	52.215–20	52.215–6.
2.1 (definition of ''offer'')	15.5	15.3.
15.104–3	52.215–12	52.215–1.
3.104–5(b)(1)	15.411	15.207.
3.104–5(b)(1)	52.215–12	52.215–1.
3.501–2(c)	15.804–6(f)	Table 15–2 of 15.508, (c)(8).
3.501–2(c)	15.803(d)	15.503–1(c)(i)(B).
5.204	15.404	15.201.
5.303(b)(2)	15.1002(e)	15.603(b).
6.302–1(d)(2)	''(See 15.402(g))''	
7.105(a)(3)(iii)	15.810	15.507–4.
7.105(b)(3)	15.6	15.4.
7.105(b)(11)	15.7	15.507–2.
7.306(b)	15.6	15.4.
9.306(j)	15.814	15.504–1(g).
12.206	15.6	15.4.
12.209	15.8	15.5.
12.301(c)(2)	15.6	15.4.
12.503(c)(2)	15.804	15.503.
12.504(a)(9)	''(See subpart 15.1)''	
12.504(c)(2)	15.8	15.5.
12.602(b)	15.6	15.4.
13.106–2(c)(3)	15.1003(b)(2)	15.805.
13.108(a)	15.402(e)	Delete ''(see 15.402(e))''.
14.103–1(d)	15.804–1	15.503–4(a)(1)(iii).
14.105	15.405	15.201(e).
14.201–7(a)	15.804–2(a)(1)	15.503–4(a)(1).
14.201–7(b)(1)	15.804–2(a)(1)	15.503–4(a)(1).
14.201–7(c)(1)	15.804–2(a)(1)	15.503–4(a)(1).
14.207	15.409	15.201.
14.404–2(g)	15.814	15.504–1(g).
14.408(a)	15.805–2	15.504–1(b).
14.408(b)	15.814	15.504–1(g).
14.503–1(c)(2)	15.413	52.215–1(e).
14.503–1(g)	15.1005 and 15.1006	15.605 and 15.606.
14.503–1(h)	15.412	15.208 (b) and (c).
16.104(b)	15.805–2	15.504–1(b).
16.301(a)(3)	15.903(d)	15.504–4(c)(4)(i).
16.306(c)(2)	15.903(d)	15.504–4(c)(4)(i).
16.505(b)(3)	15.804–1(b)(1)	15.503–1(c)(i).
16.603–2(c)	15.8	15.5.
17.106–1(c)	15.804–6	Table 15–2 of 15.508, (c)(8).
19.202–6(a)	15.805–2	15.502.
19.302(d)(1)	15.1002(b)(2)	15.603(b)(2).
19.501(h)(1)	15.1003(a)(2)	15.803(a)(2).
19.501(h)(2)	15.1003(a)(2)	15.803(a)(2).
19.806(a)	15.8	15.5.
24.202(b)	15.804–5(b)	15.503–3(c)(3).
25.405	15.1003	15.803.
25.901(b)	15.106–1(b)	15.209(b).
27.204–1(b)	15.804	15.503.
27.204–2	15.804	15.503.
27.407(a)	15.4 or 15.5	15.2 or 15.3.
27.407(b)	15.4 or 15.5	15.2 or 15.3.
28.101–4(b)	15.610(a)	15.406(a)(2).
31.000	15.805–3	15.504–1(c).
31.103(a)	15.805–3	15.504–1(c).
31.105(b)	15.805–3	15.504–1(c).
31.106–1	15.805–3	15.504–1(c).
31.109(g)	15.808	15.506–3.
31.204(b)	15.805–3	15.504–1(c).
31.205(j)(4)	15.804	15.503–4.
31.205–18 (c)(1)(i)(A)	15.804	15.503–4.
31.205–18 (c)(1)(i)(B)	15.804	15.503–4.
31.205–26(e)	15.804–1	15.503–1(b).

Location	Remove	Insert
31.205–42(c)	15.804–6(f)	
32.204	15.606	15.206.
33.103(f)(3)	15.1004	''15.605 or 15.606''.
33.104(c)(1)	15.1004	''15.605 or 15.606''.
33.207(d)	15.804–2(a)(1)(iii)	15.503–4(a)(1)(iii).
34.005–2(a)(2)	15.404	15.201.
35.007(d)	''(see 15.406–5(b))''	
35.007(e)	15.605(e)	15.404.
35.007(g)	15.409	15.201.
35.007(i)	15.5	15.3.
35.008(d)	15.10	15.6.
35.008	15.805	15.504–1(c).
36.212(b)(1)	15.804–1 and 15.804–2	15.503–2.
36.215	15.903(d)(1)(iii)	15.504–4(c)(4)(i).
36.303–2	15.605	15.404.
36.402(b)(1)	15.804–1 and 15.804–2	15.503–2.
36.403(c)	15.903(d)(1)(iii)	15.504–4(c)(4)(i).
36.606	15.903(d)(1)(iii)	15.504–4(c)(4)(i).
36.607(b)	15.1004, 15.006(b) through (f), 15.1007, and 15.1006.	15.604, 15,606(b) through (f) 15.607, and 15.606
42.302(a)(4)	15.8	15.5.
42.302(a)(5)	15.809	15.507–3.
42.705–1(b)(2)	15.805–5(e).	
42.705–2(b)(2)(iii)	15.805–5(e).	
43.204(b)(4)	15.805	15.504–1(c).
44.202–2(a)(1)	15.7	15.507–2.
44.305–3(a)(1)	15.804	15.503.
45.103(b)(1)	15.804–1	15.503–2.
45.106(b)(2)(i)	15.804–1	15.503–2.
45.302–2(e)	15.9	15.504–4.
49.105(c)(15)	15.804–(h) and 15.804	15.503–4(a)(1) and 15.503–4.
49.110(a)	15.808(a) and 15.808(b)	15.506–3 for both.
50.203(c)	15.103	14.104–1(f).
52.212–2(a)(iii)	15.605	15.404.
52.214–26(e)	15.804–2(a)(1)	15.503–4(a)(1)(iii).
52.214–27(a)	15.804–2(a)(1) and 15.804–1	15.503–4(a)(1)(iii) and 15.503–1(b).
52.214–28(a)	15.804–2 (a) (1) and (2)	15.503–4(a)(1)(iii).
52.214–28(b)	15.804–2(a)(1) and 15.804–1	15.503–4(a)(1)(iii) and 15.503–1(b).
52.214–28(c)	15.804–4	15.506–2.
52.214–28(d)	15.804–2(a)(1)	15.503–4(a)(1)(iii).
52.214–34	''15.407(l)''	
52.214–35.	''15.407(m)''	
52.244–1(g)	15.903(d)	15.504–4(c)(4)(i).
52.244–2	15.903(d)	15.504–4(c)(4)(i).
52.244–3(b)	15.903(d)	15.504–4(c)(4)(i).

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Part IV

Federal Communications Commission

47 CFR Parts 2, 73, and 74

Advanced Television Systems and Their Impact On Existing Television Service; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73 and 74

[MM Docket No. 87–268; FCC 97–115]

Advanced Television Systems and Their Impact on Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Table of Allotments for digital television (DTV) service, rules for use of these DTV channels, procedures for assigning DTV channels, and plans for spectrum recovery. The Commission also adopted technical criteria for the allotment of additional DTV channels. This action is intended to provide the channels on which broadcasters will operate DTV service and to establish a plan for recovery of spectrum.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Report and Order* in MM Docket No. 87–268, FCC 96–317, adopted April 3, 1997, and released April 21, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Washington, DC 20036, (202–857–3800).

Summary of the Sixth Report and Order

1. In this action, the Commission adopts a Table of Allotments for digital television (DTV) service, rules for use of these DTV channels, procedures for assigning DTV channels, and plans for spectrum recovery. The new DTV Table accommodates all eligible broadcasters, replicates existing service areas, and ensures sound and efficient spectrum management. The Table will also provide for early recovery of 60 MHz of spectrum (channels 60–69) and recovery of an additional 78 MHz of spectrum at the end of the transition period, for a total recovery of 138 MHz of spectrum. The Commission stated that its overarching goals in this phase of the proceeding are to ensure that the spectrum is used efficiently and effectively through the reliance on market forces and to ensure that the introduction of digital TV fully serves the public.

2. In developing the DTV allotments, the Commission was guided by several principles. The first of these principles is to fully accommodate all eligible broadcasters with a temporary second channel for DTV service. As provided in the Telecommunications Act of 1996, parties eligible for initial DTV licenses include: ''persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station, or both.'' *See* 47 U.S.C. Section 336. The DTV Table of Allotments includes a channel for all such eligible broadcasters. The Commission stated that this approach will promote an orderly transition to DTV by ensuring that all eligible full service broadcasters are able to provide digital service.

3. The second principle is to provide, to the extent possible, all existing broadcasters with a DTV service area that is comparable to their existing NTSC service area (service replication). The DTV Table therefore matches broadcasters existing channels with DTV allotments that will allow them to replicate their existing service areas. Broadcasters will be assigned these matching channels. The Commission stated that this approach will ensure that broadcasters have the ability to reach the audiences they now serve and that viewers have access to the stations that they can now receive over-the-air. In fact, during the transition period, over 50 percent of all broadcasters will receive a DTV channel that provides 100 percent replication, and over 93 percent of all broadcasters will receive a channel that provides at least 95 percent service area replication. Eligible broadcasters are offered DTV channels in accordance with the matched plan of DTV allotments in Table I below.

4. In considering how to provide for service replication, the Commission noted that the power levels that would be authorized for individual DTV stations under the service replication plan originally proposed could lead to increased disparities among stations. The Commission therefore developed the DTV Table based on a minimum power level of 50 kW effective radiated power (ERP) and a maximum power level of 1000 kW ERP. It stated that a 50 kW minimum power level will ensure that stations have a sufficient service area to compete effectively within their markets and is consistent with the maximization concept supported by the industry. It also stated that 1000 kW is sufficient to provide a very high degree of service replication for almost all stations. The Commission indicated that this power level allows a more equitable distribution of opportunities for maximization of service areas by stations of all sizes.

5. Next, the Commission stated that in considering the spectrum to use for DTV service, it is important to provide the new digital TV stations with the spectrum that is the most appropriate for their operation. The Commission further stated that, given its obligation to manage the spectrum efficiently in the public interest and the increased number of stations that the spectrum can accommodate using DTV technology, it is important that the recovery of spectrum that is not needed for DTV continue to be a key component of the implementation of DTV service. The new DTV Table therefore plans for the eventual location of all DTV channels in a core spectrum of VHF and UHF channels that are technically most suited for DTV operation. This initial DTV Table is based on use of channels 2–51. However, the Commission stated that at the end of the transition it would specify a core DTV spectrum of either channels 2–46 or 7–51.

6. To implement its core spectrum plan, the Commission attempted to provide all broadcasters with a DTV channel within the range of channels 2–51. Because of the limited availability of spectrum and the need to accommodate all existing facilities with minimal interference among stations, however, some broadcasters are provided transition DTV channels outside this area. Broadcasters with DTV channels outside the final core spectrum will move their DTV operations to a channel in the core at the end of the transition. This plan will permit the eventual recovery of 138 MHz of spectrum nationwide.

7. The DTV Table minimizes use of channels 60–69 to facilitate the early recovery of this portion of the spectrum. In taking this action, the Commission concluded that neither its core spectrum plan or the early recovery of these channels will have a significant impact on the flexibility needed for the implementation of DTV. It further noted that the record clearly demonstrates that additional spectrum is required to meet the needs of public safety and other land mobile users. The Commission stated that the record also strongly supports a conclusion that spectrum in the region of channels 60–69 is appropriate to meet some of these needs. In this regard, it stated that it intends to initiate a separate proceeding in the near future to address how to re-

allocate available spectrum at channels 60–69.

8. The Commission adopted a number of other policies, procedures and technical criteria to be used in allotting DTV channels. These proposals include: (1) Specifying the use of existing NTSC transmitter site coordinates as the reference points for the new DTV allotments; (2) deleting all existing vacant NTSC allotments to provide sufficient spectrum for DTV and, where feasible, replacing deleted NTSC vacant noncommercial allotments with new DTV allotments; (3) avoiding the use of channels 3, 4, and 6 to minimize interference to cable terminal devices, VCRs and FM radio service; and, (4) protecting land mobile operations on channels 14–20.

9. While the Commission continued the secondary status of low power TV and TV translator stations, it adopted a number of administrative and technical measures to minimize the impact of DTV implementation on low power operations. These measures include allowing low power stations that are affected by DTV implementation to apply for a suitable replacement channel in the same area without being subject to competing applications and to operate until a displacing DTV station or a new primary service provider is operational. The Commission also allowed low power station operators and applicants to make use of terrain shielding, Longley-Rice terrain dependent propagation prediction methods and appropriate interference abatement techniques to show that the station will not cause interference to other stations. Finally, the Commission adopted a number of changes to its technical rules for low power TV operation that will provide additional flexibility to accommodate low power operations during and after the transition.

10. The Commission removed the conditions that were applied to applications for modification of existing NTSC stations that were granted subsequent to July 25, 1996, the date of the Notice of Proposed Rule Making, 61 FR 43209 (August 21, 1996), addressing DTV allotments. It indicated that in developing the DTV Table of Allotments it was able to accommodate all of the eligible broadcasters with allotments that do not conflict with any of the authorizations to modify existing NTSC facilities that have been granted subsequent to July 25, 1996. The Commission further stated that it will henceforth consider any impact on DTV allotments in deciding whether to grant applications for modification of NTSC facilities.

Finally, the Commission established technical criteria for the allotment of additional DTV channels and the modification of allotments included in the initial DTV Table.

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
AK ANCHORAGE	2	18	1000.0	219.0	23462	265	28907	265	0.0	0.0	81.2
AK ANCHORAGE	4	20	234.4	55.0	10968	256	10912	256	0.0	0.0	100.0
AK ANCHORAGE	5	22	1000.0	250.0	25716	265	30730	266	0.0	0.0	83.7
AK ANCHORAGE	7	24	1000.0	240.0	24954	265	26028	265	0.0	0.0	95.9
AK ANCHORAGE	9	26	1000.0	212.0	23059	267	24726	268	0.0	0.0	93.3
AK ANCHORAGE	11	28	50.1	91.0	10708	251	10259	250	0.0	0.0	100.0
AK ANCHORAGE	13	30	1000.0	238.0	24829	265	25978	265	0.0	0.0	95.6
AK ANCHORAGE	33	32	50.1	33.0	6438	233	1175	212	18.7	5.3	100.0
AK BETHEL	4	3	1.0	61.0	9999	8	5629	7	0.0	0.0	100.0
AK DILLINGHAM	2	9	39.8	305.0	33890	4	33677	4	0.0	0.0	100.0
AK FAIRBANKS	2	18	60.3	33.0	6744	77	6670	77	0.0	0.0	100.0
AK FAIRBANKS	7	22	50.1	33.0	6523	77	2167	70	0.0	0.0	100.0
AK FAIRBANKS	9	24	79.4	152.0	13637	78	13637	78	0.0	0.0	100.0
AK FAIRBANKS	11	26	50.1	33.0	6524	77	4966	76	0.0	0.0	100.0
AK FAIRBANKS	13	28	50.1	33.0	6524	77	4966	76	0.0	0.0	100.0
AK JUNEAU	3	6	1.0	33.0	6622	27	2155	27	0.0	0.0	100.0
AK JUNEAU	8	11	3.2	33.0	6793	27	771	25	0.0	0.0	100.0
AK KETCHIKAN	4	13	3.2	174.0	18251	17	6873	15	0.0	0.0	100.0
AK KETCHIKAN	9	8	3.3	305.0	22274	17	22184	17	0.0	0.0	100.0
AK NORTH POLE	4	20	213.8	485.0	30801	79	30801	79	0.0	0.0	100.0
AK SITKA	13	2	1.0	33.0	6622	9	1132	8	0.0	0.0	100.0
AL ANNISTON	40	58	253.2	350.0	21331	1124	17127	616	0.2	0.0	99.3
AL BESSEMER	17	18	178.0	675.0	32514	1313	28727	1131	2.5	0.3	100.0
AL BIRMINGHAM	6	50	1000.0	420.0	37237	1647	34243	1547	0.0	0.0	99.4
AL BIRMINGHAM	10	53	1000.0	404.0	32562	1543	28403	1428	2.1	2.3	99.9
AL BIRMINGHAM	13	52	998.4	408.0	33339	1570	29111	1465	0.0	0.0	100.0
AL BIRMINGHAM	42	30	159.2	421.0	26381	1330	23781	1253	0.3	0.3	99.9
AL BIRMINGHAM	68	36	50.0	314.0	14449	1016	13255	977	0.0	0.0	99.5
AL DEMOPOLIS	41	19	50.0	333.0	15153	121	15040	121	0.4	0.4	100.0
AL DOTHAN	4	36	1000.0	573.0	48620	784	44475	765	0.0	0.0	99.7
AL DOTHAN	18	21	50.0	223.0	13976	291	13879	291	2.7	1.3	100.0
AL DOZIER	2	59	1000.0	210.0	25755	466	21786	298	0.0	0.0	98.7
AL FLORENCE	15	14	50.0	223.0	12858	286	12862	285	2.6	5.0	99.4
AL FLORENCE	26	20	50.0	230.0	12022	258	10994	240	1.8	1.1	100.0
AL FLORENCE	36	22	50.0	221.0	12336	261	12098	259	8.1	3.6	100.0
AL GADSDEN	44	45	50.0	303.0	12500	628	11830	523	1.6	1.1	99.3
AL GADSDEN	60	26	83.2	352.0	14419	1141	13949	1129	2.8	6.4	99.0
AL HOMEWOOD	21	28	268.4	409.0	27908	1407	26602	1316	0.8	0.9	99.0
AL HUNTSVILLE	19	59	85.1	533.0	24595	888	23489	857	1.1	0.8	99.8
AL HUNTSVILLE	25	24	50.0	352.0	18363	725	17357	706	0.3	0.1	100.0
AL HUNTSVILLE	31	32	50.0	546.0	23101	849	21838	812	1.8	1.6	100.0
AL HUNTSVILLE	48	49	50.0	579.0	22343	823	21115	792	0.7	0.3	100.0
AL HUNTSVILLE	54	41	51.1	515.0	18818	716	18097	704	0.7	0.3	100.0
AL LOUISVILLE	43	42	155.7	275.0	14437	267	14481	267	1.0	0.5	99.4

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
AL MOBILE	5	27	1000.0	581.0	49660	1292	49268	1310	0.0	0.0	99.9
AL MOBILE	10	9	15.7	381.0	31801	1009	30422	998	0.0	0.0	100.0
AL MOBILE	15	26	312.3	521.0	25918	1007	25722	1039	1.8	1.0	99.8
AL MOBILE	21	20	190.4	436.0	21862	941	21326	882	0.3	0.1	100.0
AL MOBILE	42	18	50.0	183.0	11337	528	11453	533	0.5	0.1	98.3
AL MONTGOMERY	12	57	1000.0	610.0	44140	916	41212	868	0.0	0.0	100.0
AL MONTGOMERY	20	16	50.0	226.0	12742	369	12234	365	0.6	0.2	100.0
AL MONTGOMERY	26	14	50.0	183.0	12913	376	12595	372	4.5	3.0	99.9
AL MONTGOMERY	32	51	272.6	545.0	28570	539	28011	535	3.4	2.2	99.9
AL MONTGOMERY	45	46	50.0	308.0	11868	367	11666	365	2.2	1.2	100.0
AL MOUNT CHEAHA	7	56	1000.0	610.0	42883	1996	38085	1739	0.3	0.1	99.6
AL OPELIKA	66	31	50.0	207.0	10516	470	9982	460	0.0	0.0	100.0
AL OZARK	34	33	50.0	142.0	8805	230	8749	228	0.7	0.1	99.9
AL SELMA	8	55	1000.0	515.0	39389	672	34978	632	0.0	0.0	99.9
AL TROY	67	48	50.0	592.0	18293	430	17658	427	0.2	0.0	100.0
AL TUSCALOOSA	33	34	189.9	662.0	36264	1349	33350	1300	0.6	0.8	99.7
AL TUSKEGEE	22	24	100.1	325.0	17883	473	17639	463	3.7	1.7	99.7
AR ARKADELPHIA	9	46	897.0	326.0	28446	372	24331	322	0.0	0.0	99.8
AR EL DORADO	10	27	702.3	605.0	45222	668	31478	508	0.0	0.0	100.0
AR FAYETTEVILLE	13	45	966.9	506.0	36427	710	31152	624	0.0	0.0	99.9
AR FAYETTEVILLE	29	15	50.0	270.0	14874	305	13571	286	0.4	0.1	100.0
AR FORT SMITH	5	18	1000.0	384.0	32392	630	28831	536	0.0	0.0	98.3
AR FORT SMITH	24	17	73.4	317.0	15057	406	14779	410	0.7	0.3	97.7
AR FORT SMITH	40	21	74.5	610.0	22014	315	19262	290	1.3	1.5	99.8
AR HOT SPRINGS	26	14	50.0	258.0	13340	205	12569	180	1.1	0.4	100.0
AR JONESBORO	8	58	1000.0	533.0	40686	703	36658	630	0.0	0.0	100.0
AR JONESBORO	19	20	50.0	311.0	17558	246	17453	245	0.0	0.0	100.0
AR JONESBORO	48	49	54.7	305.0	17228	257	17136	255	0.0	0.0	100.0
AR LITTLE ROCK	2	47	1000.0	543.0	45005	994	39049	963	0.0	0.0	98.1
AR LITTLE ROCK	4	32	1000.0	503.0	43128	1004	40765	981	0.0	0.0	99.1
AR LITTLE ROCK	7	22	621.9	591.0	42859	976	39421	949	0.0	0.0	100.0
AR LITTLE ROCK	11	12	20.6	521.0	38355	955	34630	919	0.0	0.0	100.0
AR LITTLE ROCK	16	33	353.0	539.0	29255	896	28845	887	0.8	0.3	99.3
AR LITTLE ROCK	42	43	133.7	156.0	14250	604	14165	604	0.0	0.0	99.3
AR MOUNTAIN VIEW	6	35	1000.0	424.0	38092	514	31061	357	0.0	0.0	99.3
AR NEWARK	17	26	50.0	162.0	4239	57	4049	55	1.2	1.0	100.0
AR PINE BLUFF	25	24	125.7	182.0	11632	585	11390	582	0.6	0.2	99.6
AR PINE BLUFF	38	39	197.7	593.0	25692	804	24909	792	0.9	0.6	100.0
AR ROGERS	51	50	50.0	143.0	6508	228	6004	221	0.0	0.0	100.0
AR SPRINGDALE	57	39	50.0	117.0	5681	223	5089	216	0.7	0.1	100.0
AZ FLAGSTAFF	2	22	1000.0	488.0	37609	175	40813	196	1.8	0.1	91.8
AZ FLAGSTAFF	4	18	694.9	487.0	34053	167	30621	158	0.0	0.0	98.0
AZ FLAGSTAFF	9	28	50.0	594.0	9346	63	8142	62	0.0	0.0	100.0
AZ FLAGSTAFF	13	27	626.9	474.0	30062	150	27367	133	0.0	0.0	100.0
AZ GREEN VALLEY	46	47	68.9	1095.0	25976	628	23986	614	0.0	0.0	100.0
AZ KINGMAN	6	19	1000.0	585.0	32271	118	37735	114	0.0	0.0	81.9
AZ LAKE HAVASU CIT	34	35	50.0	817.0	13668	81	12442	74	0.0	0.0	100.0
AZ MESA	12	36	807.8	543.0	32735	2225	30962	2221	0.0	0.0	99.5
AZ NOGALES	11	25	625.4	507.0	26180	681	24519	682	0.0	0.0	98.7
AZ PHOENIX	3	24	1000.0	542.0	37475	2233	39934	2234	0.0	0.0	91.5
AZ PHOENIX	5	17	1000.0	539.0	38008	2233	39494	2234	0.0	0.0	94.0
AZ PHOENIX	8	29	698.6	536.0	32977	2225	31649	2223	0.0	0.0	99.3
AZ PHOENIX	10	23	626.1	558.0	33986	2225	31701	2216	0.0	0.0	99.7
AZ PHOENIX	15	14	50.0	521.0	21332	2209	19733	2207	0.0	0.0	100.0
AZ PHOENIX	21	20	50.0	489.0	20189	2209	18885	2200	0.0	0.0	100.0
AZ PHOENIX	33	34	76.9	521.0	18207	2205	17530	2195	0.7	0.7	100.0
AZ PHOENIX	45	26	61.2	545.0	23153	2219	20843	2202	0.0	0.0	100.0
AZ PHOENIX	61	49	58.8	541.0	18332	2205	17585	2192	0.0	0.0	100.0
AZ PRESCOTT	7	25	50.0	856.0	18534	170	16876	137	0.3	0.0	99.8
AZ SIERRA VISTA	58	44	50.0	81.0	4915	59	4711	59	0.0	0.0	100.0
AZ TOLLESON	51	52	195.1	533.0	24691	2219	23161	2208	0.0	0.0	100.0
AZ TUCSON	4	31	461.8	1100.0	39336	679	45568	806	0.0	0.0	81.6
AZ TUCSON	6	30	465.3	1106.0	39671	711	39559	741	0.0	0.0	89.6
AZ TUCSON	9	35	223.2	1134.0	33987	687	33516	702	0.0	0.0	96.9
AZ TUCSON	13	32	749.9	622.0	31439	759	26425	729	0.0	0.0	98.4
AZ TUCSON	18	19	98.8	600.0	20144	705	17894	699	1.5	0.1	100.0
AZ TUCSON	27	28	50.0	175.0	3440	628	3028	618	0.6	0.1	100.0
AZ TUCSON	40	41	50.0	619.0	15438	673	13975	672	0.0	0.0	100.0
AZ YUMA	11	41	921.1	493.0	34525	233	33349	232	0.0	0.0	99.9
AZ YUMA	13	16	487.9	475.0	28311	231	26438	229	0.0	0.0	100.0
CA ANAHEIM	56	32	71.9	728.0	20567	11980	19520	11398	0.6	0.3	99.9
CA ARCATA	23	22	50.0	510.0	12233	112	11151	99	0.1	0.0	100.0
CA BAKERSFIELD	17	25	272.9	427.0	17536	546	17028	507	0.0	0.0	99.9
CA BAKERSFIELD	23	10	4.4	1128.0	23080	689	20817	611	0.0	0.0	100.0
CA BAKERSFIELD	29	33	67.1	1137.0	15874	538	15051	472	0.0	0.0	100.0
CA BAKERSFIELD	45	55	235.3	404.0	16263	562	15916	517	0.0	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
CA BARSTOW	64	44	67.2	518.0	15278	630	14214	623	0.0	0.0	99.5
CA CALIPATRIA	54	50	177.3	507.0	21324	226	20704	226	0.0	0.0	100.0
CA CERES	23	15	50.0	47.0	1623	359	1623	359	3.7	2.3	100.0
CA CHICO	12	43	1000.0	396.0	28873	572	28649	562	0.5	0.6	99.3
CA CHICO	24	36	292.9	564.0	21964	368	21707	355	1.0	5.9	99.9
CA CLOVIS	43	44	192.4	671.0	25054	1162	24306	1150	6.6	1.3	100.0
CA CONCORD	42	63	58.4	856.0	26738	6615	25956	6208	1.2	3.1	100.0
CA CORONA	52	39	60.8	896.0	17009	12138	17469	12070	7.7	8.6	95.3
CA COTATI	22	23	50.0	620.0	10873	1197	8985	1054	0.4	0.2	100.0
CA EL CENTRO	7	22	585.0	389.0	22736	181	21793	181	0.2	0.0	99.9
CA EL CENTRO	9	48	955.2	488.0	26945	229	26621	229	0.0	0.0	99.5
CA EUREKA	3	16	1000.0	503.0	32082	134	35054	139	0.0	0.0	91.4
CA EUREKA	6	17	1000.0	530.0	39228	139	41884	143	0.0	0.0	93.5
CA EUREKA	13	11	13.6	515.0	30362	121	28646	120	0.0	0.0	100.0
CA EUREKA	29	28	50.0	334.0	6424	92	5889	88	0.1	0.0	100.0
CA FORT BRAGG	8	15	355.3	746.0	27463	114	26639	96	0.0	0.0	99.8
CA FRESNO	18	40	83.3	677.0	22892	1124	22598	1116	1.4	0.7	99.8
CA FRESNO	24	16	50.0	716.0	23191	1124	22377	1109	0.5	0.0	100.0
CA FRESNO	30	9	8.3	622.0	20995	1141	19672	1130	1.1	0.4	99.8
CA FRESNO	47	14	50.0	597.0	19556	1085	17869	1057	0.4	0.0	99.9
CA FRESNO	53	7	3.2	581.0	17231	1091	16231	1075	1.3	0.2	100.0
CA HANFORD	21	20	267.0	605.0	25551	1223	24941	1209	3.0	0.4	99.9
CA HUNTINGTON BEAC	50	48	167.2	330.0	10136	9299	9534	8947	0.8	0.1	100.0
CA LOS ANGELES	2	60	828.8	1107.0	39943	13460	48054	14289	0.4	0.0	81.1
CA LOS ANGELES	4	36	680.9	984.0	41063	13830	46739	14262	0.0	0.0	84.3
CA LOS ANGELES	5	68	1000.0	976.0	38228	13519	47304	14401	0.0	0.0	80.8
CA LOS ANGELES	7	8	10.7	978.0	34851	13722	34407	13555	0.1	0.0	95.5
CA LOS ANGELES	9	43	342.2	970.0	23622	12774	24577	12876	0.2	0.0	94.6
CA LOS ANGELES	11	65	659.2	896.0	32990	13278	34448	13536	0.0	0.0	94.1
CA LOS ANGELES	13	66	650.6	899.0	32263	13186	33784	13490	0.0	0.0	95.0
CA LOS ANGELES	22	42	165.4	889.0	16523	11629	17644	12142	0.1	0.2	92.1
CA LOS ANGELES	28	59	182.2	927.0	25452	12719	24863	12621	1.1	0.8	99.6
CA LOS ANGELES	34	35	70.3	896.0	22216	12586	21279	12427	0.5	1.0	99.7
CA LOS ANGELES	58	41	55.7	875.0	21665	12534	20290	12096	0.4	0.7	100.0
CA MERCED	51	38	129.4	680.0	21680	1288	20945	1275	0.0	0.0	99.9
CA MODESTO	19	18	238.2	573.0	26692	2695	26692	2748	4.2	1.4	98.3
CA MONTEREY	46	32	50.0	771.0	16201	718	15629	705	0.3	0.2	99.1
CA MONTEREY	67	31	50.0	701.0	14214	1413	12867	716	0.0	0.0	99.7
CA NOVATO	68	47	124.2	431.0	20706	4165	18713	3674	0.1	0.0	99.6
CA OAKLAND	2	56	1000.0	479.0	35218	5937	36057	5970	0.0	0.0	92.9
CA ONTARIO	46	47	69.9	927.0	17999	12158	17391	11983	0.2	0.5	100.0
CA OXNARD	63	24	50.0	549.0	12050	1792	10943	1280	0.2	0.6	99.6
CA PALM SPRINGS	36	46	50.0	207.0	5986	255	5890	259	1.2	1.4	99.4
CA PALM SPRINGS	42	52	64.4	1087.0	14117	859	14077	927	4.5	8.3	97.0
CA PARADISE	30	20	68.3	440.0	17736	370	17246	364	0.3	0.0	99.8
CA PORTERVILLE	61	48	74.5	811.0	21858	1330	21490	1278	0.1	0.0	100.0
CA RANCHO PALOS VE	44	51	224.9	451.0	13335	8016	16382	7109	0.0	0.0	79.1
CA REDDING	7	14	159.1	1103.0	35718	327	35198	321	0.0	0.0	99.4
CA REDDING	9	18	175.9	1097.0	35202	322	34666	319	0.0	0.0	99.2
CA RIVERSIDE	62	69	175.0	723.0	15815	11178	16882	11441	0.4	1.6	92.8
CA SACRAMENTO	3	35	1000.0	591.0	41135	4521	41289	4261	0.0	0.0	94.9
CA SACRAMENTO	6	53	1000.0	567.0	38167	4382	37776	4081	0.0	0.0	94.9
CA SACRAMENTO	10	61	1000.0	595.0	36503	4397	35298	4047	0.5	0.2	98.8
CA SACRAMENTO	29	48	258.8	321.0	12638	1565	13056	1575	6.0	1.8	96.7
CA SACRAMENTO	31	21	173.5	558.0	25574	3598	25170	3554	0.6	0.1	95.6
CA SACRAMENTO	40	55	264.1	597.0	25325	3652	24651	3387	1.0	0.5	99.9
CA SALINAS	8	43	429.3	896.0	28466	4733	26635	2944	0.0	0.0	92.0
CA SALINAS	35	13	3.2	735.0	17519	775	16367	760	0.6	0.0	99.6
CA SAN BERNARDINO	18	61	395.9	725.0	23804	11828	23623	11875	12.1	1.6	99.7
CA SAN BERNARDINO	24	26	50.0	509.0	14424	8756	12957	5696	2.2	8.2	99.9
CA SAN BERNARDINO	30	38	201.0	715.0	17385	11693	16905	11248	7.9	2.8	99.1
CA SAN DIEGO	8	55	1000.0	226.0	24042	2709	23545	2660	34.0	2.6	98.9
CA SAN DIEGO	10	25	774.5	229.0	20855	2694	20089	2655	0.0	0.0	99.9
CA SAN DIEGO	15	30	183.5	613.0	23197	2542	23823	2548	0.0	0.0	96.1
CA SAN DIEGO	39	40	89.3	577.0	19854	2463	20018	2314	9.6	0.0	95.7
CA SAN DIEGO	51	18	50.0	579.0	17565	2442	19500	2403	9.9	7.8	86.5
CA SAN DIEGO	69	19	60.2	594.0	20766	2505	19310	2405	10.9	0.2	100.0
CA SAN FRANCISCO	4	57	1000.0	512.0	36836	6014	36969	5930	0.0	0.0	93.5
CA SAN FRANCISCO	5	28	1000.0	506.0	38683	6303	37021	5968	0.0	0.0	96.0
CA SAN FRANCISCO	7	24	594.6	509.0	33240	5894	31509	5866	1.4	1.5	98.5
CA SAN FRANCISCO	9	34	736.7	509.0	33316	5918	29666	5424	0.1	0.0	99.8
CA SAN FRANCISCO	14	29	299.2	701.0	16907	5214	17117	5307	2.3	1.3	92.6
CA SAN FRANCISCO	20	19	141.4	472.0	18343	5359	17673	5268	1.3	1.1	97.7
CA SAN FRANCISCO	26	27	91.1	421.0	15750	5143	14492	4950	0.9	1.0	99.1
CA SAN FRANCISCO	32	33	50.0	491.0	15633	5283	13582	4849	8.8	1.6	100.0
CA SAN FRANCISCO	38	39	207.6	440.0	17045	5231	14928	4781	0.7	0.1	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC: Current service: Area (sq km)	Existing NTSC: Current service: People (thous)	Existing NTSC: New interference: Area (% NL area)	Existing NTSC: New interference: People (% NL pop)	DTV/NTSC area match (%)
CA SAN FRANCISCO	44	45	197.5	491.0	17142	5297	15234	4859	0.7	0.6	99.9
CA SAN JOSE	11	12	6.0	844.0	33141	5446	29472	4933	0.0	0.0	99.9
CA SAN JOSE	36	52	240.6	686.0	16477	5328	14445	5063	3.2	1.6	99.6
CA SAN JOSE	48	49	186.3	631.0	14443	4882	12986	4803	3.5	3.1	99.7
CA SAN JOSE	54	50	50.0	585.0	8185	4455	7636	4349	8.1	9.6	98.8
CA SAN JOSE	65	41	75.8	812.0	16853	4501	15633	4358	0.0	0.0	100.0
CA SAN LUIS OBISPO	6	15	1000.0	543.0	40993	400	41704	414	0.0	0.0	96.1
CA SAN LUIS OBISPO	33	34	50.0	440.0	6608	272	5661	245	0.0	0.0	100.0
CA SAN MATEO	60	59	102.7	362.0	11899	4800	11188	4617	0.5	0.9	99.9
CA SANGER	59	36	50.0	591.0	14931	751	14055	745	0.0	0.0	99.9
CA SANTA ANA	40	53	50.0	881.0	18821	12437	17952	12273	6.6	1.1	99.9
CA SANTA BARBARA	3	27	668.8	917.0	42132	1169	45646	1276	0.0	0.0	90.2
CA SANTA MARIA	12	19	180.2	591.0	26083	375	24814	368	0.5	0.1	99.9
CA SANTA ROSA	50	54	50.0	939.0	12263	462	10137	393	2.6	3.7	99.0
CA STOCKTON	13	25	662.2	594.0	37405	4558	35709	4593	2.2	0.8	98.5
CA STOCKTON	58	46	149.7	559.0	21931	3502	21483	3377	2.0	2.5	99.5
CA STOCKTON	64	62	60.7	874.0	27091	6636	25391	5855	0.3	0.0	99.9
CA TWENTYNINE PALM ...	31	23	50.0	90.0	2541	52	2341	50	0.0	0.0	100.0
CA VALLEJO	66	30	56.3	466.0	13913	5226	11634	3741	0.0	0.0	99.6
CA VENTURA	57	49	162.4	530.0	15369	3471	13570	1584	0.0	0.0	100.0
CA VISALIA	26	28	166.9	792.0	27229	1135	26475	1132	0.1	0.0	100.0
CA VISALIA	49	50	78.8	835.0	20194	1290	19894	1225	0.0	0.0	99.9
CA WATSONVILLE	25	58	50.0	675.0	11878	1064	11399	737	0.9	0.1	99.8
CO BOULDER	14	15	95.3	351.0	17680	2098	17309	2095	3.6	0.1	99.5
CO BROOMFIELD	12	36	1000.0	738.0	31161	2113	30560	2153	0.0	0.0	97.2
CO CASTLE ROCK	53	47	125.5	193.0	10901	1683	10375	1663	0.0	0.0	100.0
CO COLORADO SPRING	11	10	19.3	725.0	30343	1054	26513	618	1.1	0.0	100.0
CO COLORADO SPRING	13	24	439.4	652.0	29869	1296	24843	643	0.0	0.0	99.9
CO COLORADO SPRING	21	22	71.9	656.0	19079	560	18277	549	1.2	0.1	99.4
CO DENVER	2	34	1000.0	319.0	28784	2266	31110	2312	0.0	0.0	91.1
CO DENVER	4	35	1000.0	451.0	32597	2295	32149	2340	0.0	0.0	90.8
CO DENVER	6	18	1000.0	292.0	28500	2243	27181	2145	0.0	0.0	96.5
CO DENVER	7	17	1000.0	310.0	26360	2253	24881	2210	0.0	0.0	99.7
CO DENVER	9	16	1000.0	280.0	25804	2254	23506	2210	0.0	0.0	99.8
CO DENVER	20	19	237.2	383.0	19883	2110	18609	2041	0.7	0.2	99.6
CO DENVER	31	32	223.3	317.0	17115	2051	16663	2047	0.3	0.1	99.9
CO DENVER	41	40	71.6	344.0	12086	1889	11934	1873	0.3	0.1	99.9
CO DENVER	50	51	78.2	233.0	12006	1871	11694	1870	0.0	0.0	99.8
CO DENVER	59	44	141.2	356.0	17379	2055	16527	2045	0.0	0.0	100.0
CO DURANGO	6	17	50.0	110.0	8459	63	9280	62	0.0	0.0	90.5
CO FORT COLLINS	22	21	50.0	256.0	14118	447	13922	432	0.4	0.1	99.9
CO GLENWOOD SPRING	3	23	841.6	771.0	26318	77	31163	85	0.1	0.4	82.1
CO GRAND JUNCTION	4	15	68.5	422.0	12567	103	13812	106	0.0	0.0	87.6
CO GRAND JUNCTION	5	2	1.0	33.0	7059	92	6692	92	0.0	0.0	100.0
CO GRAND JUNCTION	8	7	9.3	829.0	32033	143	26297	113	0.3	0.0	100.0
CO GRAND JUNCTION	11	14	346.7	429.0	21158	112	19313	103	0.0	0.0	100.0
CO GRAND JUNCTION	18	16	50.0	883.0	13838	96	12748	95	0.1	0.0	100.0
CO LONGMONT	25	26	210.0	325.0	18032	2150	17766	2144	0.2	0.1	100.0
CO MONTROSE	10	13	3.2	33.0	4663	33	4430	33	0.0	0.0	100.0
CO PUEBLO	5	27	1000.0	396.0	31224	589	31495	580	0.5	0.0	93.6
CO PUEBLO	8	29	372.2	727.0	30440	1364	26336	621	0.0	0.0	99.6
CO STEAMBOAT SPRIN	24	10	3.2	157.0	1891	12	1499	11	0.0	0.0	100.0
CO STERLING	3	23	1000.0	232.0	26327	71	22797	62	0.0	0.0	100.0
CT BRIDGEPORT	43	42	50.0	156.0	9657	2661	9725	2690	3.1	4.2	97.5
CT BRIDGEPORT	49	52	50.0	222.0	9997	3173	9696	3157	6.6	10.6	97.4
CT HARTFORD	3	11	39.5	276.0	24733	3789	24528	3874	0.0	0.0	95.5
CT HARTFORD	18	46	210.1	299.0	18530	3283	17364	3156	6.2	6.3	97.2
CT HARTFORD	24	32	50.0	262.0	13189	2859	11674	2651	11.5	11.2	98.9
CT HARTFORD	61	5	1.0	515.0	23206	3738	23113	3795	8.1	10.9	87.3
CT NEW BRITAIN	30	35	128.2	451.0	23617	4011	22144	3766	17.7	13.3	98.9
CT NEW HAVEN	8	10	8.2	363.0	23358	5735	23110	4690	4.0	2.6	91.5
CT NEW HAVEN	59	6	1.0	314.0	17262	4343	18677	4424	2.5	1.0	88.1
CT NEW HAVEN	65	39	50.0	82.0	1425	546	1369	530	0.0	0.0	100.0
CT NEW LONDON	26	34	111.7	381.0	18113	2923	15223	1723	0.7	1.8	99.9
CT NORWICH	53	45	50.0	207.0	10135	1016	9558	838	3.2	4.6	98.6
CT WATERBURY	20	12	3.2	366.0	19515	4654	18653	4039	8.5	4.7	94.1
DC WASHINGTON	4	48	1000.0	237.0	27422	6562	24749	6454	7.0	3.3	98.9
DC WASHINGTON	5	6	6.6	235.0	22879	6343	26711	6533	0.0	0.0	82.9
DC WASHINGTON	7	39	1000.0	235.0	24391	6346	23215	6365	0.0	0.0	99.0
DC WASHINGTON	9	34	1000.0	235.0	24684	6438	22883	6299	0.0	0.0	100.0
DC WASHINGTON	20	35	221.7	235.0	17611	6043	17179	5746	0.2	0.0	97.0
DC WASHINGTON	26	27	64.3	233.0	15402	5868	15606	5637	14.5	4.4	96.9
DC WASHINGTON	32	33	186.0	213.0	14526	5769	14310	5777	10.2	2.4	97.7
DC WASHINGTON	50	51	62.2	247.0	15011	5859	14207	5376	0.1	0.0	99.8
DE SEAFORD	64	44	50.0	195.0	4202	154	4202	154	3.4	2.9	100.0
DE WILMINGTON	12	55	1000.0	294.0	23834	7726	20132	6742	0.0	0.0	99.7

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC: Current service: Area (sq km)	Existing NTSC: Current service: People (thous)	Existing NTSC: New interference: Area (% NL area)	Existing NTSC: New interference: People (% NL pop)	DTV/NTSC area match (%)
DE WILMINGTON	61	31	50.0	292.0	16707	5587	15401	5324	5.4	6.5	98.6
FL BOCA RATON	63	44	59.1	310.0	13892	3705	13892	3705	0.0	0.0	100.0
FL BRADENTON	66	42	50.0	465.0	18294	2380	18282	2379	0.0	0.0	100.0
FL CAPE CORAL	36	35	206.9	450.0	24085	879	23907	870	0.0	0.0	99.9
FL CLEARWATER	22	21	222.4	433.0	21082	2536	21082	2536	7.7	4.5	100.0
FL CLERMONT	18	17	230.3	458.0	28579	2143	28566	2101	0.0	0.0	99.4
FL COCOA	52	51	148.1	285.0	14222	1508	14142	1510	0.0	0.0	99.7
FL COCOA	68	30	50.0	287.0	13459	1043	13446	1039	0.0	0.0	100.0
FL DAYTONA BEACH	2	11	45.1	503.0	44808	2703	41617	2380	0.0	0.0	100.0
FL DAYTONA BEACH	26	49	139.5	304.0	16535	1271	13794	830	0.0	0.0	100.0
FL FORT LAUDERDALE	51	52	145.2	262.0	13418	3627	13422	3627	0.0	0.0	100.0
FL FORT MYERS	11	53	1000.0	451.0	36995	1146	34767	1033	7.6	5.4	100.0
FL FORT MYERS	20	15	206.2	451.0	24348	847	24348	847	0.8	0.0	100.0
FL FORT MYERS	30	31	50.0	293.0	16321	651	16188	651	6.8	4.6	100.0
FL FORT PIERCE	21	38	112.7	147.0	11558	446	11088	436	0.0	0.0	100.0
FL FORT PIERCE	34	50	288.7	454.0	24332	1376	23318	1068	0.0	0.0	100.0
FL FORT WALTON BEA	35	25	50.0	60.0	4682	155	4678	155	4.7	1.0	100.0
FL FORT WALTON BEA	53	40	53.8	219.0	12570	488	12574	488	0.0	0.0	100.0
FL FORT WALTON BEA	58	49	50.0	59.0	1170	106	1170	106	0.0	0.0	100.0
FL GAINESVILLE	5	36	1000.0	262.0	31857	1207	31333	1154	0.0	0.0	100.0
FL GAINESVILLE	20	16	87.1	287.0	16217	546	16213	547	0.3	0.1	100.0
FL HIGH SPRINGS	53	28	99.4	278.0	13464	443	13293	416	0.0	0.0	99.9
FL HOLLYWOOD	69	47	93.2	264.0	13802	3583	13806	3583	0.0	0.0	100.0
FL JACKSONVILLE	4	42	1000.0	293.0	33348	1219	31979	1179	0.0	0.0	100.0
FL JACKSONVILLE	7	38	959.1	277.0	27783	1087	26499	1082	4.0	1.9	100.0
FL JACKSONVILLE	12	13	13.9	296.0	28267	1092	27930	1091	3.8	2.1	99.9
FL JACKSONVILLE	17	34	287.8	304.0	21158	1047	20982	1045	6.4	1.9	100.0
FL JACKSONVILLE	30	32	92.4	302.0	16097	1004	16097	1004	0.0	0.0	100.0
FL JACKSONVILLE	47	19	98.4	299.0	18851	1019	18851	1019	0.0	0.1	100.0
FL JACKSONVILLE	59	44	61.5	289.0	14310	967	14310	967	0.0	0.0	100.0
FL KEY WEST	8	12	3.2	33.0	1460	34	1460	34	0.0	0.0	100.0
FL KEY WEST	22	3	1.0	62.0	1741	33	1741	33	0.0	0.0	100.0
FL LAKE WORTH	67	36	50.0	60.0	3822	717	3822	717	0.0	0.0	100.0
FL LAKELAND	32	19	139.5	331.0	17453	2428	17465	2429	0.0	0.0	99.9
FL LEESBURG	45	46	127.3	138.0	11551	1425	10900	1419	0.0	0.0	100.0
FL LEESBURG	55	40	142.7	515.0	24293	2033	22638	1965	0.0	0.0	100.0
FL LIVE OAK	57	48	50.0	137.0	8563	161	8563	161	0.0	0.0	100.0
FL MELBOURNE	43	20	86.5	299.0	14936	1540	14868	1537	0.0	0.0	100.0
FL MELBOURNE	56	48	163.5	472.0	27669	2155	24824	1902	1.2	1.9	100.0
FL MIAMI	2	19	1000.0	283.0	32748	3999	31340	3901	0.0	0.0	100.0
FL MIAMI	4	22	1000.0	304.0	33960	4013	33960	4013	0.0	0.0	100.0
FL MIAMI	6	30	1000.0	549.0	47185	3619	43965	2793	0.0	0.0	98.9
FL MIAMI	7	8	13.7	293.0	28109	3947	28109	3947	0.1	0.0	100.0
FL MIAMI	10	9	14.1	305.0	28742	3954	28730	3954	0.0	0.0	100.0
FL MIAMI	17	18	103.4	309.0	16727	3755	16727	3755	0.0	0.0	100.0
FL MIAMI	23	24	184.4	297.0	15913	3794	15913	3794	0.0	0.0	100.0
FL MIAMI	33	32	192.7	280.0	17636	3748	17259	3598	0.0	0.0	100.0
FL MIAMI	35	21	56.6	102.0	7567	2385	7442	2300	0.0	0.0	99.8
FL MIAMI	39	20	120.7	276.0	14974	3725	14982	3725	0.0	0.0	99.9
FL MIAMI	45	46	70.0	308.0	12757	3710	12757	3710	0.0	0.0	100.0
FL NAPLES	26	43	281.9	368.0	19538	625	19530	625	0.0	0.0	100.0
FL NAPLES	46	45	90.3	309.0	14551	548	14551	548	0.0	0.0	100.0
FL NEW SMYRNA BEAC	15	33	50.0	176.0	10158	659	10158	659	0.0	0.0	100.0
FL OCALA	51	31	50.0	280.0	14383	592	14383	592	0.7	0.4	100.0
FL ORANGE PARK	25	10	3.2	151.0	9406	960	8960	953	0.0	0.0	100.0
FL ORLANDO	6	58	1000.0	445.0	41797	2575	36463	2429	0.0	0.0	100.0
FL ORLANDO	9	39	803.9	479.0	38669	2508	35179	2183	0.2	0.0	100.0
FL ORLANDO	24	23	50.0	381.0	20675	1954	20591	1953	8.9	5.1	100.0
FL ORLANDO	27	14	164.0	550.0	35524	3666	29084	3043	0.0	0.0	100.0
FL ORLANDO	35	22	64.8	451.0	20965	1941	21428	1953	0.0	0.0	97.8
FL ORLANDO	65	41	117.8	465.0	21811	2067	21799	2061	0.0	0.0	100.0
FL PALM BEACH	61	49	96.7	125.0	12726	1445	12750	1445	0.0	0.0	99.8
FL PANAMA CITY	7	41	1000.0	265.0	27049	393	26252	371	0.0	0.0	100.0
FL PANAMA CITY	13	19	514.6	437.0	35830	575	33760	511	0.0	0.0	99.9
FL PANAMA CITY	28	29	50.0	228.0	12704	211	12644	210	0.0	0.0	100.0
FL PANAMA CITY	56	38	50.0	155.0	10341	201	10321	198	0.1	0.0	100.0
FL PANAMA CITY BEA	46	47	50.0	59.0	1418	86	1418	86	0.3	0.0	100.0
FL PENSACOLA	3	17	1000.0	372.0	36766	1108	31164	943	0.0	0.0	100.0
FL PENSACOLA	23	31	87.9	149.0	11595	455	11282	465	0.7	3.6	99.8
FL PENSACOLA	33	34	127.1	415.0	18801	868	18561	866	0.0	0.0	100.0
FL PENSACOLA	44	45	117.1	454.0	19044	896	18984	896	0.0	0.0	100.0
FL SARASOTA	40	52	85.1	235.0	13428	1999	12951	1857	0.2	0.2	100.0
FL ST. PETERSBURG	10	24	581.5	458.0	31265	2787	30743	2795	0.0	0.0	99.0
FL ST. PETERSBURG	38	57	50.4	438.0	21342	2918	21394	2918	2.8	0.8	99.7
FL ST. PETERSBURG	44	59	261.0	454.0	28344	3124	26940	3082	0.0	0.0	100.0
FL TALLAHASSEE	11	32	1000.0	232.0	25793	430	23062	384	0.0	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
FL TALLAHASSEE	27	22	87.5	518.0	29119	609	28079	595	0.4	0.1	100.0
FL TALLAHASSEE	40	2	1.0	268.0	13696	361	13704	362	0.3	0.1	99.8
FL TAMPA	3	54	1000.0	473.0	43415	3702	39567	3244	0.0	0.0	99.9
FL TAMPA	8	7	18.2	471.0	38127	3509	35000	3222	1.5	0.2	100.0
FL TAMPA	13	12	17.0	433.0	35351	3384	35523	3387	7.3	2.4	99.3
FL TAMPA	16	34	70.2	308.0	16918	2771	16934	2772	1.3	0.4	99.9
FL TAMPA	28	29	96.7	471.0	27069	3079	22441	2914	0.0	0.0	100.0
FL TAMPA	50	47	142.9	445.0	26105	3052	23509	2957	1.0	0.3	100.0
FL TEQUESTA	25	16	183.0	453.0	22790	1447	22565	1268	0.0	0.0	100.0
FL TICE	49	33	127.9	312.0	15015	716	14724	714	0.0	0.0	100.0
FL VENICE	62	25	53.2	167.0	10519	666	10354	662	0.0	0.0	100.0
FL WEST PALM BEACH	5	55	1000.0	302.0	33787	4048	30886	2486	0.0	0.0	100.0
FL WEST PALM BEACH	12	13	14.1	299.0	28676	3707	27252	3701	1.2	0.6	100.0
FL WEST PALM BEACH	29	28	216.1	457.0	24721	3869	24681	3850	1.3	7.3	100.0
FL WEST PALM BEACH	42	27	50.0	439.0	19165	2452	19161	2452	0.0	0.0	100.0
GA ALBANY	10	17	585.0	293.0	28231	594	25588	544	1.2	0.4	100.0
GA ALBANY	31	30	50.0	302.0	17238	406	17242	406	0.7	0.5	100.0
GA ATHENS	8	22	574.5	326.0	29168	3378	25830	3264	0.0	0.0	100.0
GA ATHENS	34	48	265.6	440.0	22432	3064	21343	2821	1.2	0.3	100.0
GA ATLANTA	2	39	1000.0	316.0	32585	3536	28857	3391	0.0	0.0	99.6
GA ATLANTA	5	27	1000.0	326.0	32992	3540	31015	3442	0.0	0.0	99.6
GA ATLANTA	11	10	15.0	320.0	27531	3367	25847	3314	0.0	0.0	99.2
GA ATLANTA	17	20	79.0	332.0	20598	3130	18911	3044	3.1	0.4	98.1
GA ATLANTA	30	21	50.0	334.0	17251	2975	16861	2956	2.2	1.0	98.9
GA ATLANTA	36	25	64.2	332.0	19731	3109	18960	3076	5.3	0.7	99.5
GA ATLANTA	46	19	50.0	332.0	18868	3094	18442	3077	1.0	0.1	99.9
GA ATLANTA	57	38	50.0	319.0	9589	2500	9890	2606	4.0	1.2	95.2
GA ATLANTA	69	43	50.0	299.0	16180	2986	15790	2961	0.0	0.0	99.9
GA AUGUSTA	6	42	1000.0	418.0	38836	1209	33843	885	0.0	0.0	99.9
GA AUGUSTA	12	31	686.2	485.0	38280	1223	32211	921	0.0	0.0	100.0
GA AUGUSTA	26	30	57.9	485.0	24772	672	23574	625	0.1	0.0	99.8
GA AUGUSTA	54	51	62.3	385.0	17004	538	16935	537	0.3	0.1	100.0
GA BAINBRIDGE	49	50	184.5	410.0	22715	493	22683	493	0.1	0.0	100.0
GA BAXLEY	34	35	50.0	147.0	6497	93	6465	93	0.0	0.0	100.0
GA BRUNSWICK	21	24	251.1	600.0	31797	994	31608	951	0.1	0.3	100.0
GA CHATSWORTH	18	33	317.3	564.0	20031	1538	17109	1056	1.3	2.2	99.7
GA COCHRAN	29	7	4.6	350.0	21221	552	19855	520	0.0	0.0	99.9
GA COLUMBUS	3	15	1000.0	543.0	47339	1296	35466	889	0.0	0.0	100.0
GA COLUMBUS	9	47	943.1	503.0	39199	983	31128	723	0.5	0.1	99.9
GA COLUMBUS	28	23	183.8	461.0	23027	870	22061	833	4.3	4.2	100.0
GA COLUMBUS	38	35	50.0	399.0	20011	587	19837	586	3.8	3.6	99.2
GA COLUMBUS	54	49	50.0	345.0	15469	493	14812	486	0.0	0.0	100.0
GA CORDELE	55	51	50.0	125.0	5069	62	5065	62	0.0	0.0	100.0
GA DALTON	23	16	50.0	447.0	12179	706	10601	655	2.1	1.6	100.0
GA DAWSON	25	26	50.0	329.0	14790	306	14699	304	0.9	2.1	99.9
GA MACON	13	45	1000.0	238.0	25673	676	20881	590	0.0	0.0	100.0
GA MACON	24	16	50.0	244.0	14713	475	14304	467	0.7	1.0	100.0
GA MACON	41	40	50.0	237.0	12918	429	12850	429	1.2	0.3	100.0
GA MACON	64	50	50.0	185.0	2523	254	2466	253	0.0	0.0	100.0
GA MONROE	63	44	114.8	363.0	18050	3063	17752	3051	0.0	0.0	99.9
GA PELHAM	14	20	261.6	378.0	22976	647	22614	638	0.1	0.0	99.9
GA PERRY	58	32	50.0	247.0	13051	432	12959	431	0.0	0.0	100.0
GA ROME	14	51	390.9	616.0	28049	3406	26996	3239	1.1	1.0	99.7
GA SAVANNAH	3	39	1000.0	451.0	42038	739	34687	654	0.0	0.0	100.0
GA SAVANNAH	9	46	917.3	320.0	29353	642	25471	597	0.0	0.0	100.0
GA SAVANNAH	11	15	466.7	445.0	36297	697	34178	671	0.7	0.8	99.9
GA SAVANNAH	22	23	163.0	436.0	25156	549	24027	539	0.2	0.1	100.0
GA THOMASVILLE	6	52	1000.0	619.0	52080	885	45892	839	0.0	0.0	100.0
GA TOCCOA	32	24	50.0	253.0	12181	462	11262	432	1.0	1.3	100.0
GA VALDOSTA	44	43	50.0	277.0	11324	233	11324	233	0.0	0.0	100.0
GA WAYCROSS	8	18	509.2	314.0	29201	386	25190	342	0.0	0.0	100.0
GA WRENS	20	36	312.0	452.0	24753	616	24593	614	4.8	3.3	98.3
HI HILO	2	22	50.1	33.0	6524	67	2155	58	0.0	0.0	100.0
HI HILO	4	19	1000.0	366.0	29712	119	30256	110	0.0	0.0	90.6
HI HILO	9	8	3.2	33.0	6793	69	2391	58	0.0	0.0	100.0
HI HILO	11	21	50.1	33.0	6524	67	4051	65	0.0	0.0	100.0
HI HILO	13	18	50.1	33.0	6523	67	4051	65	0.0	0.0	100.0
HI HILO	14	23	50.1	33.0	6524	67	751	46	0.0	0.0	100.0
HI HILO	32	31	50.1	366.0	20338	83	17557	80	0.6	0.0	100.0
HI HILO	38	39	50.1	366.0	20338	83	17557	80	0.0	0.0	100.0
HI HONOLULU	2	22	1000.0	33.0	9594	797	11517	836	0.0	0.0	83.3
HI HONOLULU	4	40	1000.0	33.0	10686	835	11185	836	0.0	0.0	93.8
HI HONOLULU	5	23	1000.0	629.0	47397	842	52476	842	0.0	0.0	90.3
HI HONOLULU	9	8	7.2	33.0	8305	836	8484	836	0.0	0.0	97.9
HI HONOLULU	11	18	120.2	33.0	7255	799	7519	836	0.0	0.0	95.4
HI HONOLULU	13	35	549.5	33.0	9761	836	9683	836	0.0	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
HI HONOLULU	14	31	50.1	33.0	6289	802	1898	721	0.0	0.0	100.0
HI HONOLULU	20	19	50.1	622.0	28646	836	20876	836	2.0	6.2	100.0
HI HONOLULU	26	27	50.1	580.0	21625	836	17512	836	0.4	5.1	96.9
HI HONOLULU	32	33	50.1	33.0	5603	826	2501	754	2.6	1.0	100.0
HI HONOLULU	38	39	50.1	580.0	27550	832	17796	836	0.4	6.7	100.0
HI HONOLULU	44	43	50.1	580.0	27550	836	18040	836	0.0	1.3	100.0
HI KAILUA KONA	6	25	812.8	887.0	53971	133	54363	145	0.0	0.0	98.9
HI KANEOHE	66	41	50.1	632.0	28895	842	14374	837	0.0	0.0	100.0
HI LIHUE	8	12	3.3	305.0	22274	51	22184	51	4.9	0.0	100.0
HI LIHUE	21	7	3.2	305.0	24677	51	17541	51	0.0	0.0	100.0
HI LIHUE	27	28	50.1	366.0	20338	51	17557	51	27.3	0.0	100.0
HI LIHUE	67	45	50.1	366.0	20338	51	17557	51	0.0	0.0	100.0
HI WAILUKU	3	24	72.4	1814.0	53585	120	52313	138	0.0	0.0	97.8
HI WAILUKU	7	36	50.1	1811.0	51943	139	40173	121	0.0	0.0	100.0
HI WAILUKU	10	30	50.1	1811.0	51943	139	40768	121	0.0	0.0	100.0
HI WAILUKU	12	29	50.1	1763.0	51106	138	45250	128	0.0	0.0	100.0
HI WAILUKU	15	16	50.1	1723.0	50272	138	42954	123	0.0	0.0	100.0
HI WAILUKU	21	20	50.1	33.0	6373	90	2364	85	6.3	6.0	100.0
HI WAILUKU	27	28	50.1	366.0	20337	100	17557	100	17.2	5.2	100.0
HI WAILUKU	33	34	50.1	366.0	20338	100	17557	100	6.4	1.2	100.0
IA AMES	5	59	1000.0	564.0	48410	984	40402	884	0.0	0.0	100.0
IA BURLINGTON	26	41	50.0	96.0	3829	91	3821	91	1.3	0.3	100.0
IA CEDAR RAPIDS	2	51	1000.0	442.0	40311	867	34970	779	0.0	0.0	99.8
IA CEDAR RAPIDS	9	52	1000.0	607.0	44375	949	34936	774	0.0	0.0	100.0
IA CEDAR RAPIDS	28	27	216.3	452.0	24376	650	24312	641	0.2	0.0	99.8
IA CEDAR RAPIDS	48	47	79.8	323.0	15896	491	15819	490	0.9	3.4	100.0
IA COUNCIL BLUFFS	32	33	50.0	98.0	6348	642	5791	631	1.2	0.4	100.0
IA DAVENPORT	6	56	1000.0	408.0	38395	1178	32104	941	0.0	0.0	99.8
IA DAVENPORT	18	49	200.7	302.0	17590	629	17170	627	0.1	0.0	100.0
IA DAVENPORT	36	34	50.0	65.0	734	259	734	259	0.5	0.0	100.0
IA DES MOINES	8	31	762.1	591.0	44163	915	34792	837	0.0	0.0	100.0
IA DES MOINES	11	50	1000.0	600.0	44693	919	40413	889	0.0	0.0	100.0
IA DES MOINES	13	19	585.7	600.0	44809	919	37303	855	0.0	0.0	100.0
IA DES MOINES	17	16	121.3	463.0	23451	720	23117	717	0.2	0.0	100.0
IA DES MOINES	63	26	55.6	550.0	20173	674	20089	673	0.0	0.0	100.0
IA DUBUQUE	40	43	50.0	256.0	12367	221	12033	218	2.2	1.1	100.0
IA FORT DODGE	21	25	50.0	355.0	20644	211	20632	211	0.2	0.1	100.0
IA IOWA CITY	12	45	882.8	439.0	35423	1080	30996	929	0.0	0.0	100.0
IA IOWA CITY	20	25	50.0	123.0	11595	390	11165	371	1.5	0.7	100.0
IA MASON CITY	3	42	1000.0	472.0	42547	741	32414	513	0.0	0.0	100.0
IA MASON CITY	24	18	50.0	436.0	19851	279	19674	275	0.6	0.2	100.0
IA OTTUMWA	15	14	66.2	363.0	20006	338	19746	333	1.4	0.6	100.0
IA RED OAK	36	35	60.4	475.0	20200	745	19928	745	1.3	2.6	100.0
IA SIOUX CITY	4	41	1000.0	585.0	49813	657	38669	505	0.0	0.0	100.0
IA SIOUX CITY	9	30	733.8	616.0	45116	596	38211	463	0.0	0.0	100.0
IA SIOUX CITY	14	39	50.0	351.0	19097	257	19017	256	2.6	1.4	100.0
IA SIOUX CITY	27	28	154.8	326.0	19601	263	19331	262	0.3	0.6	100.0
IA SIOUX CITY	44	49	216.7	610.0	29824	360	29043	352	0.1	0.0	100.0
IA WATERLOO	7	55	1000.0	604.0	44020	940	35918	780	0.0	0.0	100.0
IA WATERLOO	32	35	227.4	579.0	29126	740	28446	698	1.8	2.2	100.0
ID BOISE	2	25	876.7	777.0	45308	394	50231	396	0.0	0.0	90.2
ID BOISE	4	21	693.1	754.0	44517	394	48288	395	0.6	0.1	92.1
ID BOISE	7	26	390.4	808.0	38673	391	38238	390	0.0	0.0	99.4
ID CALDWELL	9	10	13.4	805.0	27177	386	25527	385	0.3	0.0	100.0
ID COEUR D'ALENE	26	56	50.0	465.0	5486	235	4501	184	0.0	0.0	100.0
ID FILER	19	18	50.0	161.0	6675	83	6659	83	0.0	0.0	100.0
ID IDAHO FALLS	3	36	1000.0	488.0	37473	233	40914	237	0.0	0.0	91.3
ID IDAHO FALLS	8	9	20.9	463.0	35483	233	33586	231	0.0	0.0	100.0
ID LEWISTON	3	32	1000.0	384.0	25152	126	28025	141	1.2	0.1	84.2
ID MOSCOW	12	33	739.7	346.0	26753	131	25838	151	0.0	0.0	99.2
ID NAMPA	6	22	752.3	811.0	45250	394	47567	393	0.0	0.0	93.5
ID NAMPA	12	27	358.1	829.0	38550	391	37100	390	0.0	0.0	99.9
ID POCATELLO	6	23	1000.0	466.0	33329	267	34995	265	0.0	0.0	90.4
ID POCATELLO	10	17	181.5	465.0	29737	229	28205	228	0.0	0.0	99.7
ID TWIN FALLS	11	16	554.0	323.0	27981	131	26495	129	0.0	0.0	100.0
ID TWIN FALLS	13	24	50.0	161.0	11305	101	11221	101	0.0	0.0	100.0
ID TWIN FALLS	35	34	50.0	164.0	3197	69	3181	69	0.0	0.0	100.0
IL AURORA	60	59	179.7	494.0	24974	8281	24914	8278	0.1	0.0	100.0
IL BLOOMINGTON	43	28	50.0	293.0	14984	594	14689	563	1.0	0.3	100.0
IL CARBONDALE	8	40	1000.0	268.0	26642	773	21292	537	0.0	0.0	100.0
IL CHAMPAIGN	3	48	1000.0	287.0	32555	897	22935	724	6.9	2.5	100.0
IL CHAMPAIGN	15	41	50.0	396.0	18194	457	17815	451	0.1	0.0	100.0
IL CHARLESTON	51	50	50.0	70.0	2801	71	2801	71	0.0	0.0	100.0
IL CHICAGO	2	3	2.5	418.0	27416	8386	22397	8193	9.8	1.1	96.5
IL CHICAGO	5	29	191.5	494.0	31587	8551	27979	8322	6.6	0.8	99.8
IL CHICAGO	7	52	147.0	515.0	29071	8459	27413	8361	5.0	0.4	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC: Current service: Area (sq km)	Existing NTSC: Current service: People (thous)	Existing NTSC: New interference: Area (% NL area)	Existing NTSC: New interference: People (% NL pop)	DTV/NTSC area match (%)
IL CHICAGO	9	19	156.8	415.0	27657	8412	26313	8333	4.9	0.7	99.9
IL CHICAGO	11	47	150.2	497.0	28461	8432	25860	8218	6.8	0.5	99.9
IL CHICAGO	20	21	78.2	378.0	19475	8030	16941	7946	1.9	0.4	99.2
IL CHICAGO	26	27	67.5	472.0	22649	8201	22504	8183	2.0	0.4	99.3
IL CHICAGO	32	31	208.7	430.0	24471	8353	23929	8322	3.7	0.7	100.0
IL CHICAGO	38	43	206.1	381.0	21854	8105	21794	8099	4.0	0.7	99.7
IL CHICAGO	44	45	160.7	433.0	22405	8196	22361	8189	3.2	0.6	99.9
IL DECATUR	17	18	231.3	393.0	23377	845	21829	813	1.4	0.7	99.5
IL DECATUR	23	22	55.7	314.0	14066	648	13731	640	0.0	0.0	100.0
IL EAST ST. LOUIS	46	47	178.6	345.0	19179	2564	19026	2562	0.1	0.0	100.0
IL FREEPORT	23	41	50.0	219.0	12414	710	12124	704	10.9	5.9	100.0
IL HARRISBURG	3	34	1000.0	302.0	34703	764	24621	570	0.0	0.0	100.0
IL JACKSONVILLE	14	15	50.0	94.0	3790	58	3778	58	5.7	5.3	100.0
IL JOLIET	66	53	128.7	393.0	17795	8011	17763	8010	0.0	0.0	100.0
IL LASALLE	35	10	4.0	418.0	18938	1275	17920	772	1.9	7.6	98.7
IL MACOMB	22	21	50.0	149.0	4469	57	4409	56	1.5	1.7	100.0
IL MARION	27	17	58.9	233.0	13773	367	13704	363	2.7	1.0	99.9
IL MOLINE	8	38	800.7	308.0	28568	966	24341	826	0.0	0.0	100.0
IL MOLINE	24	23	50.0	276.0	14161	557	14009	556	0.0	0.0	100.0
IL MOUNT VERNON	13	21	566.9	302.0	28264	707	20594	430	0.0	0.0	100.0
IL OLNEY	16	19	50.0	283.0	16305	258	16405	258	0.2	1.3	98.9
IL PEORIA	19	40	86.2	194.0	14041	570	12439	537	1.8	0.5	100.0
IL PEORIA	25	57	115.0	207.0	15243	574	14416	567	0.4	0.1	100.0
IL PEORIA	31	30	50.0	195.0	12261	549	11981	545	0.4	0.0	100.0
IL PEORIA	47	46	50.0	216.0	12924	553	12880	553	2.0	0.3	100.0
IL PEORIA	59	39	50.0	178.0	6421	409	6393	409	0.4	0.5	100.0
IL QUINCY	10	54	1000.0	238.0	26233	313	23635	294	0.0	0.0	100.0
IL QUINCY	16	32	50.0	302.0	15205	198	15084	197	0.0	0.0	100.0
IL QUINCY	27	34	50.0	173.0	4121	103	4109	102	4.1	1.1	100.0
IL ROCK ISLAND	4	58	1000.0	408.0	38568	1191	31886	1005	0.0	0.0	100.0
IL ROCKFORD	13	54	1000.0	216.0	24307	1515	18743	913	0.0	0.0	100.0
IL ROCKFORD	17	16	187.6	203.0	15256	886	13542	775	1.5	1.0	100.0
IL ROCKFORD	39	42	50.0	176.0	11496	691	11331	686	1.1	1.0	100.0
IL SPRINGFIELD	20	42	72.0	436.0	23640	680	21749	607	0.6	0.1	100.0
IL SPRINGFIELD	49	53	50.0	189.0	5296	228	5296	228	0.0	0.0	100.0
IL SPRINGFIELD	55	44	50.0	439.0	21759	581	21659	581	0.0	0.0	100.0
IL URBANA	12	33	745.0	302.0	28513	970	22557	808	0.0	0.0	100.0
IL URBANA	27	26	84.3	139.0	11136	335	11296	336	3.6	1.0	98.6
IN ANGOLA	63	12	3.2	144.0	10305	560	10281	559	0.0	0.0	100.0
IN BLOOMINGTON	4	53	1000.0	357.0	31864	2087	24868	1805	0.3	0.1	100.0
IN BLOOMINGTON	30	14	50.0	216.0	12369	505	12192	503	0.4	0.4	100.0
IN BLOOMINGTON	42	56	225.9	317.0	15064	1560	14261	1516	0.3	0.3	100.0
IN BLOOMINGTON	63	27	50.0	328.0	16467	1562	16250	1555	0.0	0.0	99.9
IN ELKHART	28	58	343.4	335.0	21312	1335	20784	1220	8.6	10.1	100.0
IN EVANSVILLE	7	28	666.3	305.0	28649	796	26079	763	0.0	0.0	100.0
IN EVANSVILLE	9	54	1000.0	177.0	22537	718	17469	617	0.6	0.2	100.0
IN EVANSVILLE	14	58	176.9	311.0	17055	577	17035	577	1.6	0.4	99.9
IN EVANSVILLE	25	59	54.1	314.0	17179	589	17090	588	3.4	2.1	100.0
IN EVANSVILLE	44	45	50.0	296.0	15321	562	15301	562	0.1	0.0	100.0
IN FORT WAYNE	15	4	1.0	253.0	10500	585	10038	557	0.0	0.0	100.0
IN FORT WAYNE	21	24	50.0	226.0	12257	651	11554	603	1.4	0.7	99.3
IN FORT WAYNE	33	19	50.0	235.0	11925	634	11732	608	0.1	0.1	99.3
IN FORT WAYNE	39	40	50.0	223.0	13204	678	13477	689	2.7	1.5	98.0
IN FORT WAYNE	55	36	50.0	238.0	11227	620	11227	620	0.0	0.0	100.0
IN GARY	50	51	186.5	494.0	25853	8333	25387	8307	3.0	0.6	100.0
IN GARY	56	17	50.0	306.0	15218	4367	15198	4390	1.4	1.9	99.9
IN HAMMOND	62	36	72.5	146.0	11379	6952	11286	6855	0.0	0.0	99.9
IN INDIANAPOLIS	6	25	1000.0	302.0	32600	2394	27352	2226	0.0	0.0	99.9
IN INDIANAPOLIS	8	9	14.7	305.0	26053	2219	24755	2134	1.3	0.7	95.9
IN INDIANAPOLIS	13	46	1000.0	299.0	27698	2284	22983	2053	0.3	0.0	99.8
IN INDIANAPOLIS	20	21	50.0	259.0	15709	1647	15114	1632	0.0	0.0	100.0
IN INDIANAPOLIS	40	16	50.0	302.0	17145	1692	17045	1685	2.1	0.8	98.9
IN INDIANAPOLIS	59	45	109.6	304.0	19052	1814	18429	1759	0.1	0.2	99.5
IN INDIANAPOLIS	69	44	50.0	167.0	2526	1016	2526	1016	0.0	0.0	100.0
IN KOKOMO	29	54	133.9	236.0	13690	1183	13694	1187	0.9	3.5	100.0
IN LAFAYETTE	18	11	3.2	238.0	12626	509	12438	485	3.5	0.8	99.9
IN MARION	23	32	249.7	295.0	19322	1853	19056	1848	0.4	0.9	98.5
IN MUNCIE	49	52	50.0	155.0	9623	537	9550	532	2.3	1.5	100.0
IN RICHMOND	43	30	50.0	302.0	14667	2633	14735	2655	4.2	5.1	97.5
IN SALEM	58	57	50.0	346.0	15157	1221	14710	1209	1.6	0.3	100.0
IN SOUTH BEND	16	42	374.1	326.0	25475	1460	23194	1284	2.9	6.9	100.0
IN SOUTH BEND	22	30	232.0	325.0	24559	1418	22931	1365	3.5	7.7	100.0
IN SOUTH BEND	34	35	50.0	246.0	13991	944	14096	961	7.4	6.2	97.2
IN SOUTH BEND	46	48	50.0	305.0	15197	988	14975	960	4.9	3.0	100.0
IN TERRE HAUTE	2	36	1000.0	290.0	32408	908	22591	576	0.0	0.0	100.0
IN TERRE HAUTE	10	24	819.3	293.0	27392	725	25223	675	2.0	4.8	99.9

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
IN TERRE HAUTE	38	39	54.4	299.0	14240	407	14127	389	0.5	0.1	100.0
IN VINCENNES	22	52	57.8	174.0	11041	250	11009	249	1.2	1.6	100.0
KS COLBY	4	15	1000.0	229.0	29090	51	23001	38	0.0	0.0	100.0
KS ENSIGN	6	5	6.5	219.0	28688	122	27103	117	0.0	0.0	100.0
KS FORT SCOTT	20	40	313.0	233.0	19361	329	19106	325	0.1	0.0	100.0
KS GARDEN CITY	11	17	594.8	244.0	23621	118	22492	114	0.0	0.0	100.0
KS GARDEN CITY	13	18	645.1	265.0	25021	114	23749	114	0.0	0.0	100.0
KS GOODLAND	10	14	684.0	299.0	27788	43	26772	41	0.9	1.8	100.0
KS GREAT BEND	2	22	1000.0	296.0	32805	206	29002	175	0.0	0.0	100.0
KS HAYS	7	20	1000.0	216.0	24855	98	23445	95	0.0	0.0	100.0
KS HAYS	9	16	474.4	332.0	29984	153	24912	114	0.0	0.0	100.0
KS HUTCHINSON	8	29	1000.0	244.0	24057	670	18724	566	0.0	0.0	100.0
KS HUTCHINSON	12	19	521.0	463.0	37229	756	32857	724	0.3	0.0	100.0
KS HUTCHINSON	36	35	112.3	733.0	16065	605	16065	605	0.0	0.0	100.0
KS LAKIN	3	23	1000.0	171.0	25662	91	21268	88	0.0	0.0	100.0
KS LAWRENCE	38	39	171.1	330.0	16725	1753	16553	1731	0.3	0.1	99.1
KS PITTSBURG	7	30	639.3	332.0	29889	494	28150	475	0.0	0.0	100.0
KS SALINA	18	17	50.0	317.0	12053	156	11982	156	1.5	5.3	100.0
KS TOPEKA	11	23	780.2	305.0	28295	937	23472	909	0.0	0.0	99.6
KS TOPEKA	13	44	873.4	421.0	34281	635	28513	553	0.0	0.0	100.0
KS TOPEKA	27	26	50.0	320.0	16931	404	16380	388	0.0	0.0	100.0
KS TOPEKA	49	48	115.6	451.0	19842	479	19151	444	0.0	0.0	100.0
KS WICHITA	3	45	1000.0	305.0	32918	684	27039	660	0.0	0.0	99.9
KS WICHITA	10	21	598.9	314.0	28792	675	26335	664	0.0	0.0	100.0
KS WICHITA	24	25	128.3	328.0	17902	618	17898	618	2.0	0.1	100.0
KS WICHITA	33	34	50.0	133.0	2841	421	2841	421	0.0	0.0	100.0
KY ASHLAND	25	26	50.0	152.0	7417	389	6801	371	4.7	9.5	99.9
KY ASHLAND	61	45	50.0	189.0	8782	474	8230	441	0.6	0.3	100.0
KY BEATTYVILLE	65	7	3.2	197.0	5907	89	4788	66	0.0	0.0	100.0
KY BOWLING GREEN	13	33	1000.0	226.0	24819	587	20458	466	0.0	0.0	100.0
KY BOWLING GREEN	24	18	50.0	198.0	10565	244	9937	235	2.3	1.4	100.0
KY BOWLING GREEN	40	16	50.0	244.0	10630	240	10382	236	1.9	1.1	100.0
KY BOWLING GREEN	53	48	50.0	247.0	11922	255	11637	250	2.9	1.6	100.0
KY CAMPBELLSVILLE	34	19	50.0	314.0	14141	269	13341	248	2.4	2.8	100.0
KY COVINGTON	54	24	50.0	122.0	5890	1572	5419	1533	3.9	1.6	100.0
KY DANVILLE	56	4	1.0	351.0	16176	690	15417	674	4.5	2.3	99.7
KY ELIZABETHTOWN	23	43	50.0	198.0	12141	742	10995	409	0.5	0.2	100.0
KY HARLAN	44	51	50.0	601.0	19175	562	16832	475	2.2	4.0	100.0
KY HAZARD	35	16	50.0	384.0	15138	348	13480	296	4.5	3.6	100.0
KY HAZARD	57	12	3.2	475.0	16984	393	14617	324	0.4	0.4	100.0
KY LEXINGTON	18	20	50.0	195.0	13015	626	12783	622	1.0	0.2	99.8
KY LEXINGTON	27	59	69.2	300.0	16909	681	16781	678	1.4	0.5	99.9
KY LEXINGTON	36	40	66.5	305.0	17900	696	17412	691	1.5	1.4	100.0
KY LEXINGTON	46	42	50.0	265.0	13711	639	13491	635	6.3	3.2	99.1
KY LOUISVILLE	3	47	1000.0	555.0	45682	2902	35162	2244	0.6	0.4	99.7
KY LOUISVILLE	11	55	428.5	390.0	27674	1482	26136	1462	0.1	0.0	100.0
KY LOUISVILLE	15	17	50.0	262.0	13888	1187	13303	1177	1.6	0.4	100.0
KY LOUISVILLE	21	8	3.2	212.0	12661	1144	11897	1114	3.6	0.6	99.4
KY LOUISVILLE	32	26	153.4	384.0	25314	1449	24714	1433	5.6	1.8	99.8
KY LOUISVILLE	41	49	237.2	391.0	25666	1454	23878	1395	4.5	1.2	100.0
KY LOUISVILLE	68	38	50.0	249.0	13222	1169	12722	1158	0.0	0.0	99.6
KY MADISONVILLE	19	20	77.7	241.0	14399	552	14161	549	3.0	4.9	100.0
KY MADISONVILLE	35	42	50.0	317.0	14285	293	13997	291	2.6	2.0	100.0
KY MOREHEAD	38	15	50.0	293.0	13757	221	12686	200	0.5	0.8	100.0
KY MOREHEAD	67	21	62.8	247.0	16233	380	15470	346	0.0	0.0	100.0
KY MURRAY	21	36	50.0	201.0	12314	288	12298	288	8.9	3.9	100.0
KY NEWPORT	19	29	247.6	306.0	20496	2545	19628	2340	0.9	0.2	99.8
KY OWENSBORO	31	29	50.0	140.0	9668	454	9789	459	1.7	0.7	97.0
KY OWENTON	52	44	50.0	216.0	11130	424	10787	409	0.1	0.0	100.0
KY PADUCAH	6	32	1000.0	482.0	43956	871	38355	809	0.0	0.0	100.0
KY PADUCAH	29	41	50.0	152.0	7265	177	7069	174	5.2	3.7	100.0
KY PADUCAH	49	50	65.3	327.0	14969	435	14881	435	0.2	0.2	99.9
KY PIKEVILLE	22	24	50.0	430.0	17095	454	15956	430	0.4	0.2	100.0
KY SOMERSET	29	14	50.0	445.0	18607	402	17371	371	1.3	1.9	100.0
LA ALEXANDRIA	5	35	1000.0	485.0	43410	956	43135	982	0.0	0.0	98.7
LA ALEXANDRIA	25	26	64.6	415.0	19599	318	19527	317	0.0	0.0	100.0
LA ALEXANDRIA	31	32	50.0	333.0	17720	257	17600	256	0.9	0.9	100.0
LA BATON ROUGE	2	42	1000.0	515.0	46184	2450	40635	2324	0.0	0.0	99.8
LA BATON ROUGE	9	46	917.8	509.0	40157	1877	31609	1220	0.1	0.0	100.0
LA BATON ROUGE	27	22	71.2	303.0	16048	809	15122	761	0.2	0.0	100.0
LA BATON ROUGE	33	34	216.8	522.0	26992	1315	25957	1288	0.0	0.0	100.0
LA BATON ROUGE	44	45	137.2	426.0	19373	985	19373	985	0.0	0.0	100.0
LA COLUMBIA	11	57	1000.0	572.0	43189	691	32880	566	0.0	0.0	100.0
LA LAFAYETTE	3	28	1000.0	530.0	47375	911	35053	718	0.0	0.0	100.0
LA LAFAYETTE	10	56	1000.0	530.0	41206	1002	32285	794	0.0	0.0	100.0
LA LAFAYETTE	15	16	89.1	360.0	19890	586	19890	586	0.0	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
LA LAFAYETTE	24	23	61.5	369.0	18304	536	18304	536	0.0	0.0	100.0
LA LAKE CHARLES	7	53	1000.0	451.0	36922	954	35167	940	0.0	0.0	100.0
LA LAKE CHARLES	18	20	50.0	314.0	18006	374	18010	374	0.4	0.1	100.0
LA LAKE CHARLES	29	30	81.0	394.0	19657	610	19649	610	0.0	0.0	100.0
LA MONROE	8	55	1000.0	576.0	43716	728	41193	688	0.0	0.0	100.0
LA MONROE	13	19	530.4	543.0	41003	691	36053	621	0.0	0.0	100.0
LA NEW ORLEANS	4	30	1000.0	305.0	34068	1783	33649	1767	0.0	0.0	100.0
LA NEW ORLEANS	6	43	1000.0	283.0	33332	1807	32893	1788	0.0	0.0	100.0
LA NEW ORLEANS	8	29	669.9	302.0	28600	1682	26365	1603	0.0	0.0	100.0
LA NEW ORLEANS	12	11	14.2	308.0	21819	1549	19930	1488	0.0	0.0	100.0
LA NEW ORLEANS	20	14	124.2	275.0	16711	1451	16429	1443	0.0	0.0	100.0
LA NEW ORLEANS	26	15	67.1	308.0	16761	1404	16186	1389	0.0	0.0	100.0
LA NEW ORLEANS	32	31	63.9	308.0	15031	1384	14995	1381	0.0	0.6	100.0
LA NEW ORLEANS	38	39	189.7	311.0	17993	1432	17993	1432	0.0	0.0	100.0
LA NEW ORLEANS	49	50	59.1	271.0	13440	1317	13440	1317	0.0	0.0	100.0
LA SHREVEPORT	3	28	1000.0	543.0	47570	1089	33729	898	0.0	0.0	100.0
LA SHREVEPORT	12	17	522.4	549.0	42279	1014	32645	899	2.4	1.1	100.0
LA SHREVEPORT	24	23	50.0	326.0	19134	563	18901	560	0.0	0.0	100.0
LA SHREVEPORT	33	34	193.3	553.0	28959	838	28068	809	1.7	0.7	100.0
LA SHREVEPORT	45	44	96.0	507.0	20170	618	20089	617	0.7	0.8	100.0
LA SLIDELL	54	24	60.5	213.0	12140	1346	12140	1346	0.0	0.0	100.0
LA WEST MONROE	14	36	387.5	572.0	33831	607	33524	598	0.7	0.1	99.5
LA WEST MONROE	39	38	50.0	152.0	9420	261	8715	256	0.2	0.0	100.0
MA ADAMS	19	36	50.0	637.0	20349	1668	16992	1124	4.1	1.3	100.0
MA BOSTON	2	19	1000.0	317.0	30225	6764	29402	6697	0.0	0.0	97.9
MA BOSTON	4	30	783.0	354.0	29306	6719	29628	6716	8.4	1.9	97.2
MA BOSTON	5	20	1000.0	299.0	30281	6742	25483	5683	5.5	1.7	97.6
MA BOSTON	7	42	907.4	306.0	27632	6644	26156	6552	0.0	0.0	99.9
MA BOSTON	25	31	64.6	357.0	19809	6171	18684	6013	1.3	0.6	99.3
MA BOSTON	38	39	67.7	354.0	20381	6245	19603	6037	10.6	4.0	100.0
MA BOSTON	44	43	50.0	329.0	16777	5801	16011	5657	13.5	4.7	99.4
MA BOSTON	68	32	50.0	249.0	12984	4875	12162	4583	0.0	0.0	100.0
MA CAMBRIDGE	56	41	50.0	360.0	17470	5933	16816	5805	2.7	1.1	99.4
MA LAWRENCE	62	18	50.4	186.0	11812	4757	10914	4377	0.0	0.0	98.6
MA MARLBOROUGH	66	23	50.0	326.0	19496	6040	17821	5420	0.4	0.1	100.0
MA NEW BEDFORD	6	49	1000.0	283.0	30480	4984	22852	2645	5.0	2.1	99.5
MA NEW BEDFORD	28	22	148.5	229.0	15367	4039	13032	2424	0.3	0.1	99.8
MA NORWELL	46	52	50.0	107.0	5997	2486	5745	1865	19.6	8.9	96.6
MA SPRINGFIELD	22	33	158.0	268.0	13402	2261	12269	2079	6.7	3.2	97.3
MA SPRINGFIELD	40	55	192.2	322.0	13779	2149	13687	2146	2.6	2.6	97.3
MA SPRINGFIELD	57	58	50.0	306.0	12988	1879	11438	1677	8.3	2.6	100.0
MA VINEYARD HAVEN	58	40	50.0	155.0	8690	530	8674	526	0.0	0.0	100.0
MA WORCESTER	27	29	50.0	466.0	20523	6226	16690	5162	0.1	0.2	99.6
MA WORCESTER	48	47	96.7	398.0	20933	3954	19398	3643	5.0	14.2	99.3
MD ANNAPOLIS	22	42	334.5	265.0	20084	6096	19485	5762	11.2	3.6	96.3
MD BALTIMORE	2	52	1000.0	305.0	30626	7263	29023	7078	0.0	0.0	98.0
MD BALTIMORE	11	59	1000.0	305.0	26652	6806	25368	6610	0.9	0.9	98.5
MD BALTIMORE	13	38	1000.0	302.0	27494	6841	22887	6187	1.1	1.0	99.6
MD BALTIMORE	24	41	50.0	326.0	15943	5790	15436	5451	2.3	1.2	99.8
MD BALTIMORE	45	46	50.0	386.0	18813	5758	18217	5762	1.8	4.2	99.7
MD BALTIMORE	54	40	134.7	349.0	21869	6196	19914	5667	8.2	2.0	99.9
MD BALTIMORE	67	29	50.0	250.0	11576	4097	10599	3156	14.2	6.4	98.4
MD FREDERICK	62	28	50.0	138.0	8037	2439	6929	1990	0.1	0.1	99.4
MD HAGERSTOWN	25	55	64.8	375.0	13881	650	13228	631	4.9	3.6	99.2
MD HAGERSTOWN	31	44	200.3	378.0	16002	883	13813	713	1.3	1.5	99.5
MD HAGERSTOWN	68	16	50.0	394.0	15006	773	10798	525	0.0	0.0	99.9
MD OAKLAND	36	54	50.0	216.0	5810	113	4898	97	1.1	0.4	100.0
MD SALISBURY	16	21	188.5	299.0	17447	470	17443	470	0.0	0.0	100.0
MD SALISBURY	28	56	81.5	157.0	13122	339	13190	341	0.0	0.0	99.5
MD SALISBURY	47	53	59.9	304.0	13990	417	13990	417	0.2	0.2	100.0
ME AUGUSTA	10	17	602.0	305.0	26995	792	24295	739	0.0	0.0	100.0
ME BANGOR	2	25	1000.0	192.0	22431	325	19917	297	0.0	0.0	99.9
ME BANGOR	5	19	444.7	402.0	30460	472	26450	429	0.0	0.0	99.7
ME BANGOR	7	14	951.9	250.0	25989	341	22964	288	0.0	0.0	100.0
ME BIDDEFORD	26	45	50.0	244.0	12054	671	11449	645	0.0	0.0	99.2
ME CALAIS	13	15	178.0	134.0	15204	32	12154	28	0.0	0.0	100.0
ME LEWISTON	35	39	50.0	258.0	8766	469	8947	473	3.5	1.4	96.1
ME ORONO	12	22	948.3	302.0	27681	336	24328	320	0.0	0.0	99.8
ME POLAND SPRING	8	46	245.7	1173.0	40595	1023	38522	995	0.0	0.0	96.9
ME PORTLAND	6	44	1000.0	610.0	36046	1149	34678	1046	0.0	0.0	96.0
ME PORTLAND	13	38	791.1	491.0	32499	941	32033	995	3.2	8.7	95.9
ME PORTLAND	51	4	1.0	280.0	13947	609	13155	599	1.7	1.0	99.5
ME PRESQUE ISLE	8	16	57.4	107.0	7913	55	7518	53	0.0	0.0	96.8
ME PRESQUE ISLE	10	20	520.7	332.0	29048	80	26107	77	0.0	0.0	100.0
MI ALPENA	6	57	1000.0	448.0	38376	258	29145	180	0.0	0.0	99.9
MI ALPENA	11	13	11.7	204.0	18083	114	16801	108	0.0	0.0	99.9

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC: Current service: Area (sq km)	Existing NTSC: Current service: People (thous)	Existing NTSC: New interference: Area (% NL area)	Existing NTSC: New interference: People (% NL pop)	DTV/NTSC area match (%)
MI ANN ARBOR	31	33	50.0	329.0	17276	3195	14239	2248	1.3	3.6	99.8
MI BAD AXE	35	15	50.0	155.0	6141	80	6141	80	0.1	0.1	100.0
MI BATTLE CREEK	41	20	117.6	329.0	22717	1793	22821	1789	6.9	5.7	99.2
MI BATTLE CREEK	43	44	183.5	323.0	22157	1868	21319	1786	4.6	2.2	99.5
MI BAY CITY	5	22	1000.0	305.0	32944	1753	25468	1309	0.2	0.6	99.9
MI CADILLAC	9	40	820.9	497.0	38770	697	33871	592	0.0	0.0	100.0
MI CADILLAC	27	58	50.0	180.0	7383	87	7043	84	0.0	0.0	100.0
MI CADILLAC	33	47	50.0	311.0	11373	151	11125	147	9.8	6.3	100.0
MI CALUMET	5	18	1000.0	295.0	23238	55	21939	53	0.0	0.0	99.9
MI CHEBOYGAN	4	14	1000.0	189.0	26812	148	24239	133	0.0	0.0	100.0
MI DETROIT	2	58	1000.0	305.0	32391	5770	26496	5215	29.7	9.0	98.3
MI DETROIT	4	45	1000.0	306.0	32320	5720	25357	5127	0.0	0.0	98.3
MI DETROIT	7	41	1000.0	305.0	27072	5522	24481	5147	3.0	0.6	99.3
MI DETROIT	20	21	50.0	293.0	16588	4704	16512	4692	5.2	2.6	99.8
MI DETROIT	50	14	50.0	293.0	16894	4721	15265	4505	0.6	0.3	99.9
MI DETROIT	56	43	50.0	293.0	14854	4517	16254	4720	10.6	4.1	91.3
MI DETROIT	62	44	50.0	296.0	13246	4403	13572	4435	0.0	0.0	97.1
MI EAST LANSING	23	55	54.4	296.0	16624	1384	16287	1333	0.9	0.4	100.0
MI ESCANABA	3	48	1000.0	363.0	36170	175	35639	173	0.0	0.0	99.9
MI FLINT	12	36	1000.0	287.0	27238	1966	24490	1807	0.9	0.8	99.5
MI FLINT	28	52	115.7	265.0	14607	2617	14356	2578	0.0	0.0	99.6
MI FLINT	66	16	58.1	287.0	18404	1552	18533	1571	0.1	0.0	99.2
MI GRAND RAPIDS	8	7	14.4	302.0	23858	1875	26015	1949	8.2	2.0	88.1
MI GRAND RAPIDS	13	39	965.1	305.0	28420	1211	23938	1139	0.0	0.0	99.9
MI GRAND RAPIDS	17	19	50.0	334.0	18572	1499	18259	1488	3.2	4.4	98.0
MI GRAND RAPIDS	35	11	3.2	262.0	14666	1078	14702	1076	5.9	2.4	99.6
MI IRON MOUNTAIN	8	22	50.0	190.0	12827	75	11710	67	0.0	0.0	100.0
MI JACKSON	18	34	50.0	73.0	1772	152	1772	152	0.0	0.0	100.0
MI KALAMAZOO	3	2	6.9	305.0	29223	1998	30599	2051	13.4	4.7	92.8
MI KALAMAZOO	52	5	1.0	125.0	4044	342	4028	341	6.0	2.5	100.0
MI KALAMAZOO	64	45	50.0	319.0	17268	1424	17368	1439	0.0	0.0	99.4
MI LANSING	6	59	1000.0	305.0	31907	2876	19821	1773	0.0	0.0	99.9
MI LANSING	47	38	50.0	305.0	15372	1016	15516	1023	0.9	0.4	98.8
MI LANSING	53	51	50.0	299.0	11741	776	11637	775	0.0	0.0	99.9
MI MANISTEE	21	17	50.0	104.0	4535	47	4479	46	1.4	2.4	100.0
MI MARQUETTE	6	35	1000.0	296.0	33016	194	24010	149	0.0	0.0	99.9
MI MARQUETTE	13	33	708.4	332.0	29709	185	25981	170	0.0	0.0	100.0
MI MOUNT CLEMENS	38	39	141.7	192.0	12910	4154	13046	4167	6.7	2.7	98.4
MI MOUNT PLEASANT	14	56	50.0	158.0	8653	265	8617	264	3.2	1.7	100.0
MI MUSKEGON	54	24	76.5	294.0	13705	1048	13471	1042	0.1	0.0	99.5
MI ONONDAGA	10	57	1000.0	299.0	27187	2154	20902	1404	0.0	0.0	99.8
MI SAGINAW	25	30	185.0	402.0	25395	1901	24865	1838	0.0	0.0	98.8
MI SAGINAW	49	48	50.0	287.0	13994	1230	13882	1198	0.0	0.0	100.0
MI SAULT STE. MARI	8	56	1000.0	290.0	27126	84	25375	82	0.0	0.0	99.8
MI SAULT STE. MARI	10	49	935.8	370.0	31049	90	27587	86	0.0	0.0	100.0
MI TRAVERSE CITY	7	50	983.7	411.0	34393	407	30396	329	5.1	7.1	100.0
MI TRAVERSE CITY	29	31	60.3	399.0	20177	269	19263	257	0.3	0.1	99.3
MI UNIVERSITY CENT	19	18	50.0	140.0	11960	668	11960	680	2.8	2.5	99.6
MI VANDERBILT	45	59	50.0	324.0	14779	141	14486	139	0.0	0.0	100.0
MN ALEXANDRIA	7	24	557.0	341.0	30573	402	28777	388	0.0	0.0	100.0
MN ALEXANDRIA	42	14	50.0	358.0	21267	314	19835	213	0.2	0.1	100.0
MN APPLETON	10	31	666.9	381.0	32730	244	28132	202	0.0	0.0	100.0
MN AUSTIN	6	33	1000.0	320.0	34141	612	27103	510	0.0	0.0	100.0
MN AUSTIN	15	20	50.0	116.0	9282	174	9153	168	0.7	2.0	99.9
MN BEMIDJI	9	18	501.2	329.0	29766	106	26575	83	0.0	0.0	100.0
MN BRAINERD	22	28	50.0	227.0	9946	102	9937	102	2.5	0.5	100.0
MN DULUTH	3	33	1000.0	302.0	31915	282	31104	278	0.0	0.0	98.4
MN DULUTH	8	38	1000.0	290.0	27825	258	24845	244	0.0	0.0	100.0
MN DULUTH	10	43	1000.0	301.0	28246	261	25074	238	0.0	0.0	100.0
MN DULUTH	21	17	50.0	180.0	5782	179	5746	179	8.5	7.2	100.0
MN HIBBING	13	36	489.3	204.0	14907	113	13719	109	0.0	0.0	100.0
MN MANKATO	12	38	809.2	317.0	29282	393	25761	327	0.0	0.0	100.0
MN MINNEAPOLIS	4	32	1000.0	436.0	40181	3023	33911	2902	0.0	0.0	100.0
MN MINNEAPOLIS	9	26	604.6	435.0	35443	2940	29749	2798	0.0	0.0	100.0
MN MINNEAPOLIS	11	35	729.7	439.0	35651	2940	32925	2873	0.0	0.0	100.0
MN MINNEAPOLIS	23	22	178.1	351.0	21573	2666	21464	2663	0.0	0.0	100.0
MN MINNEAPOLIS	29	21	167.6	373.0	22480	2678	21411	2662	0.8	0.1	100.0
MN MINNEAPOLIS	45	44	175.0	375.0	21129	2649	21056	2648	0.0	0.0	100.0
MN REDWOOD FALLS	43	27	50.0	167.0	8284	74	8244	74	0.0	0.0	100.0
MN ROCHESTER	10	36	739.1	381.0	31854	561	26783	462	0.0	0.0	100.0
MN ROCHESTER	47	46	50.0	104.0	3712	139	3640	137	0.0	0.0	100.0
MN ST. CLOUD	41	40	88.1	448.0	20232	2602	19027	2349	0.0	0.0	100.0
MN ST. PAUL	2	34	1000.0	399.0	38072	2987	34436	2909	0.0	0.0	100.0
MN ST. PAUL	5	50	1000.0	436.0	39927	3009	36682	2926	0.0	0.0	99.7
MN ST. PAUL	17	16	50.0	396.0	13296	2506	13263	2505	0.2	0.0	100.0
MN THIEF RIVER FAL	10	57	663.0	183.0	12781	121	10201	106	0.0	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
MN WALKER	12	20	705.0	283.0	27812	191	25818	176	0.0	0.0	100.0
MN WORTHINGTON	20	15	69.6	332.0	17891	145	17891	145	0.6	1.8	99.9
MO CAPE GIRARDEAU	12	57	1000.0	610.0	44203	926	37135	781	0.1	0.1	100.0
MO CAPE GIRARDEAU	23	22	59.4	543.0	23030	525	22580	518	0.0	0.0	100.0
MO COLUMBIA	8	36	1000.0	242.0	26114	442	21983	413	0.0	0.0	100.0
MO COLUMBIA	17	22	51.6	348.0	20504	413	20055	411	3.4	3.8	100.0
MO HANNIBAL	7	29	1000.0	271.0	27374	319	24040	291	0.0	0.0	100.0
MO JEFFERSON CITY	13	12	14.4	308.0	25264	467	21642	404	0.0	0.0	100.0
MO JEFFERSON CITY	25	20	53.6	314.0	16237	326	15871	324	0.0	0.1	99.9
MO JOPLIN	12	43	1000.0	311.0	28497	522	23933	429	0.8	0.5	100.0
MO JOPLIN	16	46	168.5	313.0	21797	400	20104	392	1.8	0.6	100.0
MO JOPLIN	26	25	50.0	283.0	14629	302	14417	300	0.1	0.0	100.0
MO KANSAS CITY	4	34	1000.0	344.0	34722	2095	30394	1903	0.0	0.0	100.0
MO KANSAS CITY	5	24	1000.0	342.0	34802	2062	28753	1935	0.0	0.0	99.7
MO KANSAS CITY	9	14	450.9	357.0	30971	1967	28907	1910	0.0	0.0	99.9
MO KANSAS CITY	19	18	50.0	357.0	19088	1745	18797	1734	5.1	0.5	100.0
MO KANSAS CITY	32	31	192.3	322.0	23365	1763	23325	1763	0.1	0.0	99.8
MO KANSAS CITY	41	42	50.0	323.0	16490	1681	16223	1676	0.0	0.0	100.0
MO KANSAS CITY	50	51	50.0	341.0	16177	1670	15490	1659	1.0	0.1	100.0
MO KANSAS CITY	62	47	124.1	340.0	21290	1804	20991	1799	0.0	0.0	100.0
MO KIRKSVILLE	3	33	1000.0	339.0	35121	356	27492	260	0.0	0.0	100.0
MO POPLAR BLUFF	15	18	50.0	184.0	10131	127	10010	125	0.1	0.0	100.0
MO SEDALIA	6	15	1000.0	235.0	29434	550	24120	402	0.0	0.0	99.6
MO SPRINGFIELD	3	44	1000.0	622.0	49577	775	41786	671	0.0	0.0	99.7
MO SPRINGFIELD	10	52	1000.0	631.0	45556	751	40920	683	0.0	0.0	100.0
MO SPRINGFIELD	21	23	50.0	546.0	26916	496	26097	488	0.8	0.3	99.9
MO SPRINGFIELD	27	28	227.4	515.0	27179	502	25568	481	0.0	0.0	100.0
MO SPRINGFIELD	33	19	155.6	596.0	27669	526	27053	518	0.6	0.3	100.0
MO ST. JOSEPH	2	53	1000.0	247.0	29298	1469	28365	1498	0.0	0.0	99.3
MO ST. JOSEPH	16	21	235.2	326.0	17866	1558	17080	1404	1.9	9.9	100.0
MO ST. LOUIS	2	43	1000.0	332.0	34382	2774	28971	2678	0.0	0.0	99.7
MO ST. LOUIS	4	56	1000.0	335.0	34174	2785	29620	2723	0.0	0.0	99.6
MO ST. LOUIS	5	35	1000.0	332.0	34664	2787	33236	2764	0.0	0.0	100.0
MO ST. LOUIS	9	39	948.5	326.0	29428	2701	24359	2623	0.0	0.0	100.0
MO ST. LOUIS	11	26	745.5	308.0	28683	2711	26261	2667	0.0	0.0	100.0
MO ST. LOUIS	24	14	84.7	305.0	20023	2538	19527	2532	0.5	0.1	99.9
MO ST. LOUIS	30	31	65.3	335.0	20289	2556	20128	2554	0.0	0.0	100.0
MS BILOXI	13	36	742.1	408.0	34055	1025	27954	738	0.0	0.0	100.0
MS BILOXI	19	35	74.2	478.0	21446	675	21018	648	1.1	0.8	100.0
MS BOONEVILLE	12	55	480.4	229.0	15565	295	13444	261	0.0	0.0	100.0
MS BUDE	17	18	50.0	341.0	16657	226	14775	207	2.9	3.6	100.0
MS COLUMBUS	4	35	1000.0	610.0	50300	770	42825	652	0.0	0.0	99.9
MS GREENVILLE	15	17	98.9	271.0	15891	259	15891	259	0.0	0.0	100.0
MS GREENWOOD	6	54	1000.0	597.0	51049	882	40422	599	0.0	0.0	100.0
MS GREENWOOD	23	26	50.0	317.0	15296	249	15236	249	0.0	0.0	100.0
MS GULFPORT	25	48	122.9	488.0	22926	812	22499	767	2.4	9.2	99.7
MS HATTIESBURG	22	23	50.0	244.0	14700	279	14576	277	0.8	0.4	100.0
MS HOLLY SPRINGS	40	41	123.6	142.0	10001	1026	9904	1026	0.0	0.0	100.0
MS JACKSON	3	51	1000.0	610.0	46873	919	34502	734	0.0	0.0	100.0
MS JACKSON	12	52	1000.0	497.0	39222	787	33266	721	0.1	0.0	100.0
MS JACKSON	16	21	229.5	359.0	22625	599	21939	592	0.5	0.1	100.0
MS JACKSON	29	20	50.0	598.0	25082	639	24663	631	3.1	1.5	100.0
MS JACKSON	40	41	50.0	479.0	23291	614	22928	602	0.0	0.0	100.0
MS LAUREL	7	28	1000.0	155.0	21512	347	19210	328	0.0	0.0	100.0
MS MERIDIAN	11	49	1000.0	165.0	21931	291	19815	260	0.0	0.0	100.0
MS MERIDIAN	14	47	50.0	369.0	18041	314	17020	300	0.9	0.8	100.0
MS MERIDIAN	24	25	50.0	177.0	9872	148	9884	150	0.1	0.0	99.3
MS MERIDIAN	30	31	50.0	187.0	11183	168	11090	167	4.8	2.7	100.0
MS MISSISSIPPI STA	2	38	1000.0	381.0	37521	553	29904	422	0.0	0.0	100.0
MS NATCHEZ	48	49	78.7	316.0	15272	178	15268	178	0.0	0.0	100.0
MS OXFORD	18	36	50.0	423.0	18258	346	18417	348	0.5	0.3	99.1
MS TUPELO	9	57	1000.0	542.0	41709	677	38641	617	0.1	0.0	100.0
MS WEST POINT	27	16	50.8	512.0	22498	424	22373	423	2.1	1.9	99.7
MT BILLINGS	2	17	1000.0	165.0	23195	136	23167	136	3.6	0.2	98.3
MT BILLINGS	6	18	1000.0	249.0	27619	136	26222	135	0.0	0.0	99.3
MT BILLINGS	8	11	13.9	229.0	21629	133	20809	129	0.2	0.0	100.0
MT BOZEMAN	7	16	54.4	249.0	8673	59	8797	59	0.0	0.0	97.2
MT BOZEMAN	9	20	50.0	33.0	2277	46	2200	46	0.0	0.0	100.0
MT BUTTE	4	15	1000.0	576.0	33253	126	40009	138	0.0	0.0	82.6
MT BUTTE	6	2	10.7	591.0	44364	164	38372	141	0.0	0.0	100.0
MT BUTTE	18	19	105.9	585.0	14914	58	13761	57	0.1	0.0	100.0
MT GLENDIVE	5	15	120.2	152.0	13598	14	11386	12	0.0	0.0	100.0
MT GREAT FALLS	3	44	1000.0	180.0	22357	89	23804	89	0.0	0.0	93.4
MT GREAT FALLS	5	39	1000.0	180.0	21956	89	22921	89	0.0	0.0	94.9
MT GREAT FALLS	16	45	120.2	319.0	15462	85	15402	85	0.1	0.0	99.8
MT HARDIN	4	19	1000.0	323.0	30501	124	29423	136	0.0	0.0	98.6

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city		NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
								Current service		New interference		
						Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
MT	HELENA	10	29	743.1	579.0	27772	90	26705	87	0.0	0.0	98.8
MT	HELENA	12	14	162.5	686.0	30522	151	28974	149	0.0	0.0	99.6
MT	KALISPELL	9	38	50.3	850.0	23443	85	23074	79	0.0	0.0	98.4
MT	MILES CITY	3	13	3.2	33.0	5390	11	5430	11	0.0	0.0	98.9
MT	MISSOULA	8	35	1000.0	655.0	32444	129	32745	127	0.0	0.0	97.1
MT	MISSOULA	11	27	50.0	631.0	9985	86	8984	85	0.0	0.0	100.0
MT	MISSOULA	13	40	1000.0	610.0	32637	129	33336	131	0.0	0.0	97.5
MT	MISSOULA	23	36	92.5	642.0	17840	119	17374	118	0.0	0.0	99.9
NC	ASHEVILLE	13	56	619.9	853.0	33782	1831	33148	1787	0.0	0.0	96.3
NC	ASHEVILLE	21	57	315.7	765.0	27972	1524	27012	1467	2.5	1.3	98.8
NC	ASHEVILLE	33	25	96.7	816.0	23135	1446	20494	1338	0.8	0.7	99.7
NC	ASHEVILLE	62	45	134.4	556.0	22561	1378	21378	1332	0.6	0.2	99.6
NC	BELMONT	46	47	199.9	594.0	32137	2310	28624	2125	3.8	1.3	100.0
NC	BURLINGTON	16	14	50.1	256.0	14379	1385	11351	1055	1.8	0.4	99.8
NC	CHAPEL HILL	4	59	1000.0	469.0	40706	2859	30299	2262	0.0	0.0	99.9
NC	CHARLOTTE	3	23	1000.0	567.0	47158	3215	35596	2375	1.0	0.9	98.9
NC	CHARLOTTE	9	34	708.8	359.0	31546	2266	24224	1858	7.2	4.8	100.0
NC	CHARLOTTE	18	21	72.3	366.0	19163	1652	20007	1606	12.7	4.9	89.0
NC	CHARLOTTE	36	22	155.4	595.0	33377	2354	31321	2290	2.2	1.0	99.2
NC	CHARLOTTE	42	24	50.0	390.0	18723	1622	18340	1606	7.4	2.8	99.3
NC	COLUMBIA	2	20	1000.0	302.0	33693	660	27798	245	0.0	0.0	100.0
NC	CONCORD	58	44	142.5	422.0	25173	2126	24274	2084	4.6	2.4	99.9
NC	DURHAM	11	52	1000.0	607.0	44664	2399	38515	2110	0.0	0.0	99.9
NC	DURHAM	28	27	216.6	585.0	34162	2043	34886	2097	0.4	0.3	95.5
NC	FAYETTEVILLE	40	38	196.8	561.0	30966	2133	30578	2229	0.5	0.4	92.7
NC	FAYETTEVILLE	62	36	50.0	256.0	9622	539	9597	537	0.0	0.0	99.8
NC	GOLDSBORO	17	55	509.0	480.0	33383	2059	30316	1901	3.0	0.8	100.0
NC	GREENSBORO	2	51	1000.0	561.0	46687	3427	36643	2442	0.1	0.0	99.5
NC	GREENSBORO	48	33	50.0	517.0	21308	1599	20380	1507	3.6	1.4	99.3
NC	GREENSBORO	61	32	50.0	168.0	8620	976	8524	976	0.1	0.0	99.2
NC	GREENVILLE	9	10	21.1	573.0	38457	1136	33999	1054	0.0	0.0	91.4
NC	GREENVILLE	14	21	50.0	209.0	11543	487	11352	467	0.0	0.0	100.0
NC	GREENVILLE	25	23	50.0	351.0	15427	645	14305	598	2.3	1.7	100.0
NC	HICKORY	14	40	50.0	183.0	8078	547	7716	510	7.8	5.4	95.9
NC	HIGH POINT	8	35	726.9	387.0	32244	2377	25173	1795	0.1	0.0	99.9
NC	JACKSONVILLE	19	44	203.2	561.0	25214	728	25182	727	0.2	0.0	100.0
NC	JACKSONVILLE	35	34	50.2	301.0	15037	415	14985	415	0.3	0.1	100.0
NC	KANNAPOLIS	64	50	50.0	300.0	15983	1500	15907	1497	0.0	0.0	99.5
NC	LEXINGTON	20	19	80.9	297.0	17498	1437	16808	1357	5.1	2.6	99.6
NC	LINVILLE	17	54	124.8	546.0	18618	910	16911	843	0.9	0.3	99.5
NC	LUMBERTON	31	25	92.1	319.0	20338	847	20623	853	7.7	9.0	98.1
NC	MOREHEAD CITY	8	24	934.8	249.0	20009	303	13893	96	0.0	0.0	100.0
NC	NEW BERN	12	48	1000.0	591.0	43285	1189	34519	860	0.0	0.0	100.0
NC	RALEIGH	5	53	1000.0	604.0	50722	2731	40785	2317	0.0	0.0	100.0
NC	RALEIGH	22	57	449.2	510.0	31372	2121	28236	1902	7.2	3.4	100.0
NC	RALEIGH	50	49	189.5	548.0	31818	1996	31141	1976	3.6	5.0	100.0
NC	ROANOKE RAPIDS	36	39	50.0	368.0	19461	548	18410	517	1.3	0.6	100.0
NC	ROCKY MOUNT	47	15	90.5	371.0	16874	1183	17142	1182	0.8	0.3	96.6
NC	WASHINGTON	7	32	771.7	594.0	44737	1299	36849	1102	0.0	0.0	100.0
NC	WILMINGTON	3	46	1000.0	594.0	51309	1052	41539	758	0.0	0.0	100.0
NC	WILMINGTON	6	54	1000.0	588.0	50456	1697	38276	1195	0.0	0.0	100.0
NC	WILMINGTON	26	30	203.6	500.0	22230	481	22206	480	0.0	0.0	100.0
NC	WILMINGTON	39	29	144.8	553.0	26659	635	26311	627	0.0	0.0	100.0
NC	WILSON	30	42	72.2	539.0	22199	1281	21978	1266	7.2	2.9	100.0
NC	WINSTON-SALEM	12	31	771.0	604.0	39793	2275	32996	2000	0.0	0.0	99.6
NC	WINSTON-SALEM	26	43	311.7	504.0	24841	1714	23447	1642	0.3	0.1	99.8
NC	WINSTON-SALEM	45	29	143.2	597.0	25645	1759	23591	1651	0.9	0.5	99.7
ND	BISMARCK	3	22	868.0	425.0	37485	124	29273	111	0.0	0.0	100.0
ND	BISMARCK	5	31	1000.0	427.0	39831	126	33168	116	0.0	0.0	100.0
ND	BISMARCK	12	23	575.2	466.0	36704	124	31998	113	0.0	0.0	100.0
ND	BISMARCK	17	16	50.0	290.0	13983	90	13803	89	0.1	0.0	100.0
ND	DEVILS LAKE	8	59	1000.0	451.0	36977	172	35321	170	0.0	0.0	100.0
ND	DICKINSON	2	19	1000.0	256.0	29878	47	29160	45	0.0	0.0	99.9
ND	DICKINSON	7	18	1000.0	223.0	24230	39	20573	34	0.0	0.0	100.0
ND	DICKINSON	9	20	708.0	246.0	23705	43	21684	37	0.0	0.0	100.0
ND	ELLENDALE	19	20	50.0	179.0	8894	12	8866	12	5.0	1.5	100.0
ND	FARGO	6	21	1000.0	351.0	36178	339	30659	253	0.0	0.0	100.0
ND	FARGO	11	58	1000.0	610.0	45043	354	39529	319	0.0	0.0	99.6
ND	FARGO	13	39	571.2	344.0	29370	239	27002	226	0.0	0.0	100.0
ND	FARGO	15	19	188.1	379.0	19399	250	19399	250	0.0	0.0	100.0
ND	GRAND FORKS	2	56	1000.0	408.0	36001	171	32916	167	0.0	0.0	100.0
ND	JAMESTOWN	7	14	980.1	135.0	19892	50	15434	41	0.0	0.0	100.0
ND	MINOT	6	57	1000.0	323.0	34029	100	31675	98	0.0	0.0	99.9
ND	MINOT	10	58	1000.0	207.0	21936	79	20623	77	0.0	0.0	98.5
ND	MINOT	13	45	1000.0	344.0	30380	96	28469	90	0.0	0.0	100.0
ND	MINOT	14	15	50.0	829.0	12067	67	12055	67	6.7	2.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
ND PEMBINA	12	15	465.4	427.0	30006	36	24366	34	0.0	0.0	100.0
ND VALLEY CITY	4	38	1000.0	619.0	52339	409	46357	376	0.0	0.0	100.0
ND WILLISTON	4	51	1000.0	278.0	29451	51	25943	45	0.0	0.0	99.5
ND WILLISTON	8	52	688.3	323.0	25351	43	24027	42	0.0	0.0	100.0
ND WILLISTON	11	14	428.5	299.0	24426	43	22884	42	0.0	0.0	99.6
NE ALBION	24	23	83.4	378.0	23610	99	23453	99	0.8	0.3	100.0
NE ALLIANCE	13	24	593.2	469.0	36126	92	31465	83	0.0	0.0	100.0
NE BASSETT	7	15	473.5	453.0	36511	52	32997	38	0.0	0.0	100.0
NE GRAND ISLAND	11	32	737.5	308.0	28984	208	24776	184	0.0	0.0	100.0
NE GRAND ISLAND	17	19	50.0	187.0	11158	148	11170	148	0.2	0.0	99.9
NE HASTINGS	5	21	1000.0	223.0	28608	220	26274	213	0.6	0.2	99.9
NE HASTINGS	29	14	50.0	372.0	20167	166	20155	166	2.9	1.7	100.0
NE HAYES CENTER	6	18	1000.0	216.0	28857	85	26826	80	0.0	0.0	99.8
NE KEARNEY	13	35	706.1	338.0	30309	211	27104	197	0.0	0.0	100.0
NE LEXINGTON	3	26	1000.0	323.0	34565	169	25614	118	0.0	0.0	100.0
NE LINCOLN	8	31	672.7	440.0	35975	628	28642	477	0.0	0.0	100.0
NE LINCOLN	10	25	597.9	454.0	37047	749	33522	687	0.0	0.0	99.9
NE LINCOLN	12	40	1000.0	253.0	26402	1040	24175	1023	0.0	0.0	100.0
NE MCCOOK	8	12	11.1	216.0	23714	51	21288	45	0.0	0.0	100.0
NE MERRIMAN	12	17	564.4	328.0	28624	30	24104	23	0.1	0.0	100.0
NE NORFOLK	19	16	50.0	348.0	16129	204	14712	199	4.1	2.5	100.0
NE NORTH PLATTE	2	22	1000.0	192.0	26456	64	24033	61	0.0	0.0	99.5
NE NORTH PLATTE	9	16	543.6	311.0	28750	66	25659	61	0.0	0.0	100.0
NE OMAHA	3	45	1000.0	418.0	39293	1131	30293	1040	0.0	0.0	100.0
NE OMAHA	6	22	1000.0	418.0	39551	1140	36444	1117	0.0	0.0	100.0
NE OMAHA	7	20	526.7	415.0	34516	1101	29303	991	0.0	0.0	100.0
NE OMAHA	15	38	388.8	453.0	26175	1040	25781	1039	3.1	1.0	100.0
NE OMAHA	26	17	50.0	130.0	9268	698	9120	696	4.8	0.6	100.0
NE OMAHA	42	43	205.7	577.0	33997	1108	33700	1106	0.8	0.1	99.9
NE SCOTTSBLUFF	4	19	1000.0	610.0	49563	109	40276	93	0.0	0.0	99.9
NE SCOTTSBLUFF	10	29	1000.0	256.0	24901	75	22210	70	0.0	0.0	100.0
NE SUPERIOR	4	34	1000.0	344.0	35174	236	24567	116	0.0	0.0	100.0
NH BERLIN	40	15	50.0	91.0	2600	24	1843	20	0.0	0.0	100.0
NH CONCORD	21	33	71.4	320.0	17467	1959	17048	1880	2.6	5.0	98.8
NH DERRY	50	35	92.0	213.0	10235	3204	10043	3191	2.3	15.9	99.5
NH DURHAM	11	57	1000.0	302.0	26039	3804	24132	2649	2.6	1.3	98.9
NH KEENE	52	49	50.0	329.0	7453	215	5671	135	0.0	0.0	100.0
NH LITTLETON	49	48	50.0	390.0	7383	75	6258	62	0.7	0.1	100.0
NH MANCHESTER	9	59	1000.0	314.0	24821	4724	23489	4322	0.0	0.0	97.9
NH MERRIMACK	60	34	50.0	308.0	11252	1988	10603	1876	4.3	1.8	99.5
NJ ATLANTIC CITY	53	46	50.0	85.0	1323	203	1323	203	0.0	0.0	100.0
NJ ATLANTIC CITY	62	49	94.3	133.0	11239	1022	9334	753	2.7	1.9	100.0
NJ BURLINGTON	48	27	50.0	335.0	17733	6572	16922	6439	4.0	1.5	98.5
NJ CAMDEN	23	22	68.6	271.0	17269	5873	17865	6092	3.4	4.0	96.6
NJ LINDEN	47	36	142.6	460.0	15112	16235	14745	16110	0.9	0.2	99.7
NJ MONTCLAIR	50	51	171.6	243.0	14658	15537	14154	15298	0.0	0.0	94.8
NJ NEW BRUNSWICK	58	18	50.0	223.0	12005	12745	9001	10886	2.1	8.7	100.0
NJ NEWARK	13	61	190.2	500.0	23252	17043	23140	17110	1.7	0.6	94.3
NJ NEWARK	68	53	53.5	439.0	16235	16027	15416	15684	0.2	0.0	99.8
NJ NEWTON	63	8	3.2	223.0	11904	6011	10979	8387	3.2	19.0	94.5
NJ PATERSON	41	40	66.2	421.0	17907	16592	17036	16236	1.1	0.3	99.9
NJ SECAUCUS	9	38	130.6	500.0	26658	17969	22677	16641	1.7	0.3	99.7
NJ TRENTON	52	43	50.0	271.0	14602	8450	13051	7454	2.1	1.1	99.3
NJ VINELAND	65	66	103.2	280.0	16834	5794	16899	5868	2.1	2.7	99.2
NJ WEST MILFORD	66	29	50.0	217.0	4176	4092	2891	2439	1.2	0.3	100.0
NJ WILDWOOD	40	36	50.0	128.0	9396	448	9396	448	3.7	1.8	100.0
NM ALBUQUERQUE	4	26	280.6	1280.0	46915	760	50822	779	0.0	0.0	91.2
NM ALBUQUERQUE	5	25	273.1	1289.0	46922	760	51101	776	0.0	0.0	91.8
NM ALBUQUERQUE	7	21	88.2	1292.0	39099	752	39015	751	0.0	0.0	99.2
NM ALBUQUERQUE	13	16	102.3	1287.0	41957	753	40657	749	0.0	0.0	99.9
NM ALBUQUERQUE	23	22	50.0	1259.0	30425	738	29481	726	0.0	0.0	100.0
NM ALBUQUERQUE	32	17	50.0	1236.0	9241	649	8573	647	0.3	0.0	100.0
NM ALBUQUERQUE	41	42	50.0	1266.0	24283	724	23639	717	0.2	0.0	100.0
NM ALBUQUERQUE	50	51	50.0	1276.0	33030	736	31739	729	0.0	0.0	100.0
NM CARLSBAD	6	19	1000.0	366.0	35354	160	32739	118	0.0	0.0	99.1
NM CLOVIS	12	20	572.4	204.0	21463	84	18025	82	0.0	0.0	100.0
NM FARMINGTON	12	15	1000.0	125.0	18163	114	16423	107	0.0	0.0	100.0
NM GALLUP	3	8	3.2	33.0	7480	55	6028	51	0.0	0.0	98.9
NM HOBBS	29	17	50.0	159.0	2995	39	2995	39	0.0	0.0	100.0
NM LAS CRUCES	22	23	50.0	137.0	10122	209	9113	124	0.0	0.0	100.0
NM LAS CRUCES	48	28	80.6	134.0	7295	563	7295	571	0.0	0.0	97.4
NM PORTALES	3	32	1000.0	351.0	35813	187	35342	187	0.0	0.0	99.8
NM ROSWELL	8	38	852.1	536.0	41374	163	39969	159	0.0	0.0	100.0
NM ROSWELL	10	41	945.4	610.0	45150	183	38701	168	0.0	0.0	100.0
NM ROSWELL	27	28	50.0	115.0	5816	58	5824	58	0.8	0.1	99.7
NM SANTA FE	2	27	307.4	1275.0	47438	763	52571	786	0.0	0.0	90.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
NM SANTA FE	11	10	22.3	618.0	36848	734	33228	708	0.0	0.0	100.0
NM SANTA FE	19	29	199.6	33.0	7469	139	7063	136	0.0	0.0	100.0
NM SILVER CITY	10	12	3.2	485.0	16044	46	13028	42	0.0	0.0	100.0
NV ELKO	10	8	3.2	564.0	13691	27	9850	27	0.1	0.0	100.0
NV HENDERSON	5	24	1000.0	363.0	22360	732	27543	734	0.0	0.0	78.5
NV LAS VEGAS	3	2	10.7	387.0	34620	745	31087	735	0.0	0.0	100.0
NV LAS VEGAS	8	7	25.3	610.0	31703	738	27141	733	0.0	0.0	100.0
NV LAS VEGAS	10	11	18.5	372.0	21635	730	19621	730	0.0	0.0	99.9
NV LAS VEGAS	13	17	565.2	610.0	28865	737	25542	733	0.0	0.0	99.9
NV LAS VEGAS	15	16	50.0	564.0	13102	726	12220	726	0.2	0.0	99.7
NV LAS VEGAS	21	20	94.2	353.0	12324	728	11359	726	0.6	0.0	99.8
NV LAS VEGAS	33	32	50.0	581.0	13527	726	12481	726	0.0	0.0	100.0
NV PARADISE	39	38	94.1	367.0	9533	724	8797	724	0.0	0.0	100.0
NV RENO	2	32	1000.0	656.0	27417	381	35369	451	0.0	0.0	76.7
NV RENO	4	33	1000.0	133.0	11130	283	18649	393	0.0	0.0	59.4
NV RENO	5	15	50.0	140.0	5755	293	7799	315	0.0	0.0	73.4
NV RENO	8	23	301.7	893.0	33971	488	34277	492	0.0	0.0	97.6
NV RENO	11	41	475.5	856.0	27599	389	28169	392	0.0	0.0	95.6
NV RENO	21	22	50.0	189.0	5858	267	5264	261	1.0	0.4	99.2
NV RENO	27	26	120.5	894.0	22550	393	20515	387	0.2	1.5	99.9
NV WINNEMUCCA	7	12	3.2	650.0	11192	12	7700	12	0.0	0.0	100.0
NY ALBANY	10	26	1000.0	305.0	21579	1303	19684	1229	1.3	0.8	99.8
NY ALBANY	13	15	484.1	357.0	21343	1273	18951	1181	0.4	0.1	100.0
NY ALBANY	23	4	1.0	366.0	18675	1310	16337	1162	0.5	0.9	99.4
NY AMSTERDAM	55	50	131.0	223.0	8886	868	8455	848	0.2	0.1	100.0
NY BATAVIA	51	53	50.0	124.0	8127	927	7393	912	0.4	4.1	99.7
NY BINGHAMTON	12	7	8.2	369.0	24446	933	22315	790	0.5	1.8	99.9
NY BINGHAMTON	34	4	1.0	281.0	15629	673	13102	489	0.4	0.1	99.9
NY BINGHAMTON	40	8	3.2	375.0	14229	572	12037	441	0.2	0.1	99.8
NY BINGHAMTON	46	42	50.0	375.0	13909	514	12321	453	0.1	0.1	100.0
NY BUFFALO	2	33	1000.0	287.0	31958	2202	26823	1718	1.7	0.8	98.6
NY BUFFALO	4	39	1000.0	366.0	34600	2109	32541	1918	0.4	0.2	98.6
NY BUFFALO	7	38	227.9	433.0	26625	1819	21697	1528	0.3	0.0	99.7
NY BUFFALO	17	43	149.3	330.0	21201	1389	21060	1373	2.1	1.0	99.5
NY BUFFALO	23	32	50.0	314.0	15984	1312	15706	1311	0.6	0.2	98.6
NY BUFFALO	29	14	50.0	280.0	15748	1323	15534	1311	2.1	0.6	99.8
NY BUFFALO	49	34	142.6	376.0	17297	1466	16849	1451	0.1	0.1	99.4
NY CARTHAGE	7	35	1000.0	221.0	24086	278	22351	250	3.2	3.6	100.0
NY CORNING	48	50	50.0	166.0	2406	129	1874	83	0.0	0.0	100.0
NY ELMIRA	18	2	1.0	376.0	14035	551	11052	366	0.6	1.5	99.8
NY ELMIRA	36	55	50.0	320.0	11788	383	10408	316	0.7	0.5	99.8
NY GARDEN CITY	21	22	84.5	122.0	10544	12575	9063	11134	1.3	0.4	99.8
NY JAMESTOWN	26	27	228.5	463.0	21043	1506	20662	1438	0.2	0.0	98.4
NY KINGSTON	62	21	93.8	591.0	18797	1798	15917	1457	0.2	0.2	99.0
NY NEW YORK	2	56	349.0	482.0	28758	18202	24094	16955	0.0	0.0	97.9
NY NEW YORK	4	28	156.5	515.0	28734	18233	25109	17181	0.7	0.1	96.5
NY NEW YORK	5	44	215.2	515.0	29029	18246	25117	17159	9.3	5.0	98.3
NY NEW YORK	7	45	157.3	491.0	26438	17881	23891	17189	2.0	0.3	99.9
NY NEW YORK	11	33	111.8	506.0	27065	17999	23184	17102	11.1	5.1	99.9
NY NEW YORK	25	24	77.3	395.0	18867	16706	18359	16695	6.4	1.6	99.1
NY NEW YORK	31	30	99.6	475.0	17709	16256	18052	16449	6.4	1.9	96.0
NY NORTH POLE	5	14	206.5	607.0	30965	437	25548	424	0.0	0.0	95.2
NY NORWOOD	18	23	50.0	243.0	13157	149	12357	136	0.1	0.0	100.0
NY PLATTSBURGH	57	38	50.0	741.0	14920	261	14416	258	0.0	0.0	100.0
NY POUGHKEEPSIE	54	27	112.5	490.0	18617	2988	14948	1743	1.5	0.4	99.8
NY RIVERHEAD	55	57	125.8	194.0	10327	3371	10190	3221	3.8	14.9	100.0
NY ROCHESTER	8	45	1000.0	152.0	20874	1185	17894	1108	1.8	1.5	99.9
NY ROCHESTER	10	58	1000.0	152.0	20749	1183	17186	1079	0.0	0.0	99.9
NY ROCHESTER	13	59	1000.0	152.0	20645	1180	16740	1100	0.0	0.0	99.9
NY ROCHESTER	21	16	50.0	152.0	9323	1002	9891	1015	17.5	3.3	93.3
NY ROCHESTER	31	28	50.0	152.0	11355	1021	11142	998	0.1	0.0	100.0
NY SCHENECTADY	6	39	1000.0	311.0	26234	1445	25625	1434	1.1	0.4	95.4
NY SCHENECTADY	17	34	149.7	299.0	17627	1218	17010	1155	2.2	0.7	99.4
NY SCHENECTADY	45	43	94.4	338.0	14501	1112	13868	1071	1.2	0.3	99.7
NY SMITHTOWN	67	23	50.0	219.0	11259	3233	10985	3074	0.1	0.2	99.7
NY SPRINGVILLE	67	46	50.0	160.0	1579	97	992	36	0.0	0.0	100.0
NY SYRACUSE	3	54	1000.0	305.0	29411	1473	26181	1295	0.1	0.1	98.0
NY SYRACUSE	5	47	1000.0	290.0	28196	1402	26367	1340	0.0	0.0	97.2
NY SYRACUSE	9	17	103.5	462.0	24043	1298	21052	1205	0.1	0.0	99.3
NY SYRACUSE	24	25	82.8	422.0	22841	1255	21801	1245	0.2	0.6	99.7
NY SYRACUSE	43	44	50.0	445.0	14186	1015	13359	970	1.0	1.0	99.9
NY SYRACUSE	68	19	50.0	445.0	14637	1034	13052	978	0.0	0.0	100.0
NY UTICA	2	29	522.7	421.0	27567	1207	22175	666	0.7	0.2	97.5
NY UTICA	20	30	50.0	244.0	12686	491	12340	448	3.2	0.7	95.1
NY UTICA	33	27	50.0	193.0	10776	683	9842	625	4.8	7.1	99.7
NY WATERTOWN	16	41	50.0	370.0	17055	207	16449	200	1.9	2.1	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
NY WATERTOWN	50	21	50.0	387.0	14564	177	14002	173	0.5	0.4	99.9
OH AKRON	23	59	429.9	293.0	22492	3925	20985	3623	1.6	0.3	99.7
OH AKRON	49	32	50.0	299.0	13130	2823	13146	3112	9.2	8.0	97.9
OH AKRON	55	30	104.1	356.0	18444	3486	18536	3478	0.5	1.7	96.3
OH ALLIANCE	45	46	50.0	253.0	14690	2194	13486	1972	0.6	0.4	99.9
OH ATHENS	20	27	50.0	244.0	14303	489	13715	456	1.7	1.1	100.0
OH BOWLING GREEN	27	56	50.0	320.0	16405	1112	16601	1148	0.0	0.0	98.8
OH CAMBRIDGE	44	35	50.0	393.0	15503	613	14432	551	0.1	0.1	100.0
OH CANTON	17	39	50.0	137.0	9392	1382	8453	1277	6.8	4.7	100.0
OH CANTON	67	47	81.5	148.0	11124	2658	11092	2864	0.1	0.0	97.0
OH CHILLICOTHE	53	46	148.1	362.0	18854	1775	17836	1689	7.2	5.9	99.6
OH CINCINNATI	5	35	1000.0	305.0	32454	3058	27785	2835	0.0	0.0	99.8
OH CINCINNATI	9	10	14.7	305.0	24591	2663	23981	2781	8.7	5.5	93.9
OH CINCINNATI	12	31	803.4	305.0	28647	2889	25519	2800	0.3	0.1	99.9
OH CINCINNATI	48	34	50.0	326.0	18261	2267	17522	2170	2.7	2.6	99.9
OH CINCINNATI	64	33	91.4	337.0	21123	2759	20336	2719	0.0	0.0	99.9
OH CLEVELAND	3	2	8.9	305.0	28379	3870	28211	3782	0.0	0.0	91.3
OH CLEVELAND	5	15	1000.0	311.0	32999	4085	26249	3694	2.1	0.6	100.0
OH CLEVELAND	8	31	897.2	305.0	28598	3894	25576	3659	0.0	0.0	99.8
OH CLEVELAND	25	26	64.0	304.0	17175	3290	15343	3019	6.9	2.7	100.0
OH CLEVELAND	61	34	50.0	354.0	18204	3327	18024	3318	1.4	3.5	99.9
OH COLUMBUS	4	14	1000.0	274.0	30205	2370	20823	1872	0.1	0.5	99.9
OH COLUMBUS	6	13	39.0	286.0	25664	2148	22531	1855	0.0	0.0	97.2
OH COLUMBUS	10	11	14.0	271.0	23175	1994	22429	1915	12.0	8.9	97.3
OH COLUMBUS	28	36	63.0	293.0	17308	1677	16990	1675	2.6	2.7	97.7
OH COLUMBUS	34	38	50.0	329.0	17002	1673	16567	1642	2.8	1.7	99.8
OH DAYTON	2	50	1000.0	305.0	32161	3390	23541	3049	0.7	0.1	99.7
OH DAYTON	7	41	472.1	348.0	27495	3231	22628	3069	0.0	0.0	99.9
OH DAYTON	16	58	100.1	350.0	20406	2881	18568	2681	3.6	2.4	100.0
OH DAYTON	22	51	132.9	351.0	20714	2952	19726	2774	0.7	0.2	94.8
OH DAYTON	45	39	153.2	357.0	19468	2910	18391	2724	7.8	1.4	98.8
OH LIMA	35	20	50.0	165.0	10466	439	10054	433	2.7	4.2	100.0
OH LIMA	44	57	50.0	207.0	11869	480	11788	478	0.0	0.0	100.0
OH LORAIN	43	28	120.3	336.0	19611	3380	18872	3316	5.1	2.3	99.6
OH MANSFIELD	68	12	3.2	180.0	12086	572	11882	566	0.0	0.0	99.6
OH NEWARK	51	24	50.0	189.0	10416	1286	9830	1265	9.0	17.4	99.9
OH OXFORD	14	28	50.0	91.0	6275	1303	5898	1202	24.0	32.5	99.9
OH PORTSMOUTH	30	17	50.0	237.0	15354	537	14371	446	2.8	1.4	100.0
OH PORTSMOUTH	42	43	50.0	382.0	14706	495	14020	445	2.9	1.0	99.5
OH SANDUSKY	52	42	50.0	236.0	13436	657	13432	657	0.1	0.0	100.0
OH SHAKER HEIGHTS	19	10	3.5	351.0	19166	3437	18103	3086	17.3	3.7	90.2
OH SPRINGFIELD	26	18	50.0	149.0	12014	1312	11922	1299	2.0	2.6	99.5
OH STEUBENVILLE	9	57	1000.0	268.0	25540	3350	21572	2862	0.0	0.0	99.4
OH TOLEDO	11	17	520.3	305.0	28648	4269	26457	4003	6.8	1.4	100.0
OH TOLEDO	13	19	535.1	305.0	21292	2442	22248	2293	6.3	2.9	90.5
OH TOLEDO	24	49	302.3	424.0	23796	2279	23321	2257	6.5	2.1	100.0
OH TOLEDO	30	29	50.0	314.0	16186	1774	16109	1767	4.6	3.2	100.0
OH TOLEDO	36	46	63.3	372.0	17228	1407	17031	1398	5.9	2.0	100.0
OH TOLEDO	40	5	1.0	174.0	10616	936	11127	958	10.7	4.0	95.3
OH YOUNGSTOWN	21	20	140.7	302.0	21069	2702	19021	1952	0.7	1.2	100.0
OH YOUNGSTOWN	27	41	50.0	436.0	19960	2575	19241	2366	2.1	6.4	99.9
OH YOUNGSTOWN	33	36	50.0	177.0	11401	1213	11208	1189	6.4	5.6	100.0
OH ZANESVILLE	18	40	50.0	162.0	10904	404	10509	384	2.5	5.2	100.0
OK ADA	10	26	614.8	445.0	36458	452	32152	390	0.0	0.0	100.0
OK BARTLESVILLE	17	14	142.7	316.0	16700	801	15901	782	0.1	0.0	99.2
OK CHEYENNE	12	8	15.1	299.0	27427	97	23103	77	0.0	0.0	100.0
OK CLAREMORE	35	36	75.6	256.0	14061	785	14037	786	0.7	0.7	99.7
OK ENID	20	18	50.0	136.0	7094	71	7094	71	0.0	0.0	100.0
OK EUFAULA	3	31	1000.0	399.0	34860	654	25056	348	0.0	0.0	98.9
OK LAWTON	7	23	579.4	320.0	29406	391	26852	378	0.0	0.0	99.8
OK OKLAHOMA CITY	4	27	1000.0	469.0	43214	1367	38465	1290	0.0	0.0	99.8
OK OKLAHOMA CITY	5	16	1000.0	464.0	39806	1317	33032	1235	0.5	0.1	100.0
OK OKLAHOMA CITY	9	39	804.8	465.0	37637	1299	33951	1267	0.6	0.2	100.0
OK OKLAHOMA CITY	13	32	700.0	465.0	37649	1299	32294	1233	0.0	0.0	100.0
OK OKLAHOMA CITY	14	15	50.0	344.0	17111	1060	17082	1060	2.2	0.7	100.0
OK OKLAHOMA CITY	25	24	125.2	469.0	25485	1152	25388	1151	0.2	0.0	100.0
OK OKLAHOMA CITY	34	33	50.0	369.0	18605	1079	18533	1078	0.0	0.0	100.0
OK OKLAHOMA CITY	43	40	53.2	475.0	23719	1133	23352	1128	1.4	0.6	100.0
OK OKLAHOMA CITY	52	51	50.0	183.0	11722	993	11642	992	0.0	0.0	100.0
OK OKLAHOMA CITY	62	50	50.0	240.0	14644	1004	14607	1004	0.0	0.0	99.7
OK OKMULGEE	44	28	128.1	277.0	15996	822	15326	816	0.4	0.2	100.0
OK SHAWNEE	30	29	198.5	255.0	20259	1093	19843	1087	0.9	0.6	100.0
OK TULSA	2	56	1000.0	558.0	46744	1245	39680	1155	0.0	0.0	99.7
OK TULSA	6	55	1000.0	573.0	47847	1268	38329	1095	0.0	0.0	99.9
OK TULSA	8	58	1000.0	578.0	42332	1170	36166	1095	0.0	0.0	100.0
OK TULSA	11	38	802.4	521.0	40129	1150	35069	1080	0.0	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC: Current service: Area (sq km)	Existing NTSC: Current service: People (thous)	Existing NTSC: New interference: Area (% NL area)	Existing NTSC: New interference: People (% NL pop)	DTV/NTSC area match (%)
OK TULSA	23	22	123.7	399.0	25942	991	25477	988	1.0	0.3	100.0
OK TULSA	41	42	50.0	460.0	21495	919	20817	913	0.0	0.0	100.0
OK TULSA	47	48	50.0	460.0	18366	878	17256	866	0.0	0.0	100.0
OK TULSA	53	49	50.0	182.0	12221	767	11952	763	0.3	0.0	100.0
OR BEND	3	11	19.2	227.0	19374	104	22098	104	0.0	0.0	87.7
OR BEND	21	18	50.0	197.0	6192	86	5596	83	0.0	0.0	100.0
OR COOS BAY	11	21	50.0	192.0	9263	67	8895	62	0.0	0.0	100.0
OR COOS BAY	23	22	50.0	190.0	3080	56	2671	52	0.6	0.2	100.0
OR CORVALLIS	7	39	1000.0	375.0	24882	967	23686	848	0.0	0.0	97.8
OR EUGENE	9	14	524.5	539.0	32527	680	28911	574	0.0	0.0	99.8
OR EUGENE	13	25	602.7	451.0	27886	663	25085	519	0.0	0.0	99.9
OR EUGENE	16	17	69.6	512.0	18133	421	17099	415	0.4	0.1	100.0
OR EUGENE	28	29	50.0	276.0	8622	343	7830	333	1.2	0.2	100.0
OR EUGENE	34	26	83.9	259.0	8916	385	8784	379	0.3	0.1	96.8
OR KLAMATH FALLS	2	40	1000.0	671.0	35786	86	44523	159	0.0	0.0	79.6
OR KLAMATH FALLS	22	33	50.0	656.0	7861	56	6269	55	0.0	0.0	100.0
OR KLAMATH FALLS	31	29	50.0	691.0	5479	55	4555	54	0.0	0.0	100.0
OR LA GRANDE	13	5	1.0	787.0	21361	76	14518	39	0.0	0.0	100.0
OR MEDFORD	5	15	635.9	823.0	38771	346	44977	370	0.0	0.0	86.1
OR MEDFORD	8	42	526.8	818.0	32129	309	32814	322	0.0	0.0	95.9
OR MEDFORD	10	35	296.4	1009.0	33866	276	34390	277	0.0	0.0	97.5
OR MEDFORD	12	38	488.1	823.0	32581	310	31331	314	0.0	0.0	98.7
OR MEDFORD	26	27	50.0	428.0	6407	161	5794	151	0.0	0.0	100.0
OR PENDLETON	11	4	4.8	472.0	30822	268	28921	260	0.1	0.0	99.0
OR PORTLAND	2	43	1000.0	475.0	30177	1966	35417	2000	0.0	0.0	84.8
OR PORTLAND	6	40	1000.0	533.0	31477	1927	36086	2002	0.0	0.0	86.9
OR PORTLAND	8	46	960.0	539.0	29498	1964	27461	1845	0.0	0.0	98.1
OR PORTLAND	10	27	646.6	530.0	30034	1971	28520	1882	0.0	0.0	99.9
OR PORTLAND	12	30	703.9	543.0	30193	1986	28256	1882	0.0	0.0	99.7
OR PORTLAND	24	45	153.8	463.0	18209	1790	17370	1762	0.5	0.1	99.7
OR ROSEBURG	4	19	50.0	305.0	10747	87	12503	98	0.0	0.0	85.9
OR ROSEBURG	36	18	50.0	211.0	3884	69	2997	62	0.0	0.0	100.0
OR ROSEBURG	46	45	50.0	109.0	2115	65	1700	60	0.7	0.4	100.0
OR SALEM	22	20	52.3	363.0	18164	1828	16795	1405	0.0	0.0	100.0
OR SALEM	32	33	245.8	544.0	24298	1922	23069	1827	0.3	1.1	100.0
PA ALLENTOWN	39	62	50.0	302.0	11643	2301	11339	2543	5.5	11.6	97.0
PA ALLENTOWN	69	46	50.0	313.0	11443	2137	9888	1915	2.5	7.8	99.6
PA ALTOONA	10	32	1000.0	338.0	23152	828	20969	764	0.0	0.0	99.5
PA ALTOONA	23	24	50.0	324.0	7220	350	5674	289	0.6	0.0	100.0
PA ALTOONA	47	46	50.0	308.0	12792	590	11515	530	1.7	0.4	100.0
PA BETHLEHEM	60	59	64.5	284.0	11078	3332	10389	2283	0.9	2.6	95.1
PA CLEARFIELD	3	15	1000.0	268.0	27314	684	25059	691	0.0	0.0	97.3
PA ERIE	12	52	1000.0	305.0	28000	734	24477	671	0.0	0.0	100.0
PA ERIE	24	58	50.0	290.0	13553	467	13321	456	0.0	0.0	100.0
PA ERIE	35	16	50.0	287.0	11373	436	11012	422	0.3	0.4	100.0
PA ERIE	54	50	50.0	268.0	13401	446	13006	426	0.2	0.1	100.0
PA ERIE	66	22	50.0	271.0	10892	417	10264	396	0.0	0.0	100.0
PA GREENSBURG	40	50	50.0	299.0	14217	2554	13820	2528	1.5	3.4	99.5
PA HARRISBURG	21	4	1.0	372.0	17890	1898	16062	1741	3.1	4.1	96.3
PA HARRISBURG	27	57	110.6	346.0	14843	1598	15276	1653	9.6	7.1	95.1
PA HARRISBURG	33	36	50.0	427.0	17686	1887	16987	1804	3.4	1.9	99.0
PA HAZLETON	56	9	3.2	329.0	11652	822	8230	489	1.9	0.7	99.7
PA JOHNSTOWN	6	34	1000.0	341.0	27576	2643	27752	2648	0.9	0.1	94.8
PA JOHNSTOWN	8	29	633.7	368.0	21704	2586	18655	2234	0.0	0.0	99.6
PA JOHNSTOWN	19	30	155.2	325.0	17684	2376	16346	2044	0.4	0.5	99.9
PA LANCASTER	8	58	366.4	415.0	23977	3423	21703	2785	1.5	1.3	98.8
PA LANCASTER	15	23	50.0	415.0	17784	2101	17386	2079	10.1	7.7	95.4
PA PHILADELPHIA	3	26	1000.0	305.0	32197	9424	25543	7578	0.0	0.0	99.9
PA PHILADELPHIA	6	64	1000.0	332.0	30825	9122	27031	7747	8.0	1.8	98.1
PA PHILADELPHIA	10	67	757.9	354.0	26104	8148	23491	7190	0.4	0.3	98.2
PA PHILADELPHIA	17	54	164.6	320.0	19073	6755	19964	6768	1.1	0.7	93.8
PA PHILADELPHIA	29	42	261.6	347.0	22969	7506	23279	7499	15.5	10.0	95.8
PA PHILADELPHIA	35	34	50.0	284.0	11647	5631	11619	5690	1.1	1.6	98.2
PA PHILADELPHIA	57	32	103.9	353.0	16843	6507	15698	6210	2.6	0.7	99.6
PA PITTSBURGH	2	25	1000.0	302.0	29472	3489	26900	3339	8.0	5.4	98.2
PA PITTSBURGH	4	51	1000.0	293.0	28785	3237	24960	3089	0.0	0.0	97.7
PA PITTSBURGH	11	48	1000.0	302.0	26428	3433	23126	3090	0.4	0.1	99.9
PA PITTSBURGH	13	38	1000.0	210.0	23244	3084	20243	2892	1.0	0.3	100.0
PA PITTSBURGH	16	26	50.0	215.0	12490	2527	12154	2493	1.1	0.2	99.8
PA PITTSBURGH	22	42	316.6	280.0	16264	2735	14380	2580	0.7	0.4	99.9
PA PITTSBURGH	53	43	50.0	312.0	16622	2787	16057	2729	3.5	1.7	100.0
PA READING	51	25	114.9	395.0	18049	5838	16581	5175	5.3	5.1	98.3
PA RED LION	49	30	50.0	177.0	9806	1519	8685	1319	5.7	7.3	99.9
PA SCRANTON	16	49	70.4	506.0	19642	1512	18311	1353	0.4	0.5	99.8
PA SCRANTON	22	13	4.1	505.0	23875	1813	21186	1555	1.5	1.6	98.5
PA SCRANTON	38	31	50.0	385.0	15311	864	13984	819	6.1	3.3	98.6

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
PA SCRANTON	44	41	50.0	509.0	16803	1320	14479	1057	3.5	6.1	99.1
PA SCRANTON	64	32	50.0	374.0	3254	481	2498	441	4.5	0.5	100.0
PA WILKES-BARRE	28	11	3.6	509.0	23638	1771	21831	1618	6.9	10.6	97.4
PA WILLIAMSPORT	53	29	50.0	222.0	3575	162	2437	121	0.0	0.0	100.0
PA YORK	43	47	215.8	417.0	19254	2446	18552	2529	2.4	7.0	97.0
RI BLOCK ISLAND	69	17	50.0	213.0	11770	1637	11291	1552	0.0	0.0	100.0
RI PROVIDENCE	10	51	1000.0	305.0	27782	6186	23558	5267	11.4	3.0	99.9
RI PROVIDENCE	12	13	14.6	305.0	27191	6110	25661	5488	8.6	2.5	99.9
RI PROVIDENCE	36	21	50.0	182.0	11210	2577	11133	2569	8.4	3.3	97.0
RI PROVIDENCE	64	54	88.6	315.0	14705	3463	13709	2800	0.0	0.0	99.7
SC ALLENDALE	14	33	50.0	244.0	13624	362	13573	358	1.9	2.0	99.8
SC ANDERSON	40	14	50.0	311.0	15444	1021	14646	984	0.1	0.1	99.2
SC BEAUFORT	16	44	50.0	390.0	19727	670	19643	670	0.3	0.4	100.0
SC CHARLESTON	2	59	1000.0	594.0	51082	994	45904	819	0.0	0.0	100.0
SC CHARLESTON	4	53	1000.0	597.0	51399	977	42292	713	0.0	0.0	100.0
SC CHARLESTON	5	52	1000.0	597.0	51435	988	46921	835	0.0	0.0	100.0
SC CHARLESTON	7	49	1000.0	564.0	33353	825	30920	757	0.0	0.0	100.0
SC CHARLESTON	24	40	315.1	542.0	29299	697	27779	655	0.0	0.0	100.0
SC CHARLESTON	36	35	93.5	256.0	14028	502	14020	502	0.0	0.0	100.0
SC COLUMBIA	10	41	836.6	472.0	37989	1479	33420	1229	0.9	0.3	100.0
SC COLUMBIA	19	17	222.0	533.0	28901	1053	27871	1020	0.1	0.0	99.5
SC COLUMBIA	25	8	3.2	253.0	16894	776	15619	757	14.4	5.2	99.2
SC COLUMBIA	35	32	50.0	314.0	14267	727	14039	721	5.5	2.3	100.0
SC COLUMBIA	57	48	105.0	193.0	13162	715	13074	714	20.6	6.6	100.0
SC CONWAY	23	58	81.4	250.0	16109	450	15408	427	0.5	0.3	100.0
SC FLORENCE	13	56	1000.0	594.0	44012	1448	38937	1320	0.0	0.0	100.0
SC FLORENCE	15	16	50.0	594.0	29104	1061	28908	1059	2.8	3.1	99.9
SC FLORENCE	21	20	70.6	567.0	22756	788	22085	775	2.3	1.5	99.9
SC FLORENCE	33	45	50.0	241.0	12388	382	12120	379	1.0	0.6	100.0
SC GREENVILLE	4	59	1000.0	610.0	41224	1897	39424	1774	0.0	0.0	92.0
SC GREENVILLE	16	52	60.2	351.0	16092	1085	16413	1105	0.3	0.1	97.0
SC GREENVILLE	29	9	4.9	392.0	19055	1186	19301	1190	0.5	0.3	93.9
SC GREENWOOD	38	18	50.0	235.0	14231	774	14390	764	0.5	0.4	98.1
SC HARDEEVILLE	28	27	217.0	457.0	24891	570	24827	569	0.2	0.0	100.0
SC MYRTLE BEACH	43	18	119.3	463.0	25540	761	25592	760	0.4	1.0	99.8
SC ROCK HILL	30	15	50.0	210.0	11318	1017	11334	1006	6.8	6.7	95.7
SC ROCK HILL	55	39	140.8	570.0	30453	2257	29160	2209	6.1	4.0	100.0
SC SPARTANBURG	7	53	1000.0	610.0	39763	2297	38654	2205	0.0	0.0	98.5
SC SPARTANBURG	49	43	50.0	296.0	15730	1043	15059	977	2.8	2.0	99.8
SC SUMTER	27	28	50.0	354.0	17105	715	16471	529	1.0	0.7	100.0
SC SUMTER	63	38	50.0	165.0	2186	116	2118	115	0.0	0.0	100.0
SD ABERDEEN	9	28	643.3	427.0	34369	132	28565	112	0.0	0.0	100.0
SD ABERDEEN	16	17	50.0	357.0	20483	75	20039	71	0.0	0.0	100.0
SD BROOKINGS	8	18	767.3	229.0	24013	139	20117	127	0.4	1.6	100.0
SD EAGLE BUTTE	13	24	618.5	518.0	39782	20	34774	17	0.0	0.0	100.0
SD FLORENCE	3	25	1000.0	512.0	45862	202	44067	198	0.0	0.0	99.9
SD HURON	12	22	937.2	259.0	26305	81	21859	71	0.0	0.0	100.0
SD LEAD	5	26	1000.0	564.0	45177	147	43905	149	0.0	0.0	98.3
SD LEAD	11	27	711.8	576.0	40830	146	38672	144	0.0	0.0	100.0
SD LOWRY	11	15	352.8	317.0	27805	29	21711	24	0.0	0.0	100.0
SD MARTIN	8	20	895.5	265.0	26063	29	23541	27	0.0	0.0	100.0
SD MITCHELL	5	26	1000.0	460.0	42190	379	38297	340	0.0	0.0	100.0
SD PIERRE	4	19	1000.0	378.0	36775	51	32612	46	0.0	0.0	100.0
SD PIERRE	10	21	561.0	488.0	37574	60	32004	55	0.0	0.0	99.9
SD RAPID CITY	3	22	1000.0	201.0	24395	122	23814	128	0.0	0.0	96.4
SD RAPID CITY	7	18	905.0	204.0	20758	122	18203	118	0.0	0.0	99.8
SD RAPID CITY	9	23	68.3	202.0	13894	102	13117	106	0.0	0.0	99.2
SD RAPID CITY	15	16	50.0	155.0	10545	103	10141	98	2.5	0.1	100.0
SD RELIANCE	6	14	1000.0	338.0	35061	59	32119	56	0.0	0.0	100.0
SD SIOUX FALLS	11	32	50.0	192.0	12872	214	12124	209	0.0	0.0	99.9
SD SIOUX FALLS	13	29	736.2	610.0	43879	496	35241	417	0.0	0.0	100.0
SD SIOUX FALLS	17	7	3.2	151.0	6670	160	6618	159	0.4	0.2	100.0
SD SIOUX FALLS	23	24	50.0	54.0	1623	122	1623	122	0.2	0.0	100.0
SD SIOUX FALLS	36	48	50.0	293.0	15198	228	15226	228	1.4	0.8	99.6
SD SIOUX FALLS	46	47	147.4	607.0	32808	387	31976	377	0.0	0.0	100.0
SD VERMILLION	2	34	1000.0	232.0	29029	437	28686	434	0.0	0.0	98.9
TN CHATTANOOGA	3	55	1000.0	320.0	26577	1040	27342	1025	0.0	0.0	91.1
TN CHATTANOOGA	9	35	1000.0	317.0	25102	1009	21972	892	0.0	0.0	99.7
TN CHATTANOOGA	12	47	1000.0	384.0	28037	1077	25944	1001	0.0	0.0	98.7
TN CHATTANOOGA	45	29	50.0	329.0	15872	760	14511	722	0.9	1.2	100.0
TN CHATTANOOGA	61	40	121.9	370.0	14437	733	13584	702	0.0	0.0	99.7
TN CLEVELAND	53	42	50.0	356.0	11935	713	11072	686	2.8	2.2	100.0
TN COOKEVILLE	22	52	70.4	425.0	20176	354	19688	347	1.1	1.3	100.0
TN COOKEVILLE	28	36	50.0	279.0	10744	200	9879	192	4.6	2.8	100.0
TN CROSSVILLE	20	50	340.7	738.0	35145	1262	33955	1230	1.5	1.9	99.7
TN GREENEVILLE	39	38	124.3	802.0	21110	1069	19708	968	1.2	1.0	99.7

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC, Current service: Area (sq km)	Existing NTSC, Current service: People (thous)	Existing NTSC, New interference: Area (% NL area)	Existing NTSC, New interference: People (% NL pop)	DTV/NTSC area match (%)
TN HENDERSONVILLE	50	51	134.6	235.0	11856	983	11660	966	4.2	1.9	99.9
TN JACKSON	7	43	880.6	323.0	29282	565	25511	510	0.0	0.0	100.0
TN JACKSON	16	39	321.9	322.0	20322	452	20105	449	1.0	0.6	100.0
TN JELLICO	54	23	50.0	395.0	4912	216	3759	163	0.0	0.0	100.0
TN JOHNSON CITY	11	58	938.9	707.0	30048	1072	29354	1028	0.1	0.0	96.2
TN KINGSPORT	19	27	52.0	707.0	19306	728	18536	708	0.4	0.2	99.3
TN KNOXVILLE	6	26	1000.0	454.0	33062	1210	33026	1181	0.0	0.0	93.2
TN KNOXVILLE	8	30	635.1	382.0	21294	980	19888	941	0.0	0.0	99.8
TN KNOXVILLE	10	31	735.0	546.0	33656	1217	29785	1101	3.1	1.7	99.8
TN KNOXVILLE	15	17	88.2	513.0	20171	934	19516	922	0.6	0.3	99.8
TN KNOXVILLE	43	34	50.0	351.0	14106	817	13576	800	1.8	2.4	99.7
TN LEBANON	66	44	50.0	161.0	8934	901	8313	866	0.0	0.0	99.9
TN LEXINGTON	11	47	1000.0	195.0	23613	475	20401	417	0.0	0.0	100.0
TN MEMPHIS	3	28	1000.0	305.0	33675	1451	24845	1287	0.0	0.0	100.0
TN MEMPHIS	5	52	1000.0	308.0	33416	1440	29582	1379	0.0	0.0	99.9
TN MEMPHIS	10	29	642.1	329.0	29843	1365	24952	1276	1.6	0.5	100.0
TN MEMPHIS	13	53	1000.0	308.0	28740	1348	25719	1304	0.0	0.0	100.0
TN MEMPHIS	24	25	106.6	308.0	20878	1195	20718	1193	0.1	0.0	100.0
TN MEMPHIS	30	31	198.7	305.0	17571	1125	17334	1123	0.1	0.1	100.0
TN MEMPHIS	50	51	50.0	315.0	15661	1129	15581	1129	0.5	0.1	100.0
TN MURFREESBORO	39	38	175.4	250.0	15067	1089	14421	1066	3.2	1.3	99.9
TN NASHVILLE	2	27	1000.0	411.0	38226	1665	32297	1472	0.0	0.0	100.0
TN NASHVILLE	4	10	38.0	434.0	38167	1649	34521	1561	0.1	0.0	99.7
TN NASHVILLE	5	56	1000.0	425.0	37981	1674	33627	1569	0.0	0.0	99.5
TN NASHVILLE	8	46	896.4	390.0	32317	1502	28879	1420	0.0	0.0	100.0
TN NASHVILLE	17	15	116.6	354.0	24174	1347	23718	1337	1.8	0.7	99.9
TN NASHVILLE	30	21	175.2	430.0	23850	1366	23686	1364	0.9	2.3	98.6
TN NASHVILLE	58	23	50.3	240.0	13525	1078	13084	1067	4.3	3.7	99.8
TN SNEEDVILLE	2	41	1000.0	536.0	37306	1655	38851	1659	0.0	0.0	91.8
TX ABILENE	9	29	1000.0	259.0	26603	224	19981	204	4.7	3.3	100.0
TX ABILENE	32	24	50.0	287.0	17302	182	17206	182	0.7	0.2	100.0
TX ALVIN	67	36	103.0	543.0	22575	3738	22591	3738	0.1	0.0	99.9
TX AMARILLO	2	21	1000.0	401.0	38326	317	36338	310	0.0	0.0	100.0
TX AMARILLO	4	19	1000.0	433.0	40542	325	39077	324	0.0	0.0	100.0
TX AMARILLO	7	24	618.6	518.0	40089	319	35704	316	0.0	0.0	100.0
TX AMARILLO	10	9	19.9	466.0	36839	314	33165	304	0.0	0.0	100.0
TX AMARILLO	14	15	50.0	464.0	24118	285	23951	285	0.0	0.0	100.0
TX ARLINGTON	68	42	101.1	360.0	18136	3883	17975	3879	0.0	0.0	99.8
TX AUSTIN	7	56	1000.0	384.0	32047	1324	30089	1269	0.0	0.0	99.8
TX AUSTIN	18	22	63.8	335.0	18661	907	18352	904	4.5	0.8	99.9
TX AUSTIN	24	33	77.9	387.0	22580	997	20626	965	1.8	0.2	100.0
TX AUSTIN	36	21	151.5	374.0	25393	1101	23977	1044	0.1	0.0	99.8
TX AUSTIN	42	43	79.1	393.0	17821	911	16505	878	1.0	0.1	100.0
TX AUSTIN	54	49	170.0	374.0	23395	1020	21914	1005	5.4	7.0	99.9
TX BAYTOWN	57	41	138.2	585.0	26217	3625	26197	3625	0.0	0.0	100.0
TX BEAUMONT	6	21	1000.0	293.0	33120	704	28386	640	0.0	0.0	100.0
TX BEAUMONT	12	50	998.6	305.0	26753	650	23716	603	0.0	0.0	100.0
TX BEAUMONT	34	33	50.0	312.0	13852	541	13852	541	0.0	0.0	100.0
TX BELTON	46	47	50.0	384.0	15397	603	14824	547	1.6	0.4	100.0
TX BIG SPRING	4	33	130.2	116.0	12027	55	11906	55	0.0	0.0	99.9
TX BROWNSVILLE	23	24	95.8	445.0	19574	667	19566	667	0.0	0.0	100.0
TX BRYAN	3	59	1000.0	515.0	42748	2829	30202	522	0.0	0.0	100.0
TX BRYAN	28	29	50.0	220.0	12738	224	12742	224	0.5	0.1	99.9
TX COLLEGE STATION	15	12	3.2	119.0	4071	137	4071	137	0.0	0.0	100.0
TX CONROE	49	5	1.0	359.0	15464	3336	13430	2266	0.1	0.0	100.0
TX CONROE	55	42	148.7	570.0	32248	3841	31975	3838	3.6	0.3	100.0
TX CORPUS CHRISTI	3	47	1000.0	262.0	31451	490	30486	488	0.0	0.0	100.0
TX CORPUS CHRISTI	6	50	1000.0	291.0	28940	493	28236	490	0.0	0.0	100.0
TX CORPUS CHRISTI	10	18	604.2	287.0	27997	493	27637	491	0.0	0.0	100.0
TX CORPUS CHRISTI	16	22	50.0	296.0	15085	447	15085	447	0.0	0.0	100.0
TX CORPUS CHRISTI	28	27	50.0	232.0	10892	419	10892	419	0.0	0.0	100.0
TX DALLAS	4	35	1000.0	511.0	45496	4405	40694	4278	0.0	0.0	100.0
TX DALLAS	8	9	20.5	512.0	39434	4224	35954	4161	0.0	0.0	100.0
TX DALLAS	13	14	463.9	469.0	37984	4202	34197	4145	0.0	0.0	100.0
TX DALLAS	27	36	268.2	515.0	27304	4058	27151	4058	2.1	0.2	100.0
TX DALLAS	33	32	209.4	518.0	27039	4048	26714	4044	0.1	0.0	99.9
TX DALLAS	39	40	211.8	512.0	31598	4099	31248	4095	0.5	0.0	100.0
TX DALLAS	58	45	147.7	438.0	21245	3941	21140	3939	0.0	0.0	100.0
TX DECATUR	29	30	95.1	160.0	11515	3700	11916	3713	3.0	0.3	96.3
TX DEL RIO	10	28	1000.0	100.0	7805	47	7493	47	0.0	0.0	100.0
TX DENTON	2	31	1000.0	412.0	39287	4218	36831	4176	0.0	0.0	100.0
TX EAGLE PASS	16	18	50.0	85.0	2385	36	2385	36	0.0	0.0	100.0
TX EL PASO	4	16	1000.0	475.0	39256	722	39212	722	0.0	0.0	98.7
TX EL PASO	7	17	1000.0	265.0	25440	722	23481	722	0.0	0.0	100.0
TX EL PASO	9	18	653.7	582.0	40320	723	37215	723	0.0	0.0	100.0
TX EL PASO	13	29	952.6	265.0	23441	720	21850	720	0.0	0.0	99.7

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition: Area (sq km)	Digital television service during transition: People (thous)	Existing NTSC Current service: Area (sq km)	Existing NTSC Current service: People (thous)	Existing NTSC New interference: Area (% NL area)	Existing NTSC New interference: People (% NL pop)	DTV/NTSC area match (%)
TX EL PASO	14	15	50.0	604.0	21819	720	19668	720	0.1	0.1	100.0
TX EL PASO	26	25	68.0	457.0	16514	717	16029	717	0.3	0.3	100.0
TX EL PASO	38	39	50.0	557.0	8401	628	7981	628	0.0	0.0	100.0
TX EL PASO	65	51	50.0	557.0	15864	703	15091	703	0.0	0.0	100.0
TX FORT WORTH	5	41	1000.0	514.0	45538	4411	39610	4227	0.0	0.0	100.0
TX FORT WORTH	11	19	528.6	509.0	40067	4245	34825	4150	1.0	0.1	100.0
TX FORT WORTH	21	18	210.5	503.0	27792	4056	27744	4053	0.7	0.1	99.7
TX FORT WORTH	52	51	165.5	328.0	14609	3812	14188	3802	0.0	0.0	100.0
TX GALVESTON	22	23	236.0	566.0	30801	3696	30801	3696	0.0	0.0	100.0
TX GALVESTON	48	47	160.9	358.0	18436	3461	18133	3350	0.0	0.0	100.0
TX GARLAND	23	24	165.5	348.0	12897	3155	12589	3047	1.8	0.4	100.0
TX GREENVILLE	47	46	50.0	155.0	2533	70	2533	70	0.0	0.0	100.0
TX HARLINGEN	4	31	1000.0	396.0	38632	687	36762	686	0.0	0.0	100.0
TX HARLINGEN	44	34	50.0	296.0	13869	657	13869	657	0.0	0.0	100.0
TX HARLINGEN	60	38	50.0	372.0	14082	661	14082	661	0.0	0.0	100.0
TX HOUSTON	2	35	1000.0	588.0	50581	3935	44930	3865	0.0	0.0	100.0
TX HOUSTON	8	53	1000.0	564.0	38028	3869	37240	3850	0.0	0.0	99.9
TX HOUSTON	11	31	751.7	570.0	44538	3901	42875	3879	0.0	0.0	100.0
TX HOUSTON	13	32	762.7	588.0	44321	3900	41721	3870	0.2	0.0	100.0
TX HOUSTON	14	24	265.2	438.0	25785	3782	25619	3781	0.1	0.0	100.0
TX HOUSTON	20	19	228.8	552.0	27892	3788	27863	3788	0.7	0.1	100.0
TX HOUSTON	26	27	228.8	594.0	31368	3825	31101	3816	0.5	0.1	100.0
TX HOUSTON	39	38	199.5	594.0	27723	3779	27530	3776	0.0	0.0	100.0
TX HOUSTON	61	44	117.0	429.0	20486	3695	20482	3695	0.0	0.0	100.0
TX IRVING	49	48	173.6	365.0	19468	3910	19323	3907	0.9	0.2	100.0
TX JACKSONVILLE	56	22	96.9	482.0	20000	554	19872	552	2.7	3.5	100.0
TX KATY	51	52	67.9	500.0	20118	3688	20050	3687	0.0	0.0	100.0
TX KERRVILLE	35	17	141.8	536.0	23586	1420	22701	1411	1.7	1.4	100.0
TX KILLEEN	62	23	50.0	408.0	17009	540	16864	540	0.0	0.0	99.5
TX LAKE DALLAS	55	43	55.8	142.0	10429	3601	10253	3565	0.0	0.0	100.0
TX LAREDO	8	15	503.8	312.0	26413	140	25684	137	0.0	0.0	100.0
TX LAREDO	13	14	137.4	280.0	21033	143	20347	143	9.5	5.3	100.0
TX LAREDO	27	19	77.5	67.0	6996	132	6972	132	0.0	0.0	100.0
TX LLANO	14	27	166.6	269.0	19355	270	17337	118	7.3	5.3	100.0
TX LONGVIEW	51	52	161.7	381.0	17654	538	17275	521	0.7	0.5	99.6
TX LUBBOCK	5	39	1000.0	226.0	28511	364	28273	364	0.0	0.0	100.0
TX LUBBOCK	11	44	1000.0	232.0	25338	351	24403	349	1.9	0.3	100.0
TX LUBBOCK	13	40	1000.0	268.0	25110	342	24059	342	0.0	0.0	100.0
TX LUBBOCK	16	25	50.0	83.0	5191	235	5179	235	0.3	0.0	100.0
TX LUBBOCK	28	27	50.4	256.0	16287	300	16194	300	1.4	0.0	100.0
TX LUBBOCK	34	35	115.8	256.0	15056	295	14980	295	0.0	0.0	100.0
TX LUFKIN	9	43	778.5	204.0	18165	224	16010	206	3.8	5.1	100.0
TX MCALLEN	48	30	56.1	288.0	14991	658	14959	656	0.0	0.0	100.0
TX MIDLAND	2	26	1000.0	323.0	34584	345	33064	341	0.0	0.0	100.0
TX NACOGDOCHES	19	18	50.0	222.0	8477	141	8445	140	6.9	3.1	100.0
TX ODESSA	7	31	1000.0	226.0	25494	279	25006	278	0.0	0.0	100.0
TX ODESSA	9	15	465.6	387.0	33322	335	29562	297	0.0	0.0	100.0
TX ODESSA	24	23	95.5	335.0	18781	289	18874	289	0.0	0.0	99.5
TX ODESSA	36	22	50.0	88.0	4783	225	4823	225	0.0	0.0	99.2
TX ODESSA	42	43	50.0	146.0	7451	243	7435	243	0.0	0.0	100.0
TX PORT ARTHUR	4	40	1000.0	360.0	36493	793	32998	763	0.0	0.0	100.0
TX RIO GRANDE CITY	40	20	50.0	113.0	10336	106	10328	106	0.0	0.0	100.0
TX ROSENBERG	45	46	62.8	439.0	19437	3656	19380	3655	0.0	0.0	100.0
TX SAN ANGELO	3	16	195.8	183.0	17443	120	16335	119	0.0	0.0	100.0
TX SAN ANGELO	6	19	1000.0	277.0	31435	143	26407	127	0.0	0.0	99.9
TX SAN ANGELO	8	11	18.0	442.0	33771	155	29800	148	0.0	0.0	99.8
TX SAN ANTONIO	4	58	1000.0	451.0	40648	1682	37111	1591	0.0	0.0	99.4
TX SAN ANTONIO	5	55	1000.0	424.0	38776	1607	36112	1588	0.0	0.0	99.4
TX SAN ANTONIO	9	20	791.9	283.0	27088	1519	25660	1499	0.0	0.0	99.7
TX SAN ANTONIO	12	48	946.7	451.0	36367	1598	34879	1571	0.7	0.5	100.0
TX SAN ANTONIO	23	16	50.0	261.0	11230	1361	11306	1362	1.1	0.2	98.0
TX SAN ANTONIO	29	30	221.9	443.0	23887	1505	23364	1497	0.1	0.0	100.0
TX SAN ANTONIO	41	40	192.0	432.0	22698	1490	22090	1466	0.9	0.2	100.0
TX SAN ANTONIO	60	39	122.6	456.0	19207	1464	18560	1454	0.0	0.0	99.8
TX SHERMAN	12	20	377.1	543.0	39167	760	29746	384	0.0	0.0	100.0
TX SNYDER	17	10	3.2	135.0	5643	21	5431	21	0.4	0.0	100.0
TX SWEETWATER	12	20	536.8	427.0	33240	239	29841	233	2.0	0.6	99.6
TX TEMPLE	6	50	1000.0	573.0	48326	1239	35310	971	0.0	0.0	99.9
TX TEXARKANA	6	15	1000.0	482.0	43945	1020	32440	884	0.0	0.0	100.0
TX TYLER	7	38	957.5	302.0	28356	703	23372	619	0.0	0.0	100.0
TX VICTORIA	19	34	50.0	149.0	7797	117	7797	117	0.1	0.0	100.0
TX VICTORIA	25	15	50.0	311.0	16145	165	16084	164	0.0	0.0	100.0
TX WACO	10	53	700.7	552.0	38681	857	35434	811	0.0	0.0	99.5
TX WACO	25	26	224.6	558.0	29074	718	26263	595	0.0	0.0	100.0
TX WACO	34	20	50.0	155.0	4781	201	4721	201	0.1	0.0	100.0
TX WACO	44	57	191.6	552.0	22757	630	22407	608	0.1	0.0	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
TX WESLACO	5	13	38.3	290.0	33029	672	31728	675	0.0	0.0	99.9
TX WICHITA FALLS	3	28	1000.0	305.0	33437	388	30557	369	0.0	0.0	100.0
TX WICHITA FALLS	6	22	1000.0	311.0	33838	391	28057	358	0.0	0.0	100.0
TX WICHITA FALLS	18	17	96.8	329.0	17983	320	17915	320	2.6	1.1	100.0
UT CEDAR CITY	4	14	350.0	836.0	36730	75	40743	86	0.0	0.0	89.0
UT OGDEN	9	35	296.9	893.0	21201	1373	21568	1375	0.2	0.0	97.8
UT OGDEN	30	29	57.7	1190.0	22654	1372	21299	1358	0.0	0.0	100.0
UT PROVO	11	39	385.6	896.0	24912	1381	24644	1359	0.0	0.0	97.8
UT PROVO	16	17	242.2	57.0	8154	329	7461	295	0.0	0.0	99.9
UT SALT LAKE CITY	2	34	691.4	933.0	33711	1402	44486	1484	0.0	0.0	75.3
UT SALT LAKE CITY	4	38	487.8	1180.0	35105	1401	44280	1479	0.0	0.0	77.5
UT SALT LAKE CITY	5	36	496.4	1152.0	35995	1408	47582	1468	0.0	0.0	75.6
UT SALT LAKE CITY	7	40	396.8	924.0	29597	1392	30768	1397	0.1	0.0	96.0
UT SALT LAKE CITY	13	28	182.5	1116.0	21951	1392	19545	1356	0.0	0.0	99.7
UT SALT LAKE CITY	14	27	80.6	1181.0	28371	1384	26587	1374	0.1	0.0	100.0
UT ST. GEORGE	12	9	3.2	42.0	1767	43	1631	41	0.0	0.0	100.0
VA ARLINGTON	14	15	86.3	173.0	14969	5813	15213	5853	5.2	1.0	97.7
VA ASHLAND	65	47	50.0	262.0	11373	925	10521	908	0.0	0.0	100.0
VA BRISTOL	5	28	1000.0	680.0	37697	1322	38654	1387	0.0	0.0	90.7
VA CHARLOTTESVILLE	29	32	224.1	363.0	21172	683	20732	649	2.9	6.6	95.9
VA CHARLOTTESVILLE	41	14	50.0	352.0	8718	249	7661	205	2.6	0.9	99.8
VA DANVILLE	24	41	50.0	107.0	5763	306	5650	296	5.7	3.0	99.9
VA FAIRFAX	56	57	50.0	215.0	11873	4371	11068	4071	3.9	2.0	98.9
VA FRONT ROYAL	42	21	50.0	398.0	8167	247	6366	225	2.7	1.8	100.0
VA GOLDVEIN	53	30	50.0	229.0	14171	3674	13042	2821	1.1	0.2	99.9
VA GRUNDY	68	49	50.0	763.0	14790	613	13665	575	0.0	0.0	99.9
VA HAMPTON	13	41	883.7	301.0	28338	1715	23147	1590	0.0	0.0	100.0
VA HAMPTON-NORFOLK	15	16	108.6	294.0	17265	1537	17265	1537	0.6	0.0	100.0
VA HARRISONBURG	3	49	91.1	646.0	16805	440	20824	532	1.6	0.4	76.1
VA LYNCHBURG	13	56	1000.0	625.0	33408	1050	26842	836	0.0	0.0	97.8
VA LYNCHBURG	21	20	178.3	500.0	18745	640	18422	627	1.8	6.4	96.0
VA MANASSAS	66	36	57.3	168.0	13247	4021	12814	4000	0.1	0.0	99.0
VA MARION	52	42	50.0	445.0	11994	327	9955	265	1.0	0.5	99.9
VA NORFOLK	3	58	1000.0	299.0	33670	1833	26137	1739	0.0	0.0	100.0
VA NORFOLK	33	38	217.0	277.0	14070	1498	14074	1498	0.0	0.0	100.0
VA NORFOLK	49	14	50.0	155.0	6111	1349	6111	1349	0.0	0.0	100.0
VA NORTON	47	32	50.0	591.0	18586	754	15788	625	1.2	0.6	100.0
VA PETERSBURG	8	22	498.4	320.0	27563	1243	24875	1178	0.0	0.0	99.7
VA PORTSMOUTH	10	31	697.8	302.0	28891	1778	26971	1652	14.2	3.5	100.0
VA PORTSMOUTH	27	19	57.9	296.0	18925	1566	18925	1566	0.5	0.1	100.0
VA RICHMOND	6	25	1000.0	256.0	31443	1478	26888	1361	18.6	16.0	99.8
VA RICHMOND	12	54	1000.0	241.0	26142	1261	20975	1103	0.0	0.0	99.7
VA RICHMOND	23	24	104.2	327.0	21925	1108	21864	1106	0.0	0.0	99.9
VA RICHMOND	35	26	64.9	384.0	22450	1079	22414	1089	7.5	3.5	98.2
VA RICHMOND	57	44	50.0	293.0	13908	945	13872	945	3.0	0.5	100.0
VA ROANOKE	7	18	579.1	610.0	37988	1240	33935	1131	0.0	0.0	99.7
VA ROANOKE	10	30	740.6	610.0	34687	1170	31376	1092	0.1	0.1	99.2
VA ROANOKE	15	3	1.0	634.0	26331	944	20746	828	1.2	1.0	99.3
VA ROANOKE	27	17	84.9	607.0	20368	858	18540	816	3.2	2.5	99.0
VA ROANOKE	38	36	50.0	616.0	14741	657	13826	640	2.7	1.7	99.7
VA STAUNTON	51	19	50.0	680.0	7217	261	6357	220	1.3	0.6	100.0
VA VIRGINIA BEACH	43	29	127.6	261.0	18835	1572	18847	1573	0.0	0.0	99.9
VT BURLINGTON	3	53	782.0	835.0	40670	564	39340	592	0.0	0.0	91.9
VT BURLINGTON	22	16	50.0	835.0	27565	486	24512	444	0.4	0.2	99.9
VT BURLINGTON	33	32	50.0	815.0	25027	449	23456	428	0.5	0.2	100.0
VT BURLINGTON	44	43	50.0	840.0	25330	456	23655	428	0.3	0.1	99.8
VT HARTFORD	31	25	69.5	677.0	16867	382	15770	351	2.5	1.9	97.9
VT RUTLAND	28	56	50.0	429.0	10824	251	10054	243	0.0	0.0	100.0
VT ST. JOHNSBURY	20	18	50.0	592.0	17391	180	13973	146	0.7	0.4	100.0
VT WINDSOR	41	24	50.0	684.0	19498	486	16023	370	2.0	3.0	99.9
WA BELLEVUE	33	32	50.0	286.0	4048	1948	3539	1889	7.9	9.6	99.9
WA BELLEVUE	51	50	50.0	739.0	21521	2961	21087	2949	0.1	0.4	100.0
WA BELLINGHAM	12	35	586.0	722.0	40596	1170	37786	581	0.0	0.0	99.7
WA BELLINGHAM	24	19	50.0	676.0	6330	207	5934	193	0.0	0.0	100.0
WA CENTRALIA	15	19	50.0	347.0	13745	418	11570	297	0.7	1.2	100.0
WA EVERETT	16	31	278.2	239.0	15450	2879	14315	2789	0.2	0.0	100.0
WA KENNEWICK	42	14	50.0	390.0	15008	253	14145	238	0.0	0.0	100.0
WA PASCO	19	20	50.0	366.0	15893	242	15293	225	0.0	0.0	100.0
WA PULLMAN	10	17	181.5	408.0	25646	250	23766	208	0.0	0.0	99.5
WA RICHLAND	25	26	50.0	411.0	17269	267	16632	248	0.0	0.0	100.0
WA RICHLAND	31	30	50.0	370.0	6994	162	6483	158	0.0	0.0	100.0
WA SEATTLE	4	38	1000.0	247.0	27081	3049	28573	3061	0.1	0.0	94.4
WA SEATTLE	5	48	1000.0	250.0	26922	3048	27359	3034	0.0	0.0	94.0
WA SEATTLE	7	39	1000.0	250.0	24081	3016	23832	3015	0.0	0.0	98.9
WA SEATTLE	9	41	1000.0	252.0	24059	3020	23225	2982	0.0	0.0	98.5
WA SEATTLE	22	25	236.5	271.0	20242	2971	18838	2933	0.1	0.1	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
WA SEATTLE	45	44	50.0	287.0	4031	1885	3537	1819	1.6	1.6	100.0
WA SPOKANE	2	57	1000.0	671.0	41350	529	46495	549	0.0	0.0	87.3
WA SPOKANE	4	54	1000.0	933.0	43188	522	49444	551	6.2	1.2	86.5
WA SPOKANE	6	55	1000.0	653.0	40615	522	45958	568	0.0	0.0	88.0
WA SPOKANE	7	39	905.2	558.0	34990	543	34472	518	0.0	0.0	98.6
WA SPOKANE	22	38	50.0	429.0	16577	434	15967	423	0.0	0.0	99.3
WA SPOKANE	28	29	89.4	601.0	26305	493	24953	477	0.0	2.3	100.0
WA TACOMA	11	36	739.7	363.0	28093	3051	25764	2978	0.0	0.0	99.5
WA TACOMA	13	18	577.0	610.0	35945	3188	31399	3038	0.0	0.0	99.9
WA TACOMA	20	14	129.6	491.0	21568	2980	20756	2893	0.6	0.4	99.9
WA TACOMA	28	26	50.0	232.0	11699	2424	11033	2456	1.3	5.7	99.1
WA TACOMA	56	42	145.9	570.0	26527	3059	25595	3046	0.1	0.4	99.8
WA VANCOUVER	49	48	103.1	527.0	17220	1772	16636	1743	0.0	0.0	99.9
WA WENATCHEE	27	56	50.0	424.0	10164	105	8623	101	0.0	0.0	100.0
WA YAKIMA	23	16	50.0	293.0	9850	196	8519	195	0.0	0.0	100.0
WA YAKIMA	29	52	50.0	296.0	9301	198	8787	198	0.5	0.0	100.0
WA YAKIMA	35	34	50.0	293.0	9778	198	8828	197	0.0	0.0	100.0
WA YAKIMA	47	21	50.0	280.0	9830	194	8390	193	0.0	0.0	100.0
WI APPLETON	32	59	50.0	336.0	17098	762	16889	750	0.0	0.0	100.0
WI CHIPPEWA FALLS	48	49	50.0	213.0	11904	239	11695	238	0.0	0.0	100.0
WI EAGLE RIVER	34	17	50.0	127.0	9289	63	10007	71	1.6	1.0	91.3
WI EAU CLAIRE	13	39	903.9	607.0	43625	773	37390	643	0.0	0.0	99.8
WI EAU CLAIRE	18	15	50.0	226.0	11474	231	11320	230	0.3	0.1	100.0
WI FOND DU LAC	68	44	117.5	506.0	26460	2038	26736	2424	0.1	1.6	96.8
WI GREEN BAY	2	23	1000.0	381.0	37940	1058	35162	1004	1.1	0.4	100.0
WI GREEN BAY	5	56	1000.0	341.0	35637	1038	33439	987	0.0	0.0	99.9
WI GREEN BAY	11	51	980.4	384.0	33165	1008	31547	956	3.7	2.7	100.0
WI GREEN BAY	26	41	273.2	356.0	23489	924	23171	915	3.1	1.5	100.0
WI GREEN BAY	38	42	50.0	360.0	17527	733	17366	728	0.0	0.0	100.0
WI JANESVILLE	57	32	75.9	342.0	16065	1066	16225	1067	1.2	0.6	97.1
WI KENOSHA	55	40	93.1	144.0	11244	2080	10924	2040	0.4	0.1	100.0
WI LA CROSSE	8	53	1000.0	469.0	36938	682	29076	525	0.5	0.4	100.0
WI LA CROSSE	19	14	50.0	347.0	16542	300	15641	286	6.8	3.7	100.0
WI LA CROSSE	25	17	50.0	306.0	12758	252	11808	228	0.3	0.1	100.0
WI LA CROSSE	31	30	50.0	347.0	17661	311	16864	297	2.7	1.8	100.0
WI MADISON	3	50	363.9	469.0	30811	1334	25451	1060	2.8	6.5	99.9
WI MADISON	15	19	50.0	352.0	18662	823	17836	771	0.5	0.4	99.8
WI MADISON	21	20	50.0	453.0	22106	899	21760	888	2.3	1.4	99.0
WI MADISON	27	26	218.5	455.0	26207	1074	26557	1071	3.0	4.4	97.5
WI MADISON	47	11	3.2	450.0	19725	836	19310	822	1.1	1.7	98.7
WI MANITOWOC	16	19	50.0	129.0	3415	81	3415	81	1.6	0.7	100.0
WI MAYVILLE	52	43	50.0	120.0	2183	87	2155	85	1.3	0.8	100.0
WI MENOMONIE	28	27	50.0	346.0	17842	387	16347	319	0.2	0.0	100.0
WI MILWAUKEE	4	28	1000.0	305.0	33667	2878	24264	2170	0.0	0.0	98.9
WI MILWAUKEE	6	33	1000.0	305.0	34049	2865	22286	2072	0.0	0.0	100.0
WI MILWAUKEE	10	8	9.5	343.0	27742	2523	24134	2110	0.1	0.0	99.3
WI MILWAUKEE	12	34	797.1	305.0	29144	2572	22473	2066	0.0	0.0	100.0
WI MILWAUKEE	18	61	497.5	307.0	20070	2243	19192	2150	0.1	0.0	100.0
WI MILWAUKEE	24	25	106.4	313.0	17217	2101	17048	2073	0.8	0.2	100.0
WI MILWAUKEE	30	22	50.0	293.0	13395	1850	13315	1848	1.1	1.3	100.0
WI MILWAUKEE	36	35	57.1	283.0	14618	1876	14630	1875	0.8	0.5	99.8
WI MILWAUKEE	58	46	133.7	339.0	22348	2230	20629	2155	0.6	1.1	99.9
WI PARK FALLS	36	47	50.0	445.0	19963	106	19134	97	1.7	1.5	100.0
WI RACINE	49	48	168.8	303.0	17217	2104	16657	2001	2.8	1.2	100.0
WI RHINELANDER	12	16	488.7	506.0	39168	340	29829	251	0.0	0.0	99.9
WI SUPERIOR	6	19	1000.0	308.0	32879	289	28518	256	0.0	0.0	99.9
WI SURING	14	21	50.0	201.0	13334	541	13330	541	0.2	0.3	100.0
WI WAUSAU	7	40	800.2	369.0	32065	492	27053	431	0.0	0.0	100.0
WI WAUSAU	9	29	641.1	369.0	32316	493	25727	433	0.0	0.0	100.0
WI WAUSAU	20	24	50.0	300.0	17856	354	17796	354	1.5	0.7	100.0
WV BLUEFIELD	6	46	1000.0	372.0	24533	681	24697	690	0.0	0.0	94.2
WV BLUEFIELD	40	14	50.0	387.0	15729	470	12478	337	0.1	0.0	100.0
WV CHARLESTON	8	55	476.8	372.0	26302	937	24529	889	0.0	0.0	99.7
WV CHARLESTON	11	19	68.3	525.0	23340	858	20571	784	2.1	1.4	100.0
WV CHARLESTON	29	39	50.0	212.0	11177	513	10375	426	0.5	0.3	100.0
WV CLARKSBURG	12	52	1000.0	262.0	23477	604	21524	531	0.1	0.0	99.9
WV CLARKSBURG	46	28	50.0	244.0	8533	286	7660	251	4.3	2.8	100.0
WV GRANDVIEW	9	53	1000.0	305.0	24276	628	22107	545	0.0	0.0	97.8
WV HUNTINGTON	3	23	425.5	388.0	30307	1074	27309	998	0.1	0.0	99.6
WV HUNTINGTON	13	54	412.4	387.0	26802	970	25168	948	6.5	4.7	99.8
WV HUNTINGTON	33	34	60.4	379.0	16913	746	16430	723	1.4	0.5	99.9
WV LEWISBURG	59	48	50.0	568.0	13330	307	12441	282	0.2	0.0	99.7
WV MARTINSBURG	60	12	3.2	312.0	11583	516	9860	476	0.1	0.0	100.0
WV MORGANTOWN	24	33	139.2	457.0	20753	1336	19799	1254	2.7	7.7	99.6
WV OAK HILL	4	50	1000.0	226.0	22640	575	22412	539	0.0	0.0	91.6
WV PARKERSBURG	15	49	50.0	189.0	9529	282	9195	271	7.0	7.8	100.0

TABLE I—DTV ALLOTMENTS, ASSIGNMENT PAIRINGS WITH ANALOG STATIONS–AND SERVICE REPLICATION AND INTERFERENCE EVALUATION—Continued

State and city	NTSC chan	DTV chan	DTV power (kW)	Antenna HAAT (m)	Digital television service during transition		Existing NTSC				DTV/NTSC area match (%)
							Current service		New interference		
					Area (sq km)	People (thous)	Area (sq km)	People (thous)	Area (% NL area)	People (% NL pop)	
WV WESTON	5	58	1000.0	268.0	27554	568	25866	516	0.0	0.0	96.5
WV WHEELING	7	56	1000.0	293.0	25738	2243	23161	2014	0.0	0.0	99.1
WY CASPER	2	17	1000.0	610.0	45108	80	45716	79	0.0	0.0	96.2
WY CASPER	14	15	52.4	573.0	25007	65	23799	65	0.2	0.0	100.0
WY CASPER	20	18	50.0	582.0	10266	63	9090	63	1.5	0.0	99.2
WY CHEYENNE	5	30	1000.0	189.0	22936	354	22768	359	0.0	0.0	94.2
WY CHEYENNE	27	28	165.6	232.0	13520	338	13110	329	0.3	0.1	100.0
WY CHEYENNE	33	11	3.2	148.0	4174	71	3913	71	4.2	0.1	100.0
WY JACKSON	2	14	50.0	304.0	4442	11	4626	11	1.2	0.0	95.8
WY LANDER	4	8	57.4	463.0	36727	34	37280	33	0.0	0.0	97.4
WY LANDER	5	7	30.3	82.0	18113	32	19486	32	0.0	0.0	92.9
WY RAWLINS	11	9	3.2	70.0	2330	10	2097	10	0.0	0.0	100.0
WY RIVERTON	10	16	262.7	526.0	26484	48	25118	47	0.0	0.0	99.7
WY ROCK SPRINGS	13	19	359.2	495.0	33342	45	30593	45	0.0	0.0	100.0
WY SHERIDAN	12	21	1000.0	372.0	28486	37	27424	37	0.0	0.0	99.8
PR AGUADA	50	62	50.1	343.0	19152	....	13149	....	9.8	....	100.0
PR AGUADILLA	12	69	691.8	665.0	46001	....	38301	....	0.0	....	100.0
PR AGUADILLA	32	34	50.1	296.0	15358	....	4652	....	65.4	....	98.8
PR AGUADILLA	44	17	50.1	372.0	20587	....	13040	....	5.0	....	100.0
PR ARECIBO	54	53	50.1	600.0	27756	....	26609	....	11.4	....	99.3
PR ARECIBO	60	61	55.0	242.0	15529	....	15203	....	0.1	....	100.0
PR BAYAMON	36	59	50.1	329.0	18547	....	4283	....	14.9	....	100.0
PR CAGUAS	11	56	707.9	355.0	31007	....	21824	....	0.0	....	100.0
PR CAGUAS	58	57	50.1	329.0	18628	....	8316	....	13.2	....	100.0
PR CAROLINA	52	51	50.1	585.0	26949	....	21606	....	3.7	....	99.5
PR FAJARDO	13	33	281.8	863.0	45149	....	32793	....	0.0	....	100.0
PR FAJARDO	40	38	50.1	839.0	31505	....	28981	....	3.6	....	98.9
PR GUAYAMA	46	45	50.1	642.0	28750	....	27956	....	5.5	....	99.1
PR HUMACAO	68	49	50.1	594.0	27390	....	13282	....	3.6	....	100.0
PR MAYAGUEZ	3	35	1000.0	691.0	49598	....	40712	....	0.0	....	94.8
PR MAYAGUEZ	5	29	1000.0	610.0	45004	....	44597	....	0.0	....	91.1
PR MAYAGUEZ	16	63	50.1	347.0	19374	....	11527	....	0.2	....	100.0
PR MAYAGUEZ	22	23	50.1	620.0	28506	....	27691	....	0.0	....	99.9
PR NARANJITO	64	65	50.1	142.0	11499	....	10359	....	6.4	....	94.0
PR PONCE	7	66	407.4	826.0	46962	....	46824	....	0.0	....	100.0
PR PONCE	9	43	380.2	857.0	44518	....	45819	....	0.0	....	96.8
PR PONCE	14	67	50.1	861.0	33758	....	30272	....	0.8	....	100.0
PR PONCE	20	19	50.1	259.0	15818	....	7812	....	17.5	....	100.0
PR PONCE	26	25	50.1	302.0	17367	....	12274	....	9.6	....	100.0
PR PONCE	48	47	50.1	247.0	15454	....	7081	....	5.9	....	100.0
PR SAN JUAN	2	28	871.0	861.0	53035	....	46686	....	0.0	....	100.0
PR SAN JUAN	4	27	851.1	873.0	53006	....	41839	....	0.0	....	96.8
PR SAN JUAN	6	55	977.2	825.0	54314	....	41882	....	0.0	....	99.9
PR SAN JUAN	18	32	50.1	848.0	33066	....	22841	....	0.4	....	100.0
PR SAN JUAN	24	21	50.1	581.0	27602	....	21905	....	1.1	....	100.0
PR SAN JUAN	30	31	75.9	287.0	17985	....	17932	....	3.8	....	100.0
PR SAN SEBASTIAN	38	39	50.1	332.0	18642	....	8720	....	45.0	....	100.0
PR YAUCO	42	41	50.1	852.0	33204	....	31628	....	0.8	....	100.0
VI CHARLOTTE AMALI	10	50	776.2	558.0	41952	....	39160	....	0.0	....	100.0
VI CHARLOTTE AMALI	12	44	50.1	451.0	22957	....	15899	....	0.0	....	100.0
VI CHARLOTTE AMALI	17	48	50.1	429.0	22404	....	10386	....	0.1	....	100.0
VI CHRISTIANSTED	8	20	501.2	292.0	25457	....	24907	....	0.0	....	100.0
VI CHRISTIANSTED	27	5	1.0	121.0	14403	....	3162	....	94.1	....	100.0

Procedural Matters

11. *Paperwork Reduction Act of 1995 Analysis.* The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to propose or impose no modified information collection requirements on the public.

12. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Sixth Further Notice of Proposed Rule Making (Sixth Further NPRM)* in this proceeding. The Commission sought public comment on the proposals in the *Sixth Further NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.

A. Need for and Objectives of This *Sixth Report and Order*

In this rule making action, the Commission adopts policies, procedures and technical criteria for use in conjunction with broadcast digital television (DTV), adopts a DTV Table of Allotments, adopts a plan for the recovery of a portion of the spectrum currently allocated to TV broadcasting, and provides procedures for assigning DTV frequencies. We seek to allot DTV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast television service during the period of transition from NTSC to DTV service. The overarching goals in this phase of the DTV proceeding are to ensure that the spectrum is used efficiently and effectively through reliance on market forces and to ensure that the introduction of digital TV fully serves the public interest.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

Three comments were received specifically in response to the IRFA contained in the *Sixth Further NPRM.* First, Apogee Broadcasting Corporation (Apogee), which is the owner, operator, and licensee of an LPTV station, states that its station will be forced from the air under the proposed Table of Allotments. Apogee also estimates that over half of the current LPTV stations will be threatened under the proposed Table of Allotments. Apogee argues that such a result will lead to less diversity in programming on LPTV. Apogee endorses the series of technical proposals put forth by the Community Broadcasters Association (CBA), and suggests that the Table of Allotments be redrafted with an eye toward protecting LPTV stations wherever possible, with full power stations being required to negotiate engineering solutions with LPTV stations. Apogee argues that unused spectrum due to DTV implementation should be offered for use first to displaced LPTV stations, and that DTV licensees that displace LPTV stations should pay for the costs associated with frequency changes, pay for the costs of lost business opportunities, and, if necessary, provide spectrum from their DTV allotment for LPTV replacement channels. Apogee supports the proposal that LPTV stations be permitted to seek ''primary'' channel status ahead of any new entrants. Finally, Apogee argues that the Table of Allotments, as proposed, will lead to costly and time-consuming litigation.

Second, Fireweed Communications Corporation (Fireweed), licensee of a full power station in Anchorage, Alaska, notes that, in the *Sixth Further NPRM* IRFA, we requested comment on ''whether the Commission should adopt measures that will assist small stations . . . in their transition, either in their cost to upgrade technical operations or new channel identification.'' In this regard, Fireweed notes that the IRFA also cited the expected cost of equipment to operate on the new DTV channels as varying ''from $750,000 upwards to $10 million.'' Firewood argues that conversion costs to DTV can be kept lower by providing for continued operation on all VHF channels. Fireweed states that its station, and other small-market stations, already possess the most expensive part of a DTV transmission plant—an existing transmitter and antenna. On behalf of its station, Fireweed proposes that it be permitted to retain its current VHF channel for DTV while initiating a temporary UHF channel for NTSC, later to drop the temporary UHF channel. Fireweed estimates that this approach would accomplish the conversion to DTV for under $80,000.

Finally, MARRI Broadcasting, Inc. (MARRI), argues generally that we should ensure certainty in the time frame for the implementation of DTV, and that we should tolerate no delays by those unable to meet the time frames for providing service.

We have taken the commenters' views and arguments into account in the *Sixth Report and Order.* As there described, we determined, first, that the primary allotment objective should be to develop a DTV Table of Allotments that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses. The Commission also noted that low power television and TV translator operations have always been authorized on a secondary basis. For these reasons, we rejected an approach that would have resulted in providing allotments for fewer than all full service licensees in order to avoid the displacement of some LPTV stations. We did, however, take into account the views of the commenters and others in recognizing the public benefits from LPTV stations and in adopting measures to mitigate the impact of DTV implementation on such stations. The mitigating measures adopted by the Commission, including those in response to the views of the commenters, are described *infra* in Section E of this FRFA (''Steps Taken to Minimize Burdens on Small Entities, and Significant Alternatives Considered and Rejected''). We note that, as a result of these actions, the great majority of LPTV operations should be able to continue to operate.

We have limited compensation issues to those of low power services affected by new service providers on channels 60–69, and will address such issues in a forthcoming Notice of Proposed Rule Making on reallocation of those channels. Concerning Fireweed's request for relief specific to its own full power station, we note that such specific request must be handled outside of this rule making, and Fireweed has submitted a separate request for such consideration. And finally, consistent with MARRI's concern, we have stated our intention, through use of the DTV Table of Allotments and other policies described in the *Sixth Report and Order,* to promote an orderly and efficient transition to DTV.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

1. Definition of a ''Small Business''. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television stations, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *Sixth Report and Order,* we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules and policies adopted in this *Sixth Report and Order.*

2. Issues in Applying the Definition of a ''Small Business''. As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

3. Television Station Estimates Based on Census Data. The *Sixth Report and Order* will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.

It should also be noted that the foregoing estimates do not distinguish between network-affiliated stations and independent stations. As of April, 1996, the BIA Publications, Inc. Master Access Television Analyzer Database indicates that about 73 percent of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, seven percent of those affiliates have secondary affiliations.

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allotment policy and other policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

4. Alternative Classification of Small Television Stations. An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (''EEO'') rule for broadcasting. Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements. We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.

5. Other Industry Groups. While we do not believe that the following groups of equipment manufacturers constitute regulated entities for the purpose of this FRFA, we note that these entities were interested in certain technical issues in this proceeding and, accordingly, submitted comments for the record. Because the rule changes and textual discussions in the *Sixth Report and Order* may ultimately have some effect on equipment compliance, we include these entities for the purpose of this FRFA.

Television Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to manufacturers of television equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and

Communications Equipment. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates 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 be classified as small entities. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

Household/Consumer Television Equipment: The Commission has not developed a definition of small entities applicable to manufacturers of television equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

Computer Manufacturers: The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities. The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The rules adopted will result in no changes to reporting, recordkeeping, or other compliance requirements beyond that already required under current regulation.

E. Steps Taken To Minimize Burdens on Small Entities, and Significant Alternatives Considered and Rejected

The DTV Table of Allotments will affect all of the commercial and noncommercial broadcast television stations eligible for a DTV channel in the transition period and a significant number of the LPTV and TV translator stations. It is expected that the allotments will constitute the population of channels on which broadcasters will operate DTV service in the future. Affected stations will need to modify or obtain new transmission facilities and, to a varying extent, production equipment to operate on the new DTV channels. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in DTV programming and origination.

As noted *supra* in Section B of this FRFA (''Summary of Significant Issues Raised by Public Comments In Response to the IRFA''), we have determined that the primary allotment objective should be to develop an Allotments Table that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses. As a result, some LPTV and TV translator licensees currently on the subject DTV spectrum will be displaced. One alternative to this approach would have been to permit existing LPTV and TV translator stations to remain on their incumbent channels; this approach was not chosen because it would have resulted in providing allotments for fewer than all full service licensees. In making this determination, the Commission noted that LPTV and TV translator operations have always been authorized on a secondary basis. To mitigate the effect of this determination on those LPTV stations likely to be displaced, we adopted the following policies.

First, we will permit LPTV and TV translator stations that are displaced by DTV stations to apply for a suitable replacement channel in the same area without being subject to competing applications. In this regard, we also are amending our rules to indicate that such applications will be considered on a first-come, first-served basis without waiting for the Commission to issue a low power application window. Also, we will permit displaced stations to request an increase in power or other facility modifications necessary to avoid an interference conflict or to continue serving the previous coverage area.

Second, we have adopted a number of changes to our technical rules, including many changes requested by the LPTV and TV translator industries, that will provide additional flexibility to accommodate low power operations during and after the transition to DTV. These changes include permitting closer spacing of channels, new criteria for accepting low power station applications for adjacent channel operations within a DTV station's noise-limited service area, and the possibility of waivers for low power stations where interference to the DTV station will not occur or where the DTV station has consented.

Finally, we will permit unused DTV spectrum to be used by both new and displaced LPTV and TV translator stations, and will permit existing LPTV and TV translator stations to continue to operate, as secondary operations, until a displacing DTV station or a new primary service provider is operational and is not receiving interference from the LPTV or TV translator station.

In the *Sixth Report and Order* we have also adopted, as proposed, a ''service replication/maximization'' approach to identify digital TV allotments that, to the extent possible, will allow all existing broadcasters to provide DTV service to a geographic area that is comparable to their existing NTSC service area. Some entities, primarily those representing primarily the interests of existing UHF stations, disagreed with this approach, arguing that it would perpetuate the existing competitive disparities between UHF and VHF stations. We determined to adopt the approach, however, to ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air. Partly as a result of comments received, we adopted a minimum power level in the Table of Allotments, for

DTV facilities on UHF frequencies, of 50 kW, along with a maximum of 1000 kW. This ''minimum power'' approach, with a maximum of 1000 kW, should accommodate UHF providers, many of whom are small entities, while posing less potential for interference with full power stations.

We have also adopted a spectrum ''core approach'' in our Table of Allotments. One of our principal concerns in this proceeding has been to provide the new digital TV stations with the spectrum that is the most appropriate and technically suitable for their operation. Also, we believe it is important to recover efficiently those channels temporarily assigned for the transition to DTV. As described in the *Sixth Report and Order,* in the *Sixth Further NPRM* we proposed that channels 7–51 be used for DTV service, that channels 60–69 be recovered almost immediately (to be re-used for public safety purposes), and that, in the longer term, channels 2–6 and 52–59 also be recovered. In response, some commenters argued that, to lessen the impact on LPTV and TV translator stations, the core spectrum should be modified to include channels 2–6, and that no spectrum should be recovered prior to the end of the transition to DTV service. Some commenters also argued that the proposed approaches would impact adversely the interference and service replication goals in the implementation of DTV by full service broadcasters.

We have determined that, given the divergence of comment regarding the suitability of channels 2–6 for DTV, the best approach at this time is to develop the DTV Table of Allotments based on the use of channels 2–51. If the lower VHF channels 2–6 prove acceptable for DTV use, we will consider retaining these channels for DTV and adjusting the core spectrum to encompass channels 2–46 rather than channels 7–51. We also believe that the early recovery of channels 60–69 will not have a significant impact on the flexibility needed for the implementation of DTV, and we will retain this approach. In response to the concerns of commenters, we have noted that the ATSC digital system has been rigorously tested and studied, that significant industry efforts have gone into developing the technical planning criteria to be used in the implementation of DTV, and that the Table of Allotments as adopted is fully consistent with these technical decisions. We also believe that any problems in implementation will be better addressed through technical solutions other than a reliance on channels 60–69. For example, some technical solutions to unexpected interference could include using directional antennas or cross-polarization of DTV and NTSC signals, or limiting power or antenna height during the transition. We also have found the impact of our core and spectrum recovery approaches on interference and service replication to be insubstantial. Finally, we have noted that the public safety community and other land mobile interests support the core approach and argue that spectrum recovery is needed to meet important communications needs, and that the record clearly demonstrates this need for spectrum.

Finally, another issue addressed in the *Sixth Report and Order* that may affect small entities concerns the disposition of digital channels that remain unused for DTV following the transition period. Some commenters argue that our policy toward these channels should include fostering the broadcast policy goals of increased diversity and new entry, particularly by minorities and women, and one commenter argues that we should not permit existing broadcasters to have the exclusive right to use any such vacant channels. As a result, while we have determined that new entrants may seek and apply for these DTV allotments, we have also determined to permit the unused DTV spectrum to be used by both new and displaced LPTV and TV translator stations, and by non-eligible broadcasters. In addition, we will allow non-eligible broadcasters to convert their existing NTSC operations to DTV service at any time during the transition, provided those operations are within the core spectrum area. Last, we have encouraged incumbent broadcasters to seek partnerships with new entrants in developing new stations in areas where additional unused spectrum may be available, and we will consider waivers of our multiple ownership rules to allow such ventures.

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this *Sixth Report and Order,* in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**.

Ordering Clauses

13. *Ordering Clauses.* In accordance with the actions described herein, *it is ordered that* Part 73 of the Commission's rules *are amended* as set forth below. *It is further ordered that* eligible broadcasters are offered the opportunity to apply for digital TV allotments paired with their existing NTSC channels in accordance with the allotment plan and associated technical specifications set forth in Table I above, and the procedures set forth in our *Fifth Report and Order* in this proceeding, FCC 97–116, adopted April 3, 1997. This action is taken pursuant to authority contained in sections 4(i), 7, 301, 302, 303, 307 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 301, 302, 303, 307 and 336.

14. *It is further ordered that,* pursuant to the Contract with America Advancement Act of 1996, Public Law No. 104–121, the rule amendments set forth below shall be effective June 13, 1997.

List of Subjects 47 CFR Parts 2, 73 and 74

Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 2, 73 and 74 of title 47 of the Code of Federal Regulations are amended to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

2. Section 2.106 is amended by revising non-government footnote 66 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Government (NG) Footnotes

* * * * *

NG66 The frequency band 470–512 MHz is allocated for use in the broadcasting and land mobile radio services. In the land mobile services, it is available for assignment in the domestic public, public safety, industrial, and land transportation radio services at, or in the vicinity of 11 urbanized areas of the United States, as set forth in the following table. Additionally, in the land mobile services, TV channel 16 is available for assignment in the public safety radio services at, or in the vicinity of, Los Angeles. Such use in the land mobile services is subject to the conditions set forth in parts 22 and 90 of this chapter.

Urbanized area	TV channel
New York, NY-Northeastern New Jersey.	14, 15.
Los Angeles, CA	14, 20.
Chicago, IL-Northwestern Indiana	14, 15.
Philadelphia, PA-New Jersey	19, 20.
San Francisco-Oakland, CA	16, 17.
Boston, MA	14, 16.
Washington, D.C.-Maryland-Virginia	17, 18.
Pittsburgh, PA	14, 18.
Miami, FL	14.
Houston, TX	17.
Dallas, TX	16.

* * * * *

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

4. A new § 73.622 is added to read as follows:

§ 73.622 Digital television table of allotments.

(a) *General.* The following table of allotments contains the digital television (DTV) channel allotments designated for the listed communities in the United States, its Territories, and possessions. The initial DTV Table of Allotments was established on April 3, 1997, to provide a second channel for DTV service for all eligible analog television broadcasters. Requests for addition of new DTV allotments, or requests to change the channels allotted to a community must be made in a petition for rule making to amend the DTV Table of Allotments. A request to amend the DTV table to change the channel of an allotment in the DTV table will be evaluated for technical acceptability using engineering criteria set forth in § 73.623(c). A request to amend the DTV table to add a new allotment will be evaluated for technical acceptability using the geographic spacing criteria set forth in § 73.623(d). DTV allotments designated with an asterisk are assigned for use by non-commercial educational broadcast stations only. Stations operating on DTV allotments designated with a ''c'' are required to comply with paragraph (g) of this section.

(1) Petitions requesting the addition of a new allotment must specify a channel in the range of channels 2–51.

(2) Petitions requesting a change in the channel of an initial allotment must specify a channel in the range of channels 2–59.

(b) *DTV Table of Allotments.*

Community	Channel No.
Alabama:	
Anniston	58
Bessemer	18c
Birmingham	30, 36, 50, 52, *53
Demopolis	*19
Dothan	21, 36
Dozier	*59
Florence	14c, 20, *22
Gadsden	26, 45c
Homewood	28
Huntsville	*24c, 32c, 41, 49c, 59
Louisville	*42c
Mobile	9c, *18, 20c, 26, 27
Montgomery	*14, 16, 46c, 51, 57
Mount Cheaha	*56
Opelika	31
Ozark	33c
Selma	55
Troy	48
Tuscaloosa	34c
Tuskegee	24
Alaska:	
Anchorage	18, 20, 22, *24, *26, 28, 30, 32
Bethel	*3
Dillingham	*9
Fairbanks	18, 22, *24, 26, 28
Juneau	*6, 11
Ketchikan	*8, 13
North Pole	20
Sitka	2
Arizona:	
Flagstaff	18, 22, 27, 28
Green Valley	47c
Kingman	19, *46
Lake Havasu City	35c
McNary	*42
Mesa	36
Nogales	25
Phoenix	14c, 17, 20c, 23, 24, 26, *29, 34c, 49
Prescott	25
Sierra Vista	44
Tolleson	52c
Tucson	19c, *28c, *30, 31, 32, 35, 41c
Yuma	16, 41
Arkansas:	
Arkadelphia.	*46
El Dorado	27
Fayetteville.	15, *45
Fort Smith	17, 18, 21
Hot Springs	14
Jonesboro	*20c, 49c, 58
Little Rock	12c, 22, 32, 33, 43c, *47
Mountain View	*35
Newark	*26
Pine Bluff	24c, 39c
Rogers	50c
Springdale.	39
California:	
Anaheim	32
Arcata	22c
Bakersfield.	10, 25, 33, 55
Barstow	*27, 44
Blythe	*4
Calipatria	50
Ceres	*15
Chico	36, 43, *51
Clovis	44c
Coalinga	*22
Concord	63c
Corona	39c
Cotati	*23c
El Centro	22, 48
Eureka	*11, 16, 17, 28c
Fort Bragg.	15
Fresno	7, 9, 14, 16, *40
Hanford	20c
Huntington Beach	*48
Los Angeles	8c, 35c, 36, *41c, 42, 43, *59c, 60, 65c, 66, 68
Merced	38
Modesto	18c
Monterey	31, 32
Novato	47
Oakland	56
Ontario	47c
Oxnard	24
Palm Springs	46, 52
Paradise	20
Porterville	48c
Rancho Palos Verdes	51c
Redding	14, *18
Riverside	69
Sacramento	21, 35, 48, *53, 55, 61
Salinas	13, 43
San Bernardino	*26, 38, 61c
San Diego	18, 19, 25, *30, 40c, 55
San Francisco	19c, 24, 27c, 28, 29, *33c, *34, 39c, 45c, 57
San Jose	12c, 41c, 49c, *50, 52
San Luis Obispo	15, 34c
San Mateo	*59c
Sanger	36
Santa Ana	53c
Santa Barbara	*26, 27
Santa Maria	19
Santa Rosa	54
Stockton	25, 46, 62
Twentynine Palms	23
Vallejo	30
Ventura	49
Visalia	28, *50c
Watsonville	*58
Colorado:	
Alamosa	*46
Boulder	15c
Broomfield	*36
Castle Rock	47
Colorado Springs	10c, 22c, 24
Craig	*48
Denver	16, 17, *18, 19c, 32c, 34, 35, *40c, 44, 51c
Durango	17
Fort Collins	21c

Community	Channel No.
Glenwood Springs	23, *39
Grand Junction	2, 7c, 14, 15, *16
La Junta	*30
Lamar	*50
Leadville	*49
Longmont	26c
Montrose	13
Pueblo	27, *29
Steamboat Springs	10
Sterling	23
Trinidad	*43
Connecticut:	
Bridgeport	42c, *52
Hartford	5, 11, *32, 46
New Britain	35
New Haven	6, 10, *39
New London	34
Norwich	*45
Waterbury	12
Delaware:	
Seaford	*44
Wilmington	31, *55
District of Columbia:	
Washington	6c, *27c, *33c, 34, 35, 39, 48, 51c
Florida:	
Boca Raton	*44c
Bradenton	*5, 42
Cape Coral	35c
Clearwater	21c
Clermont	17c
Cocoa	*30, 51c
Daytona Beach	11, 49
Fort Lauderdale	52c
Fort Myers	15, *31c, 53
Fort Pierce	*38, 50
Fort Walton Beach	25, 40, 49
Gainesville	16, *36
High Springs	28
Hollywood	47
Jacksonville	13c, 19, 32, 34, *38, 42, *44
Key West	3, 12
Lake Worth	36
Lakeland	19
Leesburg	40, *46c
Live Oak	48
Marathon	*34
Melbourne	20, 48
Miami	8c, 9c, *18c, *19, 20, 21, 22c, 24c, 30, 32c, 46c
Naples	43, 45c
New Smyrna Beach	*33
Ocala	31
Orange Park	10
Orlando	14, 22, *23c, 39, 41, 58
Palm Beach	49
Panama City	19, 29c, *38, 41
Panama City Beach	47c
Pensacola	17, *31, 34c, 45c
Sarasota	52
St. Petersburg	24, 57, 59
Tallahassee	2, 22, *32
Tampa	7c, 12c, 29c, *34, 47, *54
Tequesta	16
Tice	33
Venice	25
West Palm Beach	13c, *27, 28c, 55
Georgia:	
Albany	17, 30c
Athens	*22, 48
Atlanta	10c, 19, 20, *21, 25, 27, *38, 39, 43
Augusta	30, 31, 42, 51
Bainbridge	50c
Baxley	35c
Brunswick	24
Chatsworth	*33
Cochran	*7
Columbus	15, *23, 35, 47, 49
Cordele	51
Dalton	16
Dawson	*26c
Macon	16, 40c, 45, 50
Monroe	44
Pelham	*20
Perry	32
Rome	51
Savannah	15, 23c, 39, *46
Thomasville	52
Toccoa	24
Valdosta	43c
Waycross	*18
Wrens	*36
Hawaii:	
Hilo	8, 18, *19, 21, 22, 23, *31, *39
Honolulu	8, *18, 19, 22, 23, 27, 31, 33, 35, *39, 40, *43
Kailua Kona	25
Kaneohe	41
Lihue	*7, *12, *28, *45
Wailuku	16, 20, 24, *28, 29, *30, *34, 36
Idaho:	
Boise	*21, 25, 26
Burley	*48
Caldwell	10c
Coeur D'alene	*56
Filer	*18c
Grangeville	*44
Idaho Falls	9c, 36
Lewiston	32
Moscow	*33
Nampa	22, 27
Pocatello	*17, 23
Twin Falls	16, *24, 34c
Weiser	*34
Illinois:	
Aurora	59c
Bloomington	28
Carbondale	*40
Champaign	41, 48
Charleston	*50c
Chicago	3c, 19c, *21c, 27c, 29, 31c, 43c, 45c, *47, 52
Decatur	18c, 22c
East St. Louis	47c
Freeport	41
Harrisburg	34
Jacksonville	*15c
Joliet	53
Lasalle	10
Macomb	*21c
Marion	17
Moline	*23c, 38
Mount Vernon	21
Olney	*19
Peoria	30c, 39, 40, *46c, 57
Quincy	32, *34, 54
Rock Island	58
Rockford	16c, 42, 54
Springfield	42, 44, 53
Urbana	26c, *33
Indiana:	
Angola	12
Bloomington	*14, 27, 53, 56
Elkhart	58
Evansville	28, 45c, *54, 58, 59
Fort Wayne	4, 19, 24, 36, *40c
Gary	*17, 51c
Hammond	36
Indianapolis	9c, 16, *21c, 25, *44, 45, 46
Kokomo	54
Lafayette	11
Marion	32
Muncie	52
Richmond	30
Salem	57c
South Bend	30, *35c, 42, 48
Terre Haute	24, 36, 39c
Vincennes	*52
Iowa:	
Ames	59
Burlington	41
Cedar Rapids	27c, 47c, 51, 52
Centerville	*44
Council Bluffs	*33c
Davenport	*34, 49, 56
Des Moines	16c, 19, 26, 31, *50
Dubuque	43
Fort Dodge	*25
Iowa City	25, *45
Mason City	*18, 42
Ottumwa	14c
Red Oak	*35c
Sioux City	*28c, 30, 39, 41, 49
Waterloo	*35, 55
Kansas:	
Colby	15
Ensign	5c
Fort Scott	40
Garden City	17, 18, *42
Goodland	14
Great Bend	22
Hays	*16, 20
Hutchinson	19, *29, 35c
Lakin	*23
Lawrence	39c
Oakley	*40
Pittsburg	30

Community	Channel No.
Salina	17c
Topeka	*23, 26c, 44, 48c
Wichita	21, 25c, 34c, 45
Kentucky:	
Ashland	*26c, *45
Beattyville	7
Bowling Green	16, *18, 33, *48
Campbellsville	19
Covington	*24
Danville	4
Elizabethtown	*43
Harlan	51
Hazard	12, *16
Lexington	20, 40, *42, 59
Louisville	8, *17, 26, *38, 47, 49, 55
Madisonville	20c, *42
Morehead	*15, 21
Murray	*36
Newport	29
Owensboro	29
Owenton	*44
Paducah	32, 41, 50c
Pikeville	*24
Somerset	*14
Louisiana:	
Alexandria	*26c, 32c, 35
Baton Rouge	*22, 34c, 42, 45c, 46
Columbia	57
Lafayette	16c, *23c, 28, 56
Lake Charles	*20, 30c, 53
Monroe	*19, 55
New Orleans	*11c, 14, 15, 29, 30, *31c, 39c, 43, 50c
Shreveport	17, *23c, 28, 34c, 44c
Slidell	24
West Monroe	36, 38c
Maine:	
Augusta	*17
Bangor	14, 19, 25
Biddeford	*45
Calais	*15
Lewiston	39
Orono	*22c
Poland Spring	46
Portland	4, 38, 44
Presque Isle	16, *20
Maryland:	
Annapolis	*42
Baltimore	*29, 38, 40, 41, 46c, 52, 59
Frederick	*28
Hagerstown	16, *44, 55
Oakland	*54
Salisbury	21, 53, *56
Massachussetts:	
Adams	36
Boston	*19, 20, 30, 31, 32, 39c, 42, *43c
Cambridge	41
Lawrence	18
Marlborough	23
New Bedford	22, 49
Norwell	52
Springfield	33, 55, *58c
Vineyard Haven	40
Worcester	29, *47c
Michigan:	
Alpena	13, *57
Ann Arbor	33
Bad Axe	*15
Battle Creek	20, 44c
Bay City	22
Cadillac	40, 47, *58
Calumet	18
Cheboygan	14
Detroit	14, 21c, 41, *43, 44, 45, 58
East Lansing	*55
Escanaba	48
Flint	16, 36, *52
Grand Rapids	7c, *11, 19, 39
Iron Mountain	22
Jackson	34
Kalamazoo	2c, *5, 45
Lansing	38, 51, 59
Manistee	*17
Marquette	*33, 35
Mount Clemens	39c
Mount Pleasant	*56
Muskegon	24
Onondaga	57
Saginaw	30, 48c
Sault Ste. Marie	49, 56
Traverse City	31, 50
University Center	*18c
Vanderbilt	59
West Branch	*24
Minnesota:	
Alexandria	14, 24
Appleton	*31
Austin	*20, 33
Bemidji	*18
Brainerd	*28
Duluth	17, 33, *38, 43
Hibbing	36, *51
Mankato	38
Minneapolis	21, 22c, *26, 32, 35, *44c
Redwood Falls	27
Rochester	36, 46c
St. Cloud	40c
St. Paul	*16c, *34, 50
Thief River Falls	57
Walker	20
Worthington	*15
Mississippi:	
Biloxi	*35, 36
Booneville	*55
Bude	*18c
Columbus	35
Greenville	17
Greenwood	*26, 54
Gulfport	48
Hattiesburg	23c
Holly Springs	41c
Jackson	*20, 21, 41c, 51, 52
Laurel	28
Meridian	25c, 31c, *47, 49
Mississippi State	*38
Natchez	49c
Oxford	*36
Tupelo	57
West Point	16
Missouri:	
Birch Tree	*7
Bowling Green	*50
Cape Girardeau	22c, 57
Columbia	22, 36
Hannibal	29
Jefferson City	12c, 20
Joplin	*25c, 43, 46
Kansas City	14, *18c, 24, 31c, 34, 42c, 47, 51c
King City	*28
Kirksville	33
Poplar Bluff	18
Sedalia	15
Springfield	19, *23, 28c, 44, 52
St. Joseph	21, 53
St. Louis	14, 26, 31c, 35, *39, 43, 56
Montana:	
Billings	11, 17, 18
Bozeman	16, *20
Butte	2, 15, 19c
Glendive	15
Great Falls	39, 44, 45
Hardin	19
Helena	14, 29
Kalispell	38
Miles City	13, *39
Missoula	*27, 35, 36, 40
Nebraska:	
Albion	23c
Alliance	*24
Bassett	*15
Grand Island	19, 32
Hastings	*14, 21
Hayes Center	18
Kearney	35
Lexington	*26
Lincoln	25, 31, *40
McCook	12
Merriman	*17
Norfolk	*16
North Platte	*16, 22
Omaha	*17, 20, 22, 38, 43c, 45
Scottsbluff	19, 29
Superior	34
Nevada:	
Elko	8, *15
Henderson	24
Las Vegas	2c, 7c, *11c, 16c, 17, 20c, 32c
Paradise	38c
Reno	*15, 22c, 23, 26c, 32, 33, 41
Winnemucca	12
New Hampshire:	
Berlin	*15
Concord	33
Derry	35
Durham	*57
Keene	*49c
Littleton	*48c
Manchester	59c
Merrimack	34
New Jersey:	

Community	Channel No.
Atlantic City	46, 49
Burlington	27
Camden	*22c
Linden	36
Montclair	*51c
New Brunswick	*18
Newark	53c, 61
Newton	8c
Paterson	40c
Secaucus	38
Trenton	*43
Vineland	66c
West Milford	*29
Wildwood	36
New Mexico:	
Albuquerque	16, *17, 21, 22c, *25, 26, 42c, 51c
Carlsbad	19
Clovis	20
Farmington	15
Gallup	8
Hobbs	17
Las Cruces	*23c, 28
Portales	*32
Roswell	28c, 38, 41
Santa Fe	10c, 27, 29
Silver City	12, *33
Socorro	*31
New York:	
Albany	4, 15, 26
Amsterdam	50
Batavia	53
Binghamton	4, 7, 8, *42
Buffalo	14, *32, 33, 34, 38, 39, *43
Carthage	35
Corning	50
Elmira	2, 55
Garden City	*22c
Jamestown	27c
Kingston	21
New York	*24c, 28, 30c, 33, 44, 45, 56
North Pole	14
Norwood	*23
Plattsburgh	*38
Poughkeepsie	27
Riverhead	57
Rochester	*16, 28, 45, 58, 59
Schenectady	*34, 39, 43
Smithtown	23
Springville	46
Syracuse	17, 19, *25c, 44c, 47, 54
Utica	27, 29, 30
Watertown	21, *41
North Carolina:	
Asheville	*25, 45, 56, 57
Belmont	47c
Burlington	14
Chapel Hill	*59
Charlotte	21, 22, 23, *24, 34
Columbia	*20
Concord	*44
Durham	27c, 52
Fayetteville	36, 38
Goldsboro	55
Greensboro	32, 33, 51
Greenville	10c, 21, *23
Hickory	40
High Point	35
Jacksonville	34c, *44
Kannapolis	50
Lexington	19c
Linville	*54
Lumberton	*25
Morehead City	24
New Bern	48
Raleigh	49c, 53, 57
Roanoke Rapids	*39
Rocky Mount	15
Washington	32
Wilmington	*29, 30, 46, 54
Wilson	42
Winston-Salem	29, 31, *43
North Dakota:	
Bismarck	16c, *22, 23, 31
Devils Lake	59
Dickinson	18, 19, *20
Ellendale	*20c
Fargo	19, 21, *39, 58
Grand Forks	*56
Jamestown	14
Minot	15c, 45, *57, 58
Pembina	15
Valley City	38
Williston	14, *51, 52
Ohio:	
Akron	30, *32c, 59
Alliance	*46c
Athens	*27
Bowling Green	*56
Cambridge	*35
Canton	39, 47
Chillicothe	46
Cincinnati	10c, 31, 33, *34, 35
Cleveland	2c, 15, *26c, 31, 34
Columbus	11c, 13, 14, 36, *38
Dayton	39, 41, 50, 51, *58
Lima	20, 57
Lorain	28
Mansfield	12
Newark	24
Oxford	*28
Portsmouth	17, *43c
Sandusky	42
Shaker Heights	10
Springfield	18
Steubenville	57
Toledo	5, 17, 19, *29c, 46, 49
Youngstown	20c, 36, 41
Zanesville	40
Oklahoma:	
Ada	26
Altus	*42
Bartlesville.	14
Cheyenne	*8
Claremore	*36c
Enid	18
Eufaula	*31
Guymon	*29
Lawton	23
Oklahoma City	15c, 16, 24c, 27, *32, 33c, 39, 40, 50, 51c
Okmulgee	28
Shawnee	29c
Tulsa	22c, *38, 42c, 48c, 49, 55, 56, 58
Oregon:	
Bend	*11, 18
Coos Bay	21, 22c
Corvallis	*39
Eugene	14, 17c, 25, 26, *29c
Klamath Falls	29, *33, 40
La Grande.	*5
Medford	15, 27c, 35, 38, *42
Pendleton	4
Portland	*27, 30, 40, 43, 45, 46
Roseburg	18, 19, 45c
Salem	20, 33c
Pennsylvania:	
Allentown	46, *62c
Altoona	24c, 32, 46c
Bethlehem.	59c
Clearfield	*15
Erie	16, 22, *50, 52, 58
Greensburg	50
Harrisburg	4, *36, 57
Hazleton	9
Johnstown.	29, 30, 34
Lancaster	23, 58
Philadelphia	26, 32, *34c, 42, 54, 64c, 67
Pittsburgh	25, *26, *38, 42, 43, 48, 51
Reading	25
Red Lion	30
Scranton	13, 31, 32, *41, 49
Wilkes-Barre	11
Williamsport	29
York	47
Rhode Island:	
Block Island	17
Providence.	13c, *21, 51, 54c
South Carolina:	
Allendale	*33
Anderson	14
Beaufort	*44
Charleston	35c, 40, *49, 52, 53, 59
Columbia	8, 17, *32, 41, 48
Conway	*58
Florence	16c, 20c, *45, 56
Greenville	*9, 52, 59
Greenwood	*18
Hardeeville	27c
Myrtle Beach	18
Rock Hill	15, 39
Spartanburg	43, 53
Sumter	*28c, 38
South Dakota:	
Aberdeen	*17c, 28
Brookings	*18

Community	Channel No.
Eagle Butte	*24
Florence	25
Huron	22
Lead	26, 27
Lowry	*15
Martin	*20
Mitchell	26
Pierre	19, *21
Rapid City	16c, 18, 22c, *23
Reliance	14
Sioux Falls	7, *24c, 29, 32, 47c, 48
Vermillion	*34
Tennessee:	
Chattanooga	*29, 35, 40, 47, 55
Cleveland	42
Cookeville	36, *52
Crossville	50
Greeneville	38c
Hendersonville	51c
Jackson	39, 43
Jellico	23
Johnson City	58
Kingsport	27
Knoxville	*17, 26, 30, 31, 34
Lebanon	44
Lexington	*47
Memphis	25c, 28, *29c, 31c, 51c, 52, 53
Murfreesboro	38c
Nashville	10, 15, 21, 23, 27, *46, 56
Sneedville	*41
Texas:	
Abilene	24, 29
Alvin	36
Amarillo	9c, 15c, 19, *21, 24
Arlington	42
Austin	21, *22, 33, 43c, 49, 56
Baytown	41
Beaumont	21, *33c, 50
Belton	47c
Big Spring	33
Brownsville	24c
Bryan	29c, 59
College Station	*12
Conroe	5, 42
Corpus Christi	18, *22, 27c, 47, 50
Dallas	9c, *14, 32c, 35, 36, 40c, 45
Decatur	30c
Del Rio	28
Denton	*31
Eagle Pass	18
El Paso	15c, 16, 17, 18, 25c, *29, *39c, 51
Fort Worth	18, 19, 41, 51c
Galveston	*23c, 47c
Garland	24c
Greenville	46c
Harlingen	31, *34, *38
Houston	19c, *24, 27c, 31, 32, 35, 38c, 44c, *53
Irving	48c
Jacksonville	22
Katy	52c
Kerrville	17
Killeen	23
Lake Dallas	43
Laredo	14, 15, 19
Llano	27
Longview	52c
Lubbock	25, 27c, 35c, *39, 40, 44
Lufkin	43
McAllen	30
Midland	26
Nacogdoches	18c
Odessa	15, *22, 23c, 31c, 43c
Port Arthur	40
Rio Grande City	20
Rosenberg	46c
San Angelo	11, 16, 19
San Antonio	*16, *20, 30c, 39, 40c, 48, 55, 58
Sherman	20
Snyder	10
Sweetwater	20
Temple	50
Texarkana	15, *50
Tyler	38
Victoria	15, 34
Waco	*20, 26c, 53, 57
Weslaco	13
Wichita Falls	17c, 22, 28
Utah:	
Cedar City	14, *44
Monticello	*41
Ogden	29c, *35
Provo	17c, *39
Salt Lake City	27c, 28, 34, 36, 38, *40
St. George	9
VERMONT:	
Burlington	16, *32c, 43c, 53
Hartford	25
Rutland	*56
St. Johnsbury	*18
Windsor	*24
Virginia:	
Arlington	15c
Ashland	47
Bristol	28
Charlottesville	*14, 32
Danville	41
Fairfax	*57c
Front Royal	*21
Goldvein	*30
Grundy	49
Hampton	41
Hampton-Norfolk	*16c
Harrisonburg	49
Lynchburg	20c, *34, 56
Manassas	36
Marion	*42
Norfolk	14c, 38, 58
Norton	*32
Petersburg	22c
Portsmouth	19, 31
Richmond	*24c, 25, 26, *44, 54
Roanoke	*3, 17, 18, 30, 36
Staunton	*19
Virginia Beach	29
West Point	*46
Washington:	
Bellevue	32c, 50c
Bellingham	19, 35
Centralia	*19
Everett	31
Kennewick	14
Pasco	20c
Pullman	*17
Richland	26c, *30c
Seattle	25, 38, 39, *41, 44c, 48
Spokane	29c, 38, *39, 54, 55, 57
Tacoma	14, 18, *26, 36, *42
Vancouver	48c
Wenatchee	56
Yakima	16, *21, 34c, 52
West Virginia:	
Bluefield	14, 46
Charleston	*16, 19, 39, 55
Clarksburg	28, 52
Grandview	*53
Huntington	23, *34c, 54
Lewisburg	48
Martinsburg	12
Morgantown	*33
Oak Hill	50
Parkersburg	49
Weston	58
Wheeling	56
Wisconsin:	
Appleton	59
Chippewa Falls	49c
Eagle River	17
Eau Claire	15, 39
Fond du Lac	44
Green Bay	23, 41, *42, 51, 56
Janesville	32
Kenosha	40
La Crosse	14, 17, *30c, 53
Madison	11, 19, *20c, 26c, 50
Manitowoc	19
Mayville	43
Menomonie	*27c
Milwaukee	*8, 22, 25c, 28, 33, 34, *35c, 46, 61
Park Falls	*47
Racine	48c
Rhinelander	16
Superior	19
Suring	21
Wausau	*24, 29, 40
Wyoming:	
Casper	15c, 17, 18
Cheyenne	11, 28c, 30
Jackson	14
Lander	7, *8
Rawlins	9
Riverton	16
Rock Springs	19

Community	Channel No.
Sheridan	21
Puerto Rico:	
Aguada	62
Aguadilla	17c, *34, 69
Arecibo	53c, 61c
Bayamon	59c
Caguas	56, *57c
Carolina	51c
Fajardo	33c, *38
Guayama	45c
Humacao	49
Mayaguez	23c, 29, 35, 63
Naranjito	65c
Ponce	19c, *25c, 43c, 47c, 66, 67c
San Juan	21, 27c, 28, 31c, 32, *55c
San Sebastian	39c
Yauco	41c
Virgin Islands:	
Charlotte Amalie	*44c, 48, 50
Christiansted	5, 20

(c) *Availability of channels.* Applications may be filed to construct DTV broadcast stations only on the channels designated in the DTV Table of Allotments set forth in paragraph (b) of this section, and only in the communities listed therein. Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the DTV Table, will not be accepted for filing. However, applications specifying channels that accord with publicly announced FCC Orders changing the DTV Table of Allotments will be accepted for filing even if such applications are tendered before the effective dates of such channel change. An application for authority to construct a DTV station on an allotment in the initial DTV table may only be filed by the licensee or permittee of the analog TV station with which that initial allotment is paired, as set forth in Appendix B of the *Sixth Report and Order* in MM Docket 87–268, FCC 97–115, adopted April 3, 1997. Copies of the *Sixth Report and Order* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., NW., Dockets Branch (Room 239), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov. Applications may also be filed to implement an exchange of channel allotments between two or more licensees or permittees of analog TV stations in the same community, provided, however, that the other requirements of this section and of § 73.623 are met with respect to each such application.

(d) *Reference points and distance computations.* (1) The reference coordinates of a DTV allotment included in the initial DTV Table of Allotments are the coordinates of the authorized transmitting antenna site of the analog TV station with which that initial allotment is paired, as set forth in Appendix B of the *Sixth Report and Order* in MM Docket 87–268 (referenced in paragraph (c) of this section). An application for authority to construct or modify DTV facilities may specify an alternate location for the DTV transmitting antenna that is within 5 kilometers of the DTV allotment reference coordinates without consideration of electromagnetic interference to other DTV or analog TV broadcast stations, allotments or applications, provided the application complies with paragraph (f)(2) of this section. Location of a DTV broadcast station's transmitting antenna at a site more than 5 kilometers from the DTV allotment reference coordinates must comply with the provisions of § 73.623(c). In the case where a DTV station has been granted authority to construct more than 5 kilometers from its reference coordinates pursuant to § 73.623(c), and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the coordinates of such authorized site are to be used in addition to the coordinates of the DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c).

(2) The reference coordinates of a DTV allotment not included in the initial DTV Table of Allotments will be designated in the FCC Order changing the DTV Table of Allotments and must meet the geographic spacing requirements of § 73.623(d). An application for authority to construct or modify such DTV facilities must comply with the provisions of § 73.623(c). In the case where such a DTV station has been granted authority to construct pursuant to § 73.623(c) and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the coordinates of such authorized site are to be used in addition to the coordinates of the DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c).

(3) The reference coordinates defined in paragraphs (d)(1) and (d)(2) of this section shall be used in considering petitions to amend the DTV Table of Allotments and in determining whether interference occurs between DTV stations and between DTV and analog TV stations.

(4) In cases where there are pending applications for DTV stations in other communities which, if granted, would have to be considered in determining whether proposed or modified stations would meet the required technical criteria or separations, as defined in § 73.623, the coordinates of the transmitter sites proposed in such applications must be used to determine whether those requirements have been met.

(5) To calculate the distance between two reference points, see § 73.208(c). However, distances shall be rounded to the nearest tenth of a kilometer.

(e) *DTV Service Areas.* The service area of a DTV station is the geographic area within which the predicted F(50,90) field strength of the station's signal, in dB above 1 microvolt per meter (dBu), exceeds the following levels:

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–69	41

These are the levels at which reception of DTV service is limited by noise. Evaluation of field strength in determining service areas shall be made using the terrain dependent Longley-Rice point-to-point propagation model. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69*. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., NW., Dockets Branch (Room 239), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

(f) *DTV maximum power and antenna heights.* (1) The maximum effective radiated power (ERP) and antenna height above average terrain (HAAT) for an allotment included in the initial DTV Table of Allotments are set forth in Appendix B of the *Sixth Report and Order* in MM Docket 87–268 (referenced in paragraph (c) of this section). These limits also appear on the construction permit and license issued for each DTV station. In each azimuthal direction, the reference ERP value is based on the HAAT of the corresponding analog TV station and achieving predicted coverage equal to that analog TV station's predicted Grade B contour, as defined in § 73.683.

(2) An application for authority to construct or modify DTV facilities will not be subject to further consideration of electromagnetic interference to other DTV or analog TV broadcast stations, allotments or applications, provided that:

(i) The proposed ERP in each azimuthal direction is equal to or less than the reference ERP in that direction; and

(ii) The proposed HAAT is equal to or less than the reference HAAT; and

(iii) The application complies with the location provisions in paragraph (d)(1) of this section.

(3) DTV licensees and permittees may request an increase in either ERP in some azimuthal direction or HAAT, or both, that exceed the initial technical facilities specified for the allotment in Appendix B the *Sixth Report and Order*, up to the maximum permissible limits on DTV power and antenna height set forth in this section or up to that needed to provide the same geographic coverage area as the largest station within their market. Such requests must be accompanied by a technical showing that the increase complies with the technical criteria in § 73.623(c), and thereby will not result in new interference, or statements agreeing to the change from any co-channel or adjacent channel stations that might be affected by potential new interference. In the case where a DTV station has been granted authority to construct pursuant to § 73.623(c), and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the authorized DTV facilities are to be used in addition to the assumed facilities of the initial DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c).

(4) A DTV station that operates on a channel 2–6 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 10 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 45 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas:

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(ii) The allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table. For DTV stations located in Zone I that operate on channels 2–6 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=92.57-33.24*\log_{10}(HAAT)$

(iii) For DTV stations located in Zone II or III that operate on channels 2–6 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=57.57-17.08*\log_{10}(HAAT)$

(5) A DTV station that operates on a channel 7–13 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 30 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 160 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas:

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(ii) The allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table. For DTV stations located in Zone I that operate on channels 7–13 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=97.35-33.24*\log_{10}(HAAT)$

(iii) For DTV stations located in Zone II or III that operate on channels 7–13 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=62.34-17.08*\log_{10}(HAAT)$

(6) A DTV station that operates on a channel 14–59 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 1000 kW if their antenna HAAT is at or below 365 meters.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas:

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–59, ALL ZONES

Antenna HAAT (meters)	ERP (kW)
610	316
580	350
550	400
520	460
490	540
460	630
425	750
395	900
365	1000

(ii) The allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table. For DTV stations located in Zone I, II or III that operate on channels 14–59 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$$ERP_{max}=72.57-17.08*\log_{10}(HAAT)$$

(g) For DTV stations using a channel allotment designated with a ''c'' in paragraph (b) of this section, the pilot carrier frequency of the DTV signal must be maintained 5.082138 MHz above the visual carrier frequency of the analog TV broadcast station operating on the lower adjacent channel, located within 88 kilometers of the DTV broadcast station. This frequency difference must be maintained within a tolerance of ±3 Hz.

(h)(1) The field strength or voltage of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. At the channel edge, emissions must be attenuated no less than 46 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 71 dB. At any frequency between 0 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in $dB=46+[(\Delta f)^2/1.44]$;

Where:

Δ f=frequency difference in MHz from the edge of the channel.

(2) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

Note to paragraph (h): Greater attenuation may be required for situations where the DTV station and an adjacent channel analog TV station serve the same area and there are expected to be locations within that shared area where the analog TV station's field strength is less than 12 dB above the DTV station's field strength.

5. A new § 73.623 is added to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

(a) *General.* This section contains the technical criteria for evaluating applications requesting DTV facilities that do not conform to the provisions of § 73.622 and petitions for rule making to amend the DTV Table of Allotments (§ 73.622(b)). Petitions to amend the DTV Table (other than those also expressly requesting amendment of this section) and applications for new DTV broadcast stations or for changes in authorized DTV stations filed pursuant to this section will not be accepted for filing if they fail to comply with the requirements of this section.

(b) In considering petitions to amend the DTV Table and applications filed pursuant to this section, the Commission will use geographic coordinates defined in § 73.622(d) as reference points in determining allotment separations and evaluating interference potential.

(c) *Minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments and for applications filed pursuant to this section.* No petition to modify a channel allotment included in the initial DTV Table or application for authority to construct or modify a DTV station, filed pursuant to this section, will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principal community coverage requirements of § 73.625(a).

(2) Requests filed pursuant to this paragraph must demonstrate that there is no increase in the amount of interference caused to any other DTV broadcast station, DTV allotment, or analog TV broadcast station. For evaluating compliance with this requirement, interference is to be predicted based on the procedure set forth in Appendix B of the *Sixth Report and Order* in MM Docket 87–268, FCC 97–115, adopted April 3, 1997, including service areas determined in accordance with § 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Guidance for evaluating interference using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* Copies of the *Sixth Report and Order* and *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., NW., Dockets Branch (Room 239), Washington, DC 20554. These documents are also available through the Internet on the *FCC Home Page* at http://www.fcc.gov. The threshold levels at which interference is considered to occur are:

	D/U ratio
Co-channel:	
DTV-into-analog TV	+34
analog TV-into-DTV	*+2
DTV-into-DTV	*+15
First Adjacent Channel:	
Lower DTV-into-analog TV	−17
Upper DTV-into-analog TV	−12
Lower analog TV-into-DTV	−48
Upper analog TV-into-DTV	−49
Lower DTV-into-DTV	−42
Upper DTV-into-DTV	−43
Other Adjacent Channel (Channels 14–69 only) DTV-into-analog TV, where N = analog TV channel and DTV Channel:	
N–2	−24
N+2	−28
N–3	−30
N+3	−34
N–4	−34
N+4	−25
N–7	−35
N+7	−34
N–8	−32
N+8	−43
N+14	−33
N+15	−31

Note to paragraph (c)(2): The values for co-channel interference to DTV service are only valid at locations where the signal-to-noise ratio is 28 dB or greater. At the edge of the noise-limited service area, where the signal-to-noise ratio is 16 dB, these values are 21 dB and 23 dB for interference from analog TV and DTV, respectively. Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in the table shall not be applicable to these pairs of channels (see § 73.603(a)).

(d)(1) *Minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table of Allotments.* No petition to add a new channel to the DTV Table of Allotments will be accepted unless it demonstrates compliance with the principle community coverage requirements of § 73.625(a) and meets the following requirements for geographic spacing with regard to all other DTV stations, DTV allotments and analog TV stations:

Channel relationship	Separation requirement
VHF Channels 2–13:	

Channel relationship	Separation requirement
Co-channel, DTV to DTV	Zone I—244.6 km. Zones II & III—273.6 km.
Co-channel, DTV to analog TV	Zone I—244.6 km. Zone II & III—273.6 km.
Adjacent Channel	
DTV to DTV	No allotments permitted between: Zone I—40.2 km and 96.6 km. Zones II & III—48.3 km and 96.6 km.
DTV to analog TV	No allotments permitted between: Zone I—11.3 km and 114.3 km. Zone II & III—17.7 km and 146.4 km.
UHF Channels:	
Co-channel, DTV to DTV	Zone I—196.3 km Zone II & III—223.7 km.
Co-channel, DTV to analog TV	Zone I—217.3 km. Zone II & III—244.6 km.
Adjacent Channel	
DTV to DTV	No allotments permitted between: All Zones—32.2 km and 88.5 km.
DTV to analog TV	No allotments permitted between: All Zones—9.7 km and 88.5 km.
Taboo Channels, DTV to analog TV only (DTV channels ±2,. ±3, ±4, ±7, ±8, and 14 or 15 channels above the analog TV channel).	No allotments permitted between: Zone I—24.1 km and 80.5 km Zone II & III 24.1 km and 96.6 km

Note to paragraph (d)(1): Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum geographic spacing requirements specified in the table shall not be applicable to these pairs of channels (see § 73.603(a)).

(2) Zones are defined in § 73.609. The minimum distance separation between a DTV station in one zone and an analog TV or DTV station in another zone shall be that of the zone requiring the lower separation.

(e) *Protection of land mobile operations on channels 14–20.* The Commission will not accept petitions to amend the DTV Table of Allotments, applications for new DTV stations, or applications to change the channel or location of authorized DTV stations that would use channels 14–20 where the distance between the DTV reference point as defined in § 73.622(d), would be located less than 250 km from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation. Land mobile operations on these channels in the following markets:

City	Channels	Latitude	Longitude
Boston, MA	14, 16	42°21′24″	71°03′25″
Chicago, IL	14, 15	41°52′28″	87°38′22″
Dallas, TX	16	32°47′09″	96°47′37″
Houston, TX	17	29°45′26″	95°21′37″
Los Angeles, CA	14, 16, 20	34°03′15″	118°14′28″
Miami, FL	14	25°46′37″	80°11′32″
New York, NY 1	4, 15	40°45′06″	73°59′39″
Philadelphia, PA	19, 20	39°56′58″	75°09′21″
Pittsburgh, PA	14, 18	40°26′19″	80°00′00″
San Francisco, CA	16, 17	37°46′39″	122°24′40″
Washington, DC	17, 18	38°53′51″	77°00′33″

(f) *Negotiated agreements on interference.* Notwithstanding the minimum technical criteria for DTV allotments specified in paragraph (b) of this section, DTV stations operating on allotments that are included in the initial DTV Table may operate with increased ERP and/or antenna HAAT that would result in additional interference to an analog TV station if that station agrees, in writing, to accept the additional interference. Such agreements must be submitted with the application for authority to construct or modify the DTV station's facilities. The larger service area resulting from such a change of ERP and/or antenna HAAT will be protected in accordance with the provisions of paragraph (c) of this section. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

6. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 336, and 554.

7. Section 74.701 is amended by revising paragraph (b) to read as follows:

§ 74.701 Definitions.

* * * * *

(b) *Primary station.* The analog television broadcast station (TV broadcast) or digital television station (DTV) which provides the programs and signals being retransmitted by a television broadcast translator station.

* * * * *

8. Section 74.702 is amended by revising paragraph (b) to read as follows:

§ 74.702 Channel assignments.

* * * * *

(b) Changes in the TV Table of Allotments or Digital Television Table of Allotments (§§ 73.606(b) and 73.622(a), respectively, of part 73 of this chapter), authorizations to construct new TV broadcast analog or DTV stations or to authorizations to change facilities of existing such stations, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast analog or DTV station, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment pursuant to § 73.3572 of this chapter.

* * * * *

9. Section 74.703 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV, TV translator, or TV booster station or for a change in the facilities of such an authorized station will not be granted when it is apparent that interference will be caused. Except where there is a written agreement between the affected parties to accept interference, or where it can be shown that interference will not occur due to terrain shielding and/or Longley-Rice terrain dependent propagation methods, the licensee of a new low power TV, TV translator, or TV booster shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707. Such written agreement shall accompany the application. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

(b) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct at its expense any condition of interference to the direct reception of the signal of any other TV broadcast analog station and DTV station operating on the same channel as that used by the low power TV, TV translator, or TV booster station or an adjacent channel which occurs as a result of the operation of the low power TV, TV translator, or TV booster station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV, TV translator, or TV booster station, regardless of the quality of the reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending low power TV, TV translator, or TV booster station shall be suspended and shall not be resumed until the interference has been eliminated. If the complainant refuses to permit the low Power TV, TV translator, or TV booster station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the low power TV, TV translator, or TV booster station is absolved of further responsibility. TV booster stations will be exempt from the provisions of this paragraph to the extent that they may cause limited interference to their primary stations' signal subject to the conditions of paragraph (g) of this section.

(c) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct any condition of interference which results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

* * * * *

10. Section 74.705 is amended by revising the section heading and paragraphs (b)(4) and (b)(5) and by adding a new paragraph (e) to read as follows:

§ 74.705 TV broadcast analog station protection.

* * * * *

(b) * * *

(4) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site less than 100 kilometers from the transmitter site of a UHF TV broadcast analog station operating on a channel which is the seventh channel above the requested channel, unless it can demonstrate that the service area of the low power TV or TV translator station as established in § 74.707(a) is not located in an area where the TV broadcast analog station is regularly viewed.

(5) An application for a new UHF low power TV or TV translator construction permit, a change of channel, or a major change in facilities pursuant to § 73.3572 of this chapter proposing a maximum effective radiated power of more than 50 kilowatts will not be accepted if it specifies a site less than 32 kilometers from the transmitter site of a UHF TV broadcast analog station operating on a channel which is the second, third, or fourth channel above or below the requested channel.

* * * * *

(e) In support of a request for waiver of the interference protection rules, an applicant for a low power TV, TV translator or TV booster may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to TV broadcast stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., NW., Dockets Branch (Room 239), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

11. A new § 74.706 is added to read as follows:

§ 74.706 Digital TV (DTV) station protection.

(a) For purposes of this section, the DTV station protected service area is the geographic-area in which the field strength of the station's signal exceeds the noise-limited service levels specified in § 73.622(e) of this chapter. The extremity of this area (noise-limited perimeter) is calculated from the authorized maximum radiated power (without depression angle correction), the horizontal radiation pattern, and height above average terrain in the pertinent direction, using the signal propagation method specified in § 73.625(b) of this chapter.

(b)(1) An application to construct a new low power TV or TV translator station or change the facilities of an existing station will not be accepted if it specifies a site which is located within the noise-limited service perimeter of a co-channel DTV station.

(2) Due to the frequency spacing which exists between TV channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, adjacent channel protection standards shall not be applicable to these pairs of channels.

(c) The low power TV, TV translator or TV booster station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a, 10a, or 10c of § 73.699 (F(50,10) charts) of part 73 of this chapter.

(2) For adjacent channel protection, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of part 73 of this chapter.

(d) A low power TV, TV translator or TV booster station application will not be accepted if the ratio in dB of its field strength to that of the DTV station fails to meet the following:

(1) − 21 dB for co-channel operations at the noise-limited perimeter of the DTV station.

(2) +48 dB for adjacent channel operations at:

(i) The DTV noise-limited perimeter if a low power TV, TV translator or TV booster station is located outside that perimeter.

(ii) At all points within the DTV noise-limited area if a low power TV or TV translator is located within the DTV noise-limited perimeter, as demonstrated by the applicant.

12. Section 74.707 is amended by revising paragraph (b)(3), removing paragraphs (d)(5) and (d)(6), redesignating paragraph (d)(7) as (d)(5), and adding a new paragraph (e) to read as follows:

§ 74.707 Low power TV and TV translator station protection.

* * * * *

(b) * * *

* * * * *

(3) A UHF low power TV, TV translator, or TV booster construction permit application will not be accepted if it specifies a site within the UHF low power TV, TV translator, or TV booster station's protected contour and proposes operation on a channel that is 15 channels above the channel in use by the low power TV, TV translator, or TV booster station.

* * * * *

(e) In support of a request for waiver of the interference protection rules, an applicant for a low power TV or TV translator station may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to low power TV, TV translator and TV booster stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., NW., Dockets Branch (Room 239), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

13. Section 74.735 is amended by revising the section heading, paragraphs (a), (b) and (c) introductory text, and removing paragraphs (d), (e) and (f).

§ 74.735 Power limitations.

(a) The maximum peak effective radiated power (ERP) of an analog low power TV, TV translator, or TV booster station shall not exceed:

(1) 3 kW for VHF channels 2–13; and

(2) 150 kW for UHF channels 14–69.

(b) The maximum ERP of a digital low power TV, TV translator, or TV booster station (average power) shall not exceed:

(1) 300 watts for VHF channels 2–13; and

(2) 15 kW for UHF channels 14–69.

(c) The limits in paragraphs (a) and (b) apply separately to the effective radiated powers that may be obtained by the use of horizontally or vertically polarized transmitting antennas, providing the applicable provisions of §§ 74.705, 74.706, 74.707 and 74.709 are met. For either omnidirectional or directional antennas, where the ERP values of the vertically and horizontally polarized components are not of equal strength, the ERP limits shall apply to the polarization with the larger ERP. Applications proposing the use of directional antenna systems must be accompanied by the following:

* * * * *

14. Section 74.750 is amended by revising paragraph (a) to read as follows:

§ 74.750 Transmission system facilities.

* * * * *

(a) A low power TV, TV translator, or TV booster station shall operate with a transmitter that is either type accepted for licensing under the provisions of this subpart or type notified for use under part 73 of this chapter.

* * * * *

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Wednesday
May 14, 1997

Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 420 and 450
State Energy Program; Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 420 and 450

[Docket No. EE–RM–96–402]

RIN 1904–AA81

State Energy Program

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: Today the Department of Energy is publishing a final rule revising the regulations for its State Energy Program in response to comments received after the publication of the program's interim final rule on July 8, 1996. With the exception of the revisions to the interim final rule discussed herein, the interim final rule is being adopted as it was printed on July 8, 1996.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, Office of Building Technology, State and Community Programs, Department of Energy, Mail Stop 5G–063, EE–44, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2096.

SUPPLEMENTARY INFORMATION:

I. Introduction and Description of the Program

On July 8, 1996, the Department of Energy (Department or DOE) published in the **Federal Register** an interim final rule consolidating the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP) under the name ''State Energy Program'' (SEP or program). 61 FR 35890 The program provides formula grants to States for a wide variety of energy efficiency and renewable energy initiatives, and, in years when funding is available, may also offer financial assistance for a number of State-oriented competitively awarded special project activities.

The Department also included in its July 8, 1996 rulemaking the removal of 10 CFR part 450, which constituted prescriptive energy audit procedures that are no longer needed.

Six comment letters were received regarding the changes made under 10 CFR part 420, which are discussed herein. No comments were received regarding the removal of 10 CFR part 450, and its removal is herein made final.

II. The Revisions to the Rule

With the exception of the revisions made and discussed below, this rule is adopted as it was published in the program's interim rule on July 8, 1996 (61 FR 35890). The major issues raised in the comments are discussed below.

Section 420.2 Definitions

Several commenters argued that the revised definition for ''building'' was too restrictive, with some suggesting that the definition be reduced to ''any structure.'' DOE is not making that change because it would disregard the statutory definition of ''building'' requiring provision for a ''heating or cooling system, or both, or for a hot water system''. 42 U.S.C. 6326. However, DOE has revised the definition by limiting it to the wording in the statutory definition.

Four exceptions included in the interim definition of ''building'' have been removed from the new definition and, as appropriate, moved to the specific sections of the rule where they apply, as follows:

(1) The exception regarding buildings for which the peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area has been moved to § 420.15(d)(1), which covers mandatory thermal efficiency standards for new and renovated buildings. States are not required to implement thermal efficiency standards for buildings that are covered by this exception.

(2) The exception regarding buildings with neither a heating nor a cooling system or a hot water sytem is incorporated into the definition of ''building'' and does not need to be repeated, as a commenter pointed out. Such buildings are not eligible for any type of assistance under SEP.

(3) The exception regarding mobile homes has been revised to cover ''manufactured homes,'' which is the current term of art, and has been moved to § 420.15(d)(1), which covers mandatory thermal efficiency standards for new and renovated buildings. States are not required to implement thermal efficiency standards for ''manufactured homes'' because that is already done by the U. S. Department of Housing and Urban Development. (A definition for ''manufactured home'' has also been added, as discussed under that term.) Buildings meeting the definition of ''manufactured home'' are eligible for appropriate assistance under SEP other than their exclusion from the SEP mandatory thermal efficiency standards.

(4) The exception regarding buildings owned or leased by the United States has been moved to § 420.15(a)(2), which covers mandatory lighting efficiency standards, and § 420.15(d)(1), which covers mandatory thermal efficiency standards. States are not required to implement either of those types of standards for buildings owned or leased by the United States. The exception for such buildings has also been added as a new § 420.18(e)(3) under expenditure prohibitions and limitations. Buildings owned or leased by the United States are not eligible under SEP for funding the purchase and installation of equipment and materials for energy efficiency and renewable energy measures.

A number of commenters stated that the definition of ''energy audit'' was limiting due to its being confined to buildings and being overly specific. DOE has therefore replaced that definition with a new one suggested by two of the commenters (based on the definition in the Act), which has broader application to all capital investments that are eligible for funding under SEP. DOE will be providing energy audit guidance for consideration by the States.

Several commenters expressed concern that the definition for ''energy conservation measure'' was too restrictive. DOE has changed the term defined to ''energy efficiency measure'' to reflect the broader current concerns of SEP, removing the restriction to buildings, and providing for a wide range of cost-effective improvements.

DOE has added a definition for ''manufactured home'' in conjunction with moving some of the exceptions to eligible buildings to § 420.15, as previously discussed. The term formerly used was ''mobile homes'' which was not defined.

A few commenters complained that the definition of ''renewable energy measure'' was too restrictive, and DOE has revised this definition to provide for a wider range of activities.

One commenter claimed that the definition of ''variable working schedule'' should include, as an example, telecommuting. DOE has revised that definition to provide for examples of allowable activities including the activities formerly part of the definition plus telecommuting.

Section 420.5 Reports.

Some commenters advocated that DOE require semiannual rather than quarterly reports, and that the reports be simplified. DOE has determined that quarterly reports are needed to adequately track the progress of the program, but will work with the States to streamline the reports and to expedite the quantification of results.

Section 420.11 Allocation of funds among the States.

A few commenters argued that two of the data elements in the base allocation (population and SECP savings data) should be updated annually. DOE has not made this change because it believes the base allocation needs to remain constant to reflect and incorporate the historical distribution of funding for SEP's component programs, SECP and ICP, that formerly used different funding formulas.

One commenter recommended that DOE use only one approach for the entire allocation, either the base allocation approach or the new formula. For the reason stated in the previous paragraph, DOE believes the base allocation should remain constant, with the new formula applying only to available funding above $25.5 million, so DOE is not making this change.

One commenter wanted DOE to use the most recent population and energy consumption data for the new formula. DOE intends to do this, as stated under § 420.11(b)(4)(iii).

Section 420.12 State matching contribution.

One commenter asked if petroleum violation escrow (PVE) funds could be used to meet the requirement for a State matching contribution. Under SEP, PVE funds that are considered as ''Federally appropriated'' funds (such as Warner Amendment and Exxon funds) may not be used to meet a State's matching contribution. However, PVE funds that are considered as ''non-Federally appropriated'' (such as Stripper Well and Diamond Shamrock funds) may be used to meet a State's matching contribution.

Section 420.13 Annual State applications and amendments to State plans.

A number of commenters requested that DOE simplify the information required in SEP grant applications, including the requirement that goals be specified and quantified each year under § 420.13(b) (2) and (3). DOE believes a State's goals need to be articulated each year as part of making the program accountable, and therefore DOE is not making this change. However, as mentioned under § 420.5, Reports, DOE will be working with the States to simplify and expedite the quantification of program goals and results.

One commenter expressed the opinion that annual applications should be required, but not State plans. While DOE does not require complete State plans to be resubmitted each year, amendments to plans need to be submitted whenever the activities a State intends to undertake under SEP change. If an activity for which funds are sought is not in the State plan, then an amendment to that plan is necessary because the Act only authorizes DOE to provide financial assistance to execute State plans. The heading of this section and the wording of § 420.13(a) have been revised to clarify this.

One commenter suggested that States be allowed to submit an assurance that the required activities under § 420.15 have been implemented. DOE was not persuaded by this comment, because these activities need to be accounted for annually, as specified under § 420.13(b)(4)(v), which has been revised to make the requirement clearer.

One commenter argued that States should only have to address the issues specified under § 420.13 (b)(5) and (b)(6) in cases where a State is actually undertaking activities that apply to those situations. That is DOE's intent, and those paragraphs have been revised to clarfy that.

Section 420.14 Review and approval of annual State applications and amendments to State plans.

One commenter suggested that ''plans'' be dropped from the heading and that only applications be required. As already discussed under § 420.13, DOE is continuing to require amendments to plans to reflect changes, and DOE has revised this heading to provide for amendments to State plans. Unless the State elects to submit a complete plan each year with its application, DOE only requires appropriate plan amendments.

Section 420.15 Minimum criteria for required program activities for plans.

One commenter wanted the references to ''plans'' in the heading and the text of the section deleted and replaced with ''applications.'' As with the discussions under §§ 420.13 and 420.14, this commenter argued that only applications should be required each year, not plans. Since the statute requires that the State plan include the relevant activities a State is undertaking, DOE is not deleting the requirement for State plan amendments where warranted.

Section 420.17 Optional elements of State Energy Program plans.

One commenter thought only applications should be required and wanted the reference to ''plans'' in the heading replaced with ''applications.'' As already discussed under §§ 420.13, 420.14, and 420.15, DOE has not made this change because State plan amendments must continue to be submitted with applications when a State changes the SEP activities for which it is seeking financial assistance. Paragraphs (a)(3) and (a)(7) have been revised to replace the term ''energy conservation measure'' with ''energy efficiency measure'' to coincide with the change in terms defined, as discussed under § 420.2, Definitions.

Section 420.18 Expenditure prohibitions and limitations.

One commenter asked that design costs be allowable as part of energy efficiency and renewable energy measure costs, and DOE has revised § 420.18(e) to provide for reasonable design costs to be allowable.

Some commenters advocated that DOE drop the 50 percent limit on energy efficiency and renewable energy measure expenditures because it was unnecessary. DOE believes that it is reasonable to have this 50 percent limitation in order to, in general, keep a balance between State activities relating to energy efficiency and renewable energy measures and the wide variety of other types of SEP activities that States may undertake. On the other hand, DOE also believes it is worthwhile to include the possibility of a waiver, provided for under § 420.18(e)(2), for States that plan to use more than 50 percent of their SEP funds for energy efficiency and renewable energy measures. DOE will treat any waiver requests expeditiously; States simply need to explain how much funding they plan to devote to energy efficiency and renewable energy measures, and why they need to exceed the 50 percent limit. Therefore, DOE has not dropped the 50 percent limit.

One commenter claimed the restriction on loan repayments and the prohibition on loan forgiveness specified under § 420.18(e)(2) should not apply to non-Federal funds used under SEP. DOE is of the view that any funds used under SEP must be used in compliance with the SEP rule, and is not changing those restrictions.

One commenter wanted the wording under § 420.18(e)(3) revised to provide for public buildings, not just State and local government buildings. DOE believes this entire paragraph should be deleted; the section applies to all eligible buildings and the range of eligible buildings has already been specified under § 420.17(a)(3). DOE is replacing that paragraph with one excluding from eligibility for energy efficiency and renewable energy measures buildings owned or leased by the United States as was discussed earlier under the definition of ''building.''

Former § 420.18 (e)(6), (e)(6)(i), and (e)(6)(ii) have been redesignated § 420.18 (f), (f)(1), and (f)(2), respectively, because they are more logically separate paragraphs rather than continuations of the limitations specified under paragraph (e).

One commenter wondered if the 50 percent limit on rebates specified under new § 420.18(f)(1) (former § 420.18(e)(6)(i)) applied to grants. This limit does not apply to grants, which may be for up to 100 percent of the cost of measures under SEP.

III. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, legislation and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

IV. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

V. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in Section 3 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of Section 3 (a) and (b) of Executive Order 12988.

VI. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's rules.

VII. Review Under the National Environmental Policy Act

A programmatic environmental assessment has been prepared covering the grant program under the final regulations published today which was sent to the States for comment on March 27, 1996. No comments were received by the end of the 14-day comment period. This programmatic environmental assessment resulted in a finding of no significant impact (FONSI). A FONSI was issued on June 7, 1996. The documents relating to this programmatic environmental assessment are available in the DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

VIII. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act), 5 U.S.C. 801. OMB has determined that the final regulations do not constitute a ''major rule'' under the Act, 5 U.S.C. 804. DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

IX. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 imposes a variety of procedural requirements on agencies proposing or finalizing a ''Federal mandate'' on State, local, and tribal governments. 2 U.S.C. 1531–1535. None of these requirements apply to this rulemaking because, by definition, enforceable duties that are a condition of Federal financial asistance do not constitute a ''Federal mandate.'' 2 U.S.C. 658 (5)(A)(i)(I), (6).

X. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical Assistance, Incorporation by reference.

Issued in Washington, DC, on April 11, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Accordingly, the interim rule revising 10 CFR part 420 and removing 10 CFR part 450 which was published at 61 FR 35890 on July 8, 1996, is adopted as a final rule with the following changes to part 420:

PART 420—STATE ENERGY PROGRAM

1. The authority citation for part 420 continues to read as follows:

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

§ 420.2 [Amended]

2. Section 420.2 is amended by (a) Revising the definitions for ''Building,'' ''Energy audit,'' ''Renewable energy measure,'' and ''Variable working schedule;'' by (b) adding, in alphabetical order, the definitions of ''Energy efficiency measure,'' and ''Manufactured home;'' and by (c) removing the definition of ''Energy conservation measure,'' to read as follows:

§ 420.2 Definitions.

* * * * *

Building means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

* * * * *

Energy audit means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy efficiency measures or renewable energy measures.

Energy efficiency measure means any capital investment that reduces energy costs in an amount sufficient to recover the total cost of purchasing and installing such measure over an appropriate period of time and maintains or reduces non-renewable energy consumption.

* * * * *

Manufactured home means any dwelling covered by the Federal Manufactured Home Construction and Safety Standards, 24 CFR part 3280.

* * * * *

Renewable energy measure means any capital investment that reduces energy costs in an amount sufficient to recover the total cost of purchasing and installing such measure over an appropriate period of time and that results in the use of renewable energy to replace the use of non-renewable energy.

* * * * *

Variable working schedule means a flexible working schedule to facilitate activities such as carpools, vanpools, public transportation usage, and/or telecommuting.

* * * * *

§ 420.13 [Amended]

3. Section 420.13 is amended by revising the heading, paragraph (a), paragraph (b)(4)(iii), paragraph (b)(4)(v), paragraph (b)(5), and paragraph (b)(6) to read as follows:

§ 420.13 Annual State applications and amendments to State plans.

(a) To be eligible for financial assistance under subpart B of this part, a State shall submit to the cognizant Regional Support Office Director an original and two copies of the annual application executed by the Governor, including an amended State plan or any amendments to the State plan needed to reflect changes in the activities the State is planning to undertake for the fiscal year concerned. The date for submission of the annual State application shall be set by DOE.

(b) * * *

(4) * * *

(iii) A narrative statement detailing the nature of State plan amendments and of new program activities.

* * * * *

(v) An explanation of how the minimum criteria for required program activities prescribed in § 420.15 have been implemented and are being maintained.

(5) If any of the activities being undertaken by the State in its plan have environmental impacts, a detailed description of the increase or decrease in environmental residuals expected from implementation of a plan defined insofar as possible through the use of information to be provided by DOE and an indication of how these environmental factors were considered in the selection of program activities.

(6) If a State is undertaking program activities involving purchase or installation of materials or equipment for weatherization of low-income housing, an explanation of how these activities would supplement and not supplant the existing DOE program under 10 CFR part 440.

* * * * *

§ 420.14 [Amended]

4. Section 420.14 is amended by revising the heading and paragraph (a) to read as follows:

§ 420.14 Review and approval of annual State applications and amendments to State plans.

(a) After receipt of an application for financial assistance under subpart B of this part and for approval of an amendment, if any, to a State plan, the cognizant Regional Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete and to bring the application into compliance with the requirements of this part. The cognizant Regional Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete an application or to bring it into compliance, the cognizant Regional Support Office Director may reject the application in a written decision, including a statement of reasons, which shall be subject to administrative review under § 420.19 of this part.

* * * * *

§ 420.15 [Amended]

5. Section 420.15 is amended by revising paragraphs (a)(2) and (d)(1) to read as follows:

§ 420.15 Minimum criteria for required program activities for plans.

* * * * *

(a) * * *

(2) Apply to all public buildings (except for public buildings owned or leased by the United States), above a certain size, as determined by the State;

* * * * *

(d) * * *

(1) Be implemented throughout the State, with respect to all buildings (other than buildings owned or leased by the United States, buildings whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor space for all purposes, or manufactured homes), except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's law reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

* * * * *

§ 420.17 [Amended]

6. Section 420.17 is amended by revising paragraph (a)(3) introductory text, paragraph (a)(3)(i), and paragraph (a)(7) to read as follows:

§ 420.17 Optional elements of State Energy Program plans.

(a) * * *

(3) Program activities for financing energy efficiency measures and renewable energy measures—

(i) Which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds and program activities which allow rebates, grants, or other incentives for the purchase of energy efficiency measures and renewable energy measures; or

* * * * *

(7) Program activities to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable energy measures and to educate consumers concerning such acts or practices;

* * * * *

§ 420.18 [Amended]

7. Section 420.18 is amended by revising the introductory text to paragraph (e), by revising paragraphs (e)(3) and (e)(5), and by redesignating paragraphs (e)(6) introductory text, (e)(6)(i), and (e)(6)(ii) as new paragraphs (f) introductory text, (f)(1), and (f)(2), respectively, to read as follows:

§ 420.18 Expenditure prohibitions and limitations.

* * * * *

(e) A State may use funds under this part for the purchase and installation of equipment and materials for energy efficiency measures and renewable energy measures, including reasonable design costs, subject to the following terms and conditions:

* * * * *

(3) Buildings owned or leased by the United States are not eligible for energy efficiency measures or renewable energy measures under this paragraph;

* * * * *

(5) Subject to paragraph (f) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates and grants.

* * * * *

[FR Doc. 97–12641 Filed 5–13–97; 8:45 am]

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Wednesday
May 14, 1997

Part VI

Nuclear Regulatory Commission

10 CFR Part 51

Environmental Report—Materials Licenses; Rule

Environmental Report—Materials Licenses; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN AF65

Environmental Report—Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that an environmental report be submitted by uranium mill licensees at the time of license termination. This action removes an outdated and unnecessary reporting requirement.

EFFECTIVE DATE: The final rule is effective July 14, 1997, unless significant adverse comments are received by June 13, 1997. A companion Notice of Proposed Rulemaking is published with this final rule. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6202, or e-mail JJM@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

Environmental protection requirements applicable to NRC's domestic licensing and regulatory functions are addressed in 10 CFR part 51. Part 51 also establishes procedures for compliance with the National Environmental Policy Act (NEPA). According to 10 CFR 51.60, license applicants or licensees under 10 CFR part 40 and other parts, who seek approval for a specified list of actions must file an ''Applicant's Environmental Report'' or a ''Supplement to an Applicant's Report.'' The action specified in 10 CFR 51.60(b)(3) is ''Termination of a license for the possession and use of source material for uranium milling.''

As promulgated in 1974, 10 CFR part 51 required that the Atomic Energy Commission (AEC) consider whether, under the circumstances of a particular facility, the AEC should prepare an environmental impact statement (EIS) or environmental appraisal (EA) at license termination, and gave the AEC authority to obtain the necessary information from the licensee. At that time, few, if any, uranium mills had been subject to a full NEPA review. Also, there were no statutory or codified rules relevant to the closure of mill tailings sites and ground-water remediation. Hence, an environmental report by the licensee at the time of license termination was necessary to ensure proper remediation of the site before terminating the license. The requirement for the submission of an environmental report as part of the application for license terminations was created in 1980. However, reporting requirements that have come into existence since the mid 1970s covering activities that precede license termination have rendered the requirement for a separate environmental report at license termination unnecessary.

Discussion

The current decommissioning requirements, for example, 10 CFR part 40, appendix A, criterion 9, call for a licensee to submit several environmental reports throughout the process leading up to license termination. The licensee must submit applications for license amendments to undertake site reclamation and decommissioning activities that must be completed before the license may be terminated. Examples of such activities are decommissioning the mill, reclaiming the tailings, and remediating the ground-water contamination. These applications must be accompanied by an environmental report or a supplement to an environmental report. After the reclamation and decommissioning activities are completed, the licensee must submit another license amendment application, again accompanied by the necessary environmental report, requesting removal of the license conditions that required the reclamation and decommissioning work. The NRC staff reviews the application and issues a Technical Evaluation Report (TER) and an Environmental Impact Statement (EIS) or Environmental Assessment (EA).

The NRC staff will conduct a safety and environmental review to ensure that the proposed actions meet the requirements in 10 CFR part 40 before approval of each such application for a license amendment and license condition requiring the decommissioning and reclamation actions. Before license termination, the licensee also must comply with site and byproduct material ownership provisions that require ownership of byproduct material and land (including any interests connected to the land essential to ensure the long-term stability of the disposal site) to be transferred to the Federal Government or to the appropriate State Government.

The termination process in effect at the time the rule was originally promulgated has been superseded by a multi-step process of application, reporting, and NRC staff review and approval that leads to the license termination. The sequence of events outlined above takes a number of years and will be completed before the licensee can request termination of the license. Because each step in the sequence requires an environmental report from the licensee, the environmental report that responds to 10 CFR 51.60(b)(3) at the time of license termination is simply a reiteration or summary of information previously submitted by the licensee earlier in the process. Hence, it does not provide any new information beyond that already submitted in previous reports, nor does its submittal have bearing on any regulatory decision being made. Elimination of the reporting requirement in 10 CFR 51.60(b)(3) would not affect the remaining requirements in 10 CFR 51.60, nor would changes be necessary to 10 CFR part 40 or to appendix A to part 40.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld, or directly via the Internet. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages.

Using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via the Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online menu. The NRC Online area can also be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from the FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

A rulemaking site also can be accessed through the NRC's home page on the World Wide Web (http://www.nrc.gov). This site provides the same access to rulemakings as the FedWorld bulletin board, and you will be able to upload files (comments) if that function is supported by your web browser.

For more information on NRC bulletin boards at FedWorld call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. Information on the Rulemaking Web site can be obtained from Ms. Carol Gallagher, Division of Regulatory Applications, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5905; e-mail CAG@nrc.gov.

Procedural Background

The NRC considers this action to be noncontroversial. Public comment is unnecessary because the amendment relieves a burden on licensees by eliminating a requirement that has no regulatory use or implications. This action will become effective on July 14, 1997. However, if the NRC receives significant adverse comments within June 13, 1997 on the companion notice of proposed rulemaking, the NRC will publish a document that withdraws this action. The NRC will address the comments received in response to the proposed revisions that are published concurrently in the Proposed Rules section of this **Federal Register**. Such comments, if any, will be addressed in a subsequent final rule. Because comments are requested on the companion notice of proposed rulemaking, NRC will not initiate a second comment period.

Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or significantly amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S. C. 3501 *et seq*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0027.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC staff prepared a regulatory analysis for this final regulation which covered two basic options: take no action and allow the requirement for an environmental report at license termination to remain in the regulations, or eliminate the requirement. The Commission has decided to eliminate the requirement through a direct final rule. This action would eliminate an unnecessary reporting requirement and the associated licensee burden to an estimated 11 licensees over the next 10 years.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. This regulation potentially affects about 30 licensees who operate uranium mills. Only about 11 licensees will be affected over the next 10 years. The large majority of these licensees do not fall under the definition of small business entities. Additionally, this change to the regulation will result in a decrease in requirements by eliminating a current reporting requirement. Hence, there is no significant economic impact on any licensee, large or small.

Backfit Analysis

The NRC had determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Environmental regulations assessment and reports, NEPA procedures, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for 10 CFR part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub L. 100–203, 101 Stat. 1330–223 (U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

§ 51.60 [Amended]

2. In § 51.60, paragraph (b)(3) is removed, paragraphs (b) (4), (5), and (6) are redesignated as paragraphs (b) (3), (4), and (5), and paragraph (a) is amended by revising the reference ‘‘paragraphs (b)(1) through (b)(6)’’ to read ‘‘paragraphs (b)(1) through (b)(5).’’

Dated at Rockville, Maryland this 21st day of April, 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–12594 Filed 5–13–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN AF65

Environmental Report—Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to eliminate the requirement that an environmental report must be submitted by uranium mill licensees at the time of license termination. The intent of this action is to remove an outdated and unnecessary reporting requirement.

DATES: Comments on the proposed rule must be received on or before June 13, 1997.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6202, or e-mail JJM@NRC.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Rules section of this **Federal Register**.

Procedural Background

The NRC considers this action to be noncontroversial and routine. We are publishing this proposed rule concurrently with a final rule on the subject which will become effective on June 13, 1997. However, if the NRC receives significant adverse comments on the proposed amendment in this notice by July 14, 1997, the NRC will publish a document that withdraws the final rule. If the final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in this notice in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the final rule is withdrawn.

Electronic Access

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld, or directly via the Internet. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages.

Using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via the Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online menu. The NRC Online area can also be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from the FedWorld's main menu, you may return to FedWorld by selecting the ''Return to Fedworld '' option from the NRC Online Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

A rulemaking site also can be accessed through the NRC's home page on the World Wide Web (http://www.nrc.gov). This site provides the same access to rulemakings as the FedWorld bulletin board, and you will be able to upload files (comments) if that function is supported by your web browser.

For more information on NRC bulletin boards at FedWorld call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. Information on the Rulemaking Web site can be obtained from Ms. Carol Gallagher, Division of Regulatory Applications, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5905; e-mail CAG@nrc.gov.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Environmental regulations assessment and reports, NEPA procedures, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for 10 CFR part 51 continues to read as follows

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub L. 100–203, 101 Stat. 1330–223 (U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

§ 51.60 [Amended]

2. In § 51.60, paragraph (b)(3) is removed, paragraphs (b) (4), (5), and (6) are redesignated as paragraphs (b) (3), (4), and (5), and paragraph (a) is amended by revising the reference ''paragraphs (b)(1) through (b)(6)'' to read ''paragraphs (b)(1) through (b)(5).''

Dated at Rockville, Maryland this 21st day of April, 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–12593 Filed 5–13–97; 8:45 am]

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