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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: May 24, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

MINNEAPOLIS, MN

WHEN: June 18, at 1:00 p.m.
WHERE: Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
RESERVATIONS: 1–800–366–2998

KANSAS CITY, MO

WHEN: June 19, at 9:00 a.m.
WHERE: Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
RESERVATIONS: 1–800–735–8004

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Presidential Documents

Title 3—

The President

Executive Order 12714 of May 3, 1990

Establishing an Emergency Board To Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached lists, which are made a part of this order.

These disputes have not been adjusted under the provisions of the Railway Labor Act, as amended; 45 U.S.C. 151–188 ("the Act").

In the judgment of the National Mediation Board, the disputes threaten substantially to interrupt interstate commerce to a degree that would deprive various sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me by the Constitution and laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

Section 1. *Creation of Emergency Board.* There is created, effective May 5, 1990, a board of three members to be appointed by the President to investigate the disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report to the President with respect to these disputes.

Sec. 3. *Maintaining Conditions.* From the date of the creation of the board and for 30 days after the board has made its report with respect to these disputes to the President, no change, except by agreement of the parties, shall be made by the railroads or the employees in the conditions out of which the disputes arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report referred to in sections 2 and 3 of this order.

George Bush

THE WHITE HOUSE,
May 3, 1990.

RAILROADS

Akron & Barberton Belt Railroad

Alameda Belt Line Railway

Alton & Southern Railway

Atchison, Topeka & Santa Fe Railway

Bessemer and Lake Erie Railroad

Burlington Northern Railroad
- Western Fruit Express Company

Canadian National Railways
- Great Lakes Region Lines in U.S.
- St. Lawrence Region Lines in U.S.

Canadian Pacific Limited

CSX Transportation
- Atlanta & West Point Rail Road
  - Western Railway of Alabama
- Baltimore and Ohio Railroad
- Baltimore and Ohio Chicago Terminal Railroad
- Chesapeake and Ohio Railway
  - Hocking Valley Railroad
  - Pere Marquette Railroad
- Clinchfield Railroad
- Seaboard System Railroad
  - Georgia Railroad (former)
  - Louisville and Nashville Railroad (former) incl. C&EI and Monon
  - Nashville, Chattanooga & St. Louis Railway
    - Nashville Terminal
    - Seaboard Coast Line Railroad (former)
  - Toledo Terminal Railroad
  - Western Maryland Railway

Chicago & Illinois Midland Railway

Chicago & North Western Transportation Co.

Chicago South Shore and South Bend Railroad

Colorado & Wyoming Railway

Columbia & Cowlitz Railway

Consolidated Rail Corporation

Davenport, Rock Island and Northwestern Railway

Denver and Rio Grande Western Railroad

Denver Union Terminal Railway

Duluth, Winnipeg & Pacific Railway

Elgin, Joliet & Eastern Railway

Grand Trunk Western Railroad

Houston Belt and Terminal Railway

Illinois Central Railroad

Kansas City Southern Railway
  Louisiana & Arkansas Railway

  Milwaukee (Soo Line) - KCS Joint Agency
Kansas City Terminal Railway

Lake Superior & Ishpeming Railroad

Los Angeles Junction Railway

Manufacturers Railway

Meridian & Bigbee Railroad

Minnesota, Dakota & Western Railway

Mississippi Export Railroad

Missouri Pacific Railroad
  Chicago Heights Terminal Transfer Railroad

  Galveston, Houston and Henderson Railroad

  Missouri-Kansas-Texas Railroad

  Oklahoma, Kansas & Texas Railroad
Monongahela Railway

New Orleans Public Belt Railroad

Norfolk and Portsmouth Belt Line Railroad

Norfolk and Western Railway

Norfolk Southern Corporation

Oakland Terminal Railway

Ogden Union Railway and Depot Co.

Peoria & Pekin Union Railway

Pittsburgh & Lake Erie Railroad

Pittsburgh, Chartiers & Youghiogheny Railway

Port Terminal Railroad Association

Portland Terminal Railroad Company

Richmond, Fredericksburg & Potomac Railroad

Sacramento Northern Railway

St. Louis Southwestern Railway

Southern Pacific Transportation Co.
  Eastern Lines
  Western Lines

Southern Railway Company
  Alabama Great Southern Railroad
    New Orleans and Northeastern Railroad
  Atlantic and East Carolina Railway

  Carolina & Northwestern Railway

  Central of Georgia Railroad

  Cincinnati, New Orleans & Texas Pacific Rwy.

  Georgia Northern Railway

Georgia Southern and Florida Railway
Interstate Railroad
Live Oak, Perry and South Georgia Railroad
New Orleans Terminal Co.
St. Johns River Terminal Company
Tennessee, Alabama and Georgia Railway
Tennessee Railway
Spokane International Railroad
Terminal Railroad Association of St. Louis
Texas Mexican Railway
Union Pacific Railroad
Western Pacific Railroad
Wichita Terminal Association
Yakima Valley Transportation Co.
Youngstown & Southern Railway
Montour Railroad

LABOR ORGANIZATIONS

American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employees
Brotherhood of Railroad Signalmen
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
Sheet Metal Workers International Assocaiation
Transportation Communications Union
Transportation Communications Union-Carmen Division
United Transportation Union

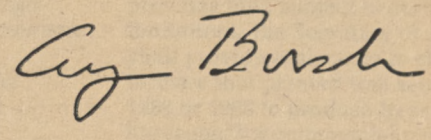
[FR Doc. 90-10901
Filed 5-7-90; 8:45 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12715 of May 3, 1990

Determination Under Section 2606 of Title 10, United States Code, for Support of Scouting Activities Overseas

By the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to section 2606(b) of title 10, United States Code, with regard to support of scouting activities overseas, I hereby determine that the cooperation and assistance authorized by section 2606(a) of that title is necessary in the interest of the morale, welfare, and recreation of members of the armed forces. The Secretary of Defense, or his designee, shall issue regulations concerning such cooperation and support.



THE WHITE HOUSE,
May 3, 1990.

[FR Doc. 90-10902
Filed 5-7-90; 8:45 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1478

1989 Tree Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations in 7 CFR part 1478 for the 1989 Tree Assistance Program (TAP) which were published at 54 FR 47669 on November 16, 1989. The revised regulations, as provided for in Public Law 101–220, add coverage of 1989 tree losses due to an earthquake or related condition. Subject to limitations that apply to TAP payments for 1989 losses related to drought and freeze conditions, the Commodity Credit Corporation (CCC) will: (1) Reimburse approved eligible persons who produce annual crops from trees for commercial purposes for part of the eligible costs of planting seedlings to offset losses of trees planted in any year that were lost due to an earthquake or related condition in 1989; and, (2) reimburse approved eligible persons who have planted trees for harvest as trees for commercial purposes for part of the eligible costs of replanting seedlings planted for commercial purposes in 1988 or 1989 that were lost due to an earthquake or related condition in 1989.

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013 (Tel. (202) 447–6221).

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed. Copies of the environmental evaluation are available upon written request. The titles and numbers of the Federal Assistance Program to which this rule applies are: Title: Tree Assistance Program; Number 10.TAP, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Subtitle B of title I of the Disaster Assistance Act of 1989 (Pub. L. 100–82) ("the 1989 Act") provided that, subject to certain limitations, the Secretary of Agriculture would make assistance available to eligible orchardists who planted trees for commercial purposes but lost such trees as a result of freeze, or related condition in 1989, as determined by the Secretary. To be an eligible orchardist, a person must produce annual crops from trees for commercial purposes and own 500 acres or less of such trees. Subtitle B of the 1989 Act provided that eligible orchardists could receive reimbursement of 65 percent of the eligible costs of replanting trees lost due to freeze or related condition in 1989 in excess of 45 percent mortality (adjusted for normal mortality). Public Law 101–220 added earthquakes and related conditions as conditions for which losses could be reimbursed under subtitle B.

Also, Public Law 101–220 added earthquake-related losses to the coverage of subtitle C of title I of the 1989 Act. That subtitle of the 1989 Act, as now amended by Public Law 101–220, provides that, subject to certain limitations, the Secretary of Agriculture shall provide assistance to eligible tree farmers that planted tree seedlings in 1988 or 1989 to produce trees to be harvested for commercial purposes but lost such seedlings as a result of drought, earthquake, or related condition in 1989, as determined by the Secretary. Under subtitle C, to be an "eligible tree farmer" the applicant must be a person who grows trees for harvest for commercial purposes and owns 1,000 acres or less of such trees. Under subtitle C, an eligible person may receive reimbursement of 65 percent of the cost of replanting seedlings to replace seedlings that were planted in 1988 or 1989 for commercial purposes but were lost due to drought, earthquake, or related condition in 1989 in excess of 45 percent morality (adjusted for normal mortality).

Prior to 101–220, subtitle B applied only to freeze or related condition, and subtitle C applied only to drought or related condition. Regulations providing for 1989 TAP freeze and drought assistance, pursuant to the provisions of subtitles B and C, were published at 54 FR 47669, November 16, 1989. Pursuant to 101–220, the 1989 TAP regulations are revised in this rule to add earthquake coverage for both subtitle B and subtitle C type purposes under the same conditions as apply to freeze and drought assistance.

There are separate payment limitations of $25,000 per "person," as defined in the regulations, for subtitle B and subtitle C relief. Also, pursuant to section 151 of the 1989 Act, no person is eligible to receive TAP assistance if that person's "qualifying gross revenues" are in excess of $2 million annually as determined by the Secretary under rules and definitions provided for in the program regulations published on November 16, 1989.

Applications and information for TAP assistance of the kind provided for in this rule will be available from local Agricultural Stabilization and Conservation Service offices. Among other limitations that will apply to earthquake losses, as with freeze or drought losses, are the following: (1) The application for assistance must be filed by June 30, 1990; (2) only certain costs related to the replacement of trees, as specified in § 1478.6 as published on November 16, 1989, are eligible for cost-share assistance (e.g., irrigation costs are not covered); (3) eligible costs do not include those costs incurred prior to filing an application for participation in the program unless specifically otherwise approved by the Deputy Administrator for State and County Operations (DASCO); (4) County Agricultural Stabilization and Conservation (ASC) Committees can not approve cost-shares in excess of certain amounts without the concurrence of the State ASC Committee or DASCO; and (5) losses and replacement costs must be documented.

Section 155 of the 1989 Act provides that with respect to the issuance of regulations for the implementation of subtitles B and C, such rules be issued as soon as practicable and without regard to the requirements for notice and public participation in rule making prescribed in section 553 of the United States Code, or in any directive of the Secretary. Accordingly, and to avoid unnecessary delay in the availability of relief, this rule is issued as a final rule without prior comment.

List of Subjects in 7 CFR Part 1478

Administrative practices and procedures, Natural resources, Trees.

Final Rule

Accordingly, subchapter B, chapter XIV of title 7 of the Code of Federal Regulations part 1478 is amended as follows:

1. The authority citation for part 1478 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1421 note.

2. Section 1478.1 is revised to read as follows:

§ 1478.1 General statement.

(a) The regulations in this part set forth the terms and conditions of the 1989 Tree Assistance Program (1989 TAP) authorized by title I of the Disaster Assistance Act of 1989 (the Act). Within specified limits, the Commodity Credit Corporation (CCC) is authorized by the Act to:

(1) Reimburse eligible persons for part of the cost of replanting seedlings to offset losses by an eligible orchardist for trees that were planted in any year to produce annual crops for commercial purposes but were lost due to freeze or related condition, or earthquake or related condition, in 1989; and,

(2) Reimburse eligible persons for part of the cost of replanting seedlings planted in 1988 or 1989 that were planted to produce trees to be harvested for commercial purposes where the seedlings were lost due to drought or related condition, or earthquake or related condition, in 1989.

(b) Such assistance may not exceed 65 percent of the eligible reseeding costs actually incurred by the producer with respect to those eligible losses which, after adjustments for normal mortality, exceed a percentage loss of 45 percent, as determined by CCC.

(c) Assistance for 1989 losses due to earthquake or related condition may be made available as provided for in § 1478.17.

3. A new § 1478.17, is added to read as follows:

§ 1478.17 1989 Losses due to earthquake or related condition.

(a) Notwithstanding any other provision of this part, assistance may be made available as provided for in paragraph (b) of this section for 1989 losses due to earthquake or related condition.

(b)(1) Persons who meet both the following criteria:

(i) Produce annual crops from trees for commercial purposes; and

(ii) Own less than 500 acres of such trees, may receive assistance for 1989 losses of such trees for losses due to earthquake or related condition under the same terms, conditions and limitations (including, but not restricted to, limitations on payment) that apply under this part for assistance for 1989 losses due to freeze or related condition. The amount that may be received under paragraph (b)(1) of this section, when combined with the assistance for 1989 freeze losses under this part may not exceed the amount of $25,000 per person as determined under this part.

(2) Persons who meet both of the following conditions:

(i) Grow trees for harvest for commercial purposes; and

(ii) Own 1,000 acres or less of such trees, who planted seedlings for such purposes in 1988 or 1989 but lost such seedlings due to an earthquake or related condition in 1989 may receive assistance under the same terms, conditions and limitations (including, but not limited to, limitations on payment) that apply under this part for assistance for 1989 losses due to drought or related condition. The amount that may be received under paragraph (b)(2) of this section, when combined with the assistance for 1989 drought losses under this part may not exceed the amount of $25,000 per person as determined under this part.

Signed at Washington, DC on May 2, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-10641 Filed 5-7-90; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 89-149]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Kentucky from Class B to Class A. We have determined that Kentucky now meets the standards for Class A status.

EFFECTIVE DATE: June 7, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 1989, and published in the **Federal Register** on June 14, 1989 (54 FR 25227-25228, Docket Number 89-099), we amended the brucellosis regulations in 9 CFR part 78 governing the interstate movement of cattle by removing Kentucky from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before August 14, 1989. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Kentucky from Class B to Class A reduces certain testing, permit and branding requirements governing the interstate movement of cattle from Kentucky. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal group affected would be owners in Kentucky who seek to sell cattle from noncertified herds not known to be affected with brucellosis.

There are an estimated 60,000 herds in Kentucky, most of which are owned by small entities that potentially would be affected by this rule. During fiscal year 1988 Kentucky tested 286,184 eligible cattle at saleyards. We estimate that approximately 15 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. This testing costs approximately $3 per head. Since herd sizes vary, larger herds will accumulate more savings than smaller herds. Also, not all herd owners will choose to market their cattle in a way that accrues these cost savings. The overall effect of this rule on small entities should be to provide very small economic benefit.

Therefore, we believe that changing Kentucky's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 54 FR 25228–25229 on June 14, 1989.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 3rd day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–10640 Filed 5–7–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 083CE, Special Condition 23–ACE–54]

Special Conditions; Beech Models 200, A200, and B200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Beech Models 200, A200, and B200 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION

Background

On November 17, 1989, Elliott Flying Service, P.O. Box 100, Quad City Airport, Moline, IL 61265, made an application to the FAA for supplemental type certificate (STC) approval of the Models 200, A200, and B200 Series airplanes to include the installation of electronic displays. This airplane is a pressurized, twin-engine turboprop, of conventional metal material, with a maximum altitude of 35,000 feet. The installation may incorporate an electronic attitude director indicator (EADI) and an electronic horizontal situation indicator (EHSI) instead of the traditional mechanical or electromechanical displays providing similar information to the flight crew. The High Energy Radiated Electromagnetic Fields (HERF) requirements are not being included in these special conditions, since the HERF requirements are not applicable for STC application prior to December 5, 1989. However, FAA is planning a post certification reassessment to assure safe operation in the HERF environment of critical electrical and electronic systems that are installed after January 1, 1982.

Type Certification Basis

The type certification basis for the Beech Models 200, A200, and B200 Series airplanes are as follows: Part 23 of the FAR, effective February 1, 1965, including amendments 23–1 through 23–9; amendment 11; §§ 23.175, 23.143(a), 23.145(d), 23.153, 23.161(c)(3), and 23.173(a) as amended by amendment 23–14; § 23.951(c) and § 23.997(d) as amended by amendment 23–15 (A200CT, B200 Series only); § 23.1545(a) as amended by amendment 23–23; § 23.1325(e) as amended by amendment 23–20 (B200 Series only); § 23.1305(n) as amended by amendment 23–26; special conditions 23–47–CE–5, including amendments 1 and 2, dated January 12, 1979; part 25 of the FAR, §§ 25.929 and 25.1419 as amended by amendments 25–

34, § 25.831(d) as amended by amendment 25–41. SFAR 27, effective February 1, 1974, as amended by amendments 27–2 through 27–4; part 36, effective December 1, 1969, as amended by amendments 36–1 through amendment 36–10; exemptions, if any; and the special conditions adopted herein.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Beech Models 200, A200, and B200 Series airplanes contain a number of novel and unusual design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the Beech Models 200, A200, and B200 Series airplanes. These special conditions will also be applicable to all Beech Models 200, A200, and B200 Series airplanes, including the installation of similar EFIS, without further amendment of the special conditions.

Electronic Flight Instrument System (EFIS)

The proposed cathode-ray tube (CRT) electronic display units will contain primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and an EHSI on the pilot side of the instrument panels. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments. On some later installations, another EADI and EHSI may be installed on the copilot side.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electromechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions, including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness standards. Current small airplane airworthiness standards are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane airworthiness standards envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. When the current airworthiness standards of part 23 were written, only mechanical or electromechanical instruments that functioned independently for each parameter were envisioned. The requirements intended that airspeed, altitude, and magnetic compass information remain available to the pilot after total failure of the airplane's electrical power. Standby instruments for mechanical or electromechanical flight instruments are not required by the small airplane airworthiness standards because the FAA has long accepted that the small airplane could be flown safely by using partial panel techniques following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included requirements for the pilot to demonstrate the ability to fly the airplane safely following failure of any one of the previously cited instruments.

The potential for increased clarity in data display and the concentration of data displays in a single indicator increases the potential criticality of failures. It is anticipated that pilots using these new instrument systems will become increasingly dependent on the use of them because of the tasks they perform for the pilot. After a period of time, where these electronic indicators are located in the primary instrument panel locations, it is anticipated that pilots will find it more difficult to transition to back-up or secondary indicators when failure occurs, such as reverting to use of needle-ball and airspeed for airplane attitude control when the artificial horizon instrument system fails.

The electronic indicators are expected to have significantly different modes of failure, that is, they may rapidly change from perfect performance to total failure. In contrast, the mechanical and electromechanical indicators typically deteriorated in performance over a period of time such that they were replaced before a total failure that prevented them from providing useful information to the pilot.

The electronic instrument systems can readily provide digital indication of exact numbers, moving pointer on a scale, and various other formats and combinations of them all. The FAA is especially concerned that pilots be provided adequate sensory cues as to whether numbers displayed are increasing or decreasing and how fast they are changing. Also of concern is that the digital indication may not show the normal operating range cues to direction or rate of change or operational limits.

The special conditions will provide appropriate requirements for installation of electronic displays featuring design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special conditions will also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane. For installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This concerns the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special conditions include requirements needed for their certification.

Electronic indicator systems will have great potential for inhibiting information to maximize the effect of other information in various phases of flight. Attitude, airspeed, and altitude are information the FAA has concluded that must be displayed during all normal modes of operation and, therefore, may not be inhibited during normal modes of operation for electronic display indicators. Information that is considered essential to continued safe flight must remain available on indicators usable by the pilot after any single failure or combination of probable failures without need for immediate

crew action. At a minimum, without considering specific characteristics of an airplane's design, attitude, airspeed, and altitude must remain available without any crew action after such a failure, whereas a failure that would remove other essential information from displays, without resulting in an immediate hazard, would be acceptable provided the essential information could be returned to a usable indicator in a safe elapsed time.

The special conditions will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the special conditions.

The existing § 23.1309, which was incorporated into part 23 by amendment 23–14, dated December 20, 1973, has been used as a means of evaluating systems for those airplanes that include § 23.1309 in their type certification basis. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment, have been used to successfully evaluate most airplane systems and equipment. The type certification basis for this airplane does not include § 23.1309; however, the "single fault" concept does not provide an adequate means for determining and evaluating the effect of certain failure conditions that may exist in complex systems such as an EFIS installation. Therefore, the FAA considers it necessary to include the additional system analysis requirements in the certification basis. This will also allow the use of the "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur. Rational methods for showing compliance for safety assessment of systems may be shown by the use of numerical analysis, but it is not mandatory. In many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently a more acceptable substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform critical functions, it will be necessary to show that those systems meet more stringent requirements. These systems would be required to establish either that there will be no failures of that system or that a failure is extremely improbable. Critical functions means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane. These special conditions provide reliability requirements that are based on the criticality of the system's function and provide the airworthiness standards needed for certification of complex safety-critical systems being proposed for installation.

The special conditions also require that the occurrence of system(s) failures that would significantly reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree leading to potentially catastrophic results.

Conclusion

In review of the design features discussed for the installation in the Beech Models 200, A200, and B200 Series airplanes, the following special conditions are issued to provide a level of safety equivalent to that intended by the referenced airworthiness standards. This action is not a rule of general applicability and affects only the model/series of airplanes identified in these special conditions.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (51 FR 28525; August 8, 1986), (51 FR 36998; October 17, 1986), (51 FR 37711; October 24, 1986), and (53 FR 14782; April 26, 1988). Also, special conditions with similar requirements have been promulgated without public procedures because the FAA has determined that good cause existed for immediate adoption (55 FR 270; January 4, 1990) and (54 FR 51870; December 19, 1989). For this reason, and because a delay would significantly affect the applicant's installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective 30 days from the date of publication.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 andl 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special conditions are issued as part of the type certification basis for the Beech Models 200, A200, and B200 Series airplanes that incorporate an electronic flight instrument system (EFIS).

Electronic Flight Instrument Displays

In addition to, and instead of, the applicable airworthiness standards of part 23 and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of this special condition may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed instead of mechanical or electromechanical instruments if:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation, do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this section.

Issued in Kansas City, Missouri on April 24, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-10682 Filed 5-7-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-275-AD; Amdt. 39-6598]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 series airplanes, which requires replacement of the thrust reverser synchronizing bell crank with a new bell crank. This amendment is prompted by fatigue testing of the thrust reverser synchronizing bell crank which revealed that these bell cranks have a limited service life and must be replaced prior to the accumulation of 3,000 landings. This condition, if not corrected, could lead to failure of the thrust reverser linkage.

EFFECTIVE DATE: June 15, 1990.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 series airplanes, which requires replacement of the thrust reverser synchronizing bell crank with a new bell crank, was published in the **Federal Register** on February 8, 1990 (55 FR 4432).

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

The commenter questioned the need for the rule since the Falcon 900 Maintenance Manual Chapter 5-40-00, as currently written, requires the removal of the synchronizing bell crank, Part Number (P/N) F900HD3200240A2, prior to the accumulation of 3,000 landings. The FAA does not concur that the AD is unnecessary. The procedures contained in the manufacturer's maintenance manual are not mandatory for operators. For this reason, the final rule is issued to ensure that the bell crank will be removed and replaced prior to the accumulation of 3,000 landings.

The commenter further stated that if the FAA elects to issue the rule, then "Part Numbers F900HD3200240A1 and F900HD3200240A3 should be cited, in addition to P/N F900HD3200240A2 which is referenced in the proposed rule. The Falcon 900 Maintenance Manual will be updated to incorporate all three of the affected part numbers. The FAA partially concurs. The present maintenance manual identifies P/N F900HD3200240A2 as needing replacement prior to the accumulation of 3,000 landings. The AD mandates this replacement at this interval. Once the maintenance manual is revised, the FAA may consider additional rulemaking to address additional part numbers.

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 as proposed.

It is estimated that 40 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost for parts is estimated to be $12,500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $505,600.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD–BA): Applies to all Model Mystere Falcon 900 series airplanes equipped with thrust reverser synchronizing bell crank, part number F900HD3200240A2, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the thrust reverser door actuating system, accomplish the following:

A. Prior to the accumulation of 3,000 landings on the thrust reverser synchronizing bell crank, part number F900HD3200240A2, or within the next 250 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, replace the bell crank, which is life limited to 3,000 landings, in accordance with the manufacturer's maintenance manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 15, 1990.

Issued in Seattle, Washington, on May 1, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–10678 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–60–AD; Amdt. 39–6600]

Airworthiness Directives; British Aerospace Model BH.125–600A, HS.125–700A, and BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 90–08–07, which was previously made effective as to all known U.S. owners and operators of British Aerospace Model BH.125–600A, HS.125–700A, and BAe 125–800A series airplanes by individual letters. This AD requires draining water from and deactivating the aft lavatory water system. This action is prompted by a report of an aft lavatory water system leak which caused the aileron control system to jam due to the resulting ice formation on the aileron control cables and fairleads. This condition, if not corrected, could result in loss of aileron control.

EFFECTIVE DATE: May 29, 1990, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90–08–07, issued April 10, 1990, which contained this amendment.

FOR FURTHER INFORMATION CONTACT: Mr. Joe L. Condo, Special Programs Office, ASW–190; telephone (817) 624–5193. Mailing address: FAA, Southwest Region, Fort Worth, Texas 76193–0190.

SUPPLEMENTARY INFORMATION: On April 10, 1989, the FAA issued priority letter AD 90–08–07, applicable to British Aerospace Model BH.125–600A, HS.125–700A, and BAe 125–800A series airplanes, equipped with a cabin interior and aft lavatory water system installed in accordance with Supplemental Type Certificate (STC) SA2271SW, which requires draining water from and deactivating the lavatory water system. That action was prompted by a report of an aft lavatory water system leak which caused the aileron control system to jam due to the resulting ice formation on the aileron control cables and fairleads. This condition, if not corrected, could result in loss of aileron control.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design, equipped with a cabin interior and aft lavatory water system installed in accordance with STC SA2271SW, registered in the United States, this AD requires draining water from and deactivating the aft lavatory water system.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 10, 1990, to all known U.S. owners and operators of British Aerospace Model BH.125–600A, HS.125–700A, and BAe 125–800A series airplanes, equipped with a cabin interior and aft lavatory water system installed in accordance with STC SA2271SW. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued

immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BH.125-600A, HS.125-700A, and BAe 125-800A series airplanes, equipped with a cabin interior and aft lavatory water system installed in accordance with STC SA2271SW, certificated in any category. Compliance is required prior to further flight, unless previously accomplished.

To prevent loss of aileron control, accomplish the following:

A. Drain all water from the aft lavatory water system reservoir, deactivate the water system pressure pump by pulling the circuit breaker located beneath the vanity in the aft lavatory, and install a tie wrap on the circuit breaker to prevent it from being reset.

B. 1. The aft lavatory water system pressure pump may be reactivated upon accomplishment of a modification which has been approved by the Manager, Special Programs Office, ASW-190, FAA, Southwest Region.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Special Programs Office, ASW-190, FAA, Southwest Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Special Programs Office, ASW-190.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective May 29, 1990, as to all persons, except those persons to whom it was made immediately effective by priority letter AD 90-08-07, issued April 10, 1990, which contained this amendment.

Issued in Seattle, Washington, on May 1, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-10680 Filed 5-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-06-AD; Amdt. 39-6597]

Airworthiness Directives; Israel Aircraft Industries (IAI) Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Model 1125 Westwind Astra series airplanes which requires repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. This amendment is prompted by a damage tolerance analysis that revealed cracks may develop in the horizontal stabilizer hinge fitting lugs. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer assembly.

EFFECTIVE DATE: June 15, 1990.

ADDRESSES: The applicable service information may be obtained from Astra Jet Corporation, Technical Publications, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Israel Aircraft Industries (IAI) Model 1125 Westwind Astra series airplanes, which requires repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings, was published in the Federal Register on February 8, 1990 (55 FR 4431).

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

The commenters questioned the need for the rule since all U.S. registered airplanes have been inspected, and the repetitive inspections have been incorporated in the manufacturer's maintenance manual with a temporary revision. One commenter further stated that since all operators have accomplished the initial inspection and the maintenance manual has been revised, to issue an AD is redundant. The FAA does not concur. Even though the FAA has received documentation which indicates that the initial inspection has been accomplished on all airplanes and the maintenance manual has been revised, the inclusion of the repetitive inspections in the manufacturer's maintenance manual does not automatically make the repetitive inspections mandatory for operators. Therefore, the FAA has determined that this AD is necessary to ensure the accomplishment of the repetitive inspections on all affected airplanes.

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 as proposed.

It is estimated that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $560.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI) Ltd.: Applies to all Model 1125 Westwind Astra series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the outer lugs of the horizontal stabilizer hinge fitting, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 150 hours time-inservice, perform a visual inspection of the outer lugs of the horizontal stabilizer hinge fitting, in accordance with Westwind Astra Service Bulletin 1125–55–017, dated October 16, 1989.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 200 hours time-in-service.

C. If cracks are found, prior to further flight, replace the hinge fitting, in accordance with Westwind Astra Service Bulletin 1125–55–017. Repeat the inspection required by paragraph A., above, at intervals not to exceed 200 hours time-in-service.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Astra Jet Corporation, Technical Publications, P.O. Box 10086, Wilmington, Delaware 19850. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 15, 1990.

Issued in Seattle, Washington, on May 1, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–10681 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ASW–52; Amdt. 39–6596]

Airworthiness Directives; Certain Bell Helicopter Textron, Inc., (BHTI) Models UH–1A, 1B, 1E, 1F, 1H, 1L, and TH–1L Helicopters, Manufactured Under Military Contract

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the removal and replacement of certain tail rotor gearbox duplex bearing sets used on Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters manufactured by Bell Helicopter Textron, Inc., under military contract. The AD is needed to prevent failure of the duplex bearing which could result in loss of tail rotor control and subsequent loss of the helicopter.

DATES: *Effective date:* June 5, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable AD-related material may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, FAA. Rotorcraft Certification Office, ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 624–5177.

SUPPLEMENTARY INFORMATION: The FAA has determined that insufficient heat treatment during the manufacturing of certain tail rotor gearbox duplex bearing sets, part number (P/N) 204–040–424–001, could result in premature wear and subsequent failure of the duplex bearing. Failure of the duplex bearing could result in loss of tail rotor control and subsequent loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires the removal and replacement of these tail rotor gearbox duplex bearing sets used on Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters manufactured by Bell Helicopter Textron, Inc., under military contract.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

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 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; Hercules; International Helicopters, Inc.; Offshore Contruction; Oregon Helicopters; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation; Southwest Florida Aviation; and West Coast Fabrications (these helicopters were manufactured by Bell Helicopter Textron, Inc., under military contract): Applies to Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters, certificated in any category.

(Docket No. 89–ASW–52)

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor duplex bearing which could result in loss of tail rotor control and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, determine if the tail rotor gearbox duplex bearing sets, P/N 204–040–424–001, having the following serial numbers are installed in the tail rotor gearbox output quill, P/N 204–040–012–009:

Serial Numbers

1 thru 182	MB548
MB183 thru	MB549
MB382	MB551
MB442	MB553
MB486	MB554
MB513	MB561
MB518	MB659
MB519	MB743
MB524	MB744
MB530	MB760 thru
MB531	MB769
MB544	MB927 thru
MB545	MB936

If a part with any of the listed serial numbers is installed, replace with a serviceable part before further flight.

(b) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the requirements of this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, Rotorcraft Directorate, FAA, Southwest Region, Fort Worth, Texas.

This amendment becomes effective June 5, 1990.

Issued in Fort Worth, Texas, on April 30, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90–10679 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. No. 34–27960]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its Rules of Practice to delegate authority to the Director of the Division of Market Regulation to publish notice of and, by order, grant under section 11A(b) of the Securities Exchange Act ("Act") and Rule 11Ab2–1 thereunder: Applications for registration as a securities information processor; and exemptions from that section and any rules or regulations promulgated thereunder, either conditionally or unconditionally.

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: Kathryn Natale (202/272–2405), Christine Sakach (202/272–2857) or Teresa Fink (202/272–2418), Division of Market Regulation, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today adopted, pursuant to section 4A of the Securities Exchange Act of 1934, an amendment to its Rules of Practice governing Delegation of Authority to the Director of the Division of Market Regulation (17 CFR 200.30–3). The amendment adds to Rule 30–3, new paragraph (a)(49), authorizing the Director of the Division of Market Regulation to publish notice of and, by order, grant under section 11A(b) of the Act and Rule 11Ab2–1 thereunder: Applications for registration as a securities information processor; and exemptions from that section and any rules or regulations promulgated thereunder, either conditionally or unconditionally.

The delegation of authority is intended to conserve Commission resources by permitting the staff to accommodate requests on a more expedited basis. Nevertheless, the staff may submit matters to the Commission for consideration as appropriate.

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act,[1] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (government agencies), Organizations and functions.

Text of Amendment

The Commission hereby amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read, in part, as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

* * * * *

2. 17 CFR 200.30–3 is amended by adding new paragraph (a)(49) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(49) Pursuant to section 11A(b) of the Act and Rule 11Ab2–1 thereunder (17 CFR 11Ab2–1), to publish notice of and, by order, grant under section 11A(b) of the Act and Rule 11Ab2–1 thereunder: Applications for registration as a securities information processor; and exemptions from that section and any rules or regulations promulgated

[1] 5 U.S.C. 553(b)(A).

thereunder, either conditionally or unconditionally.

* * * * *

By the Commission.

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10660 Filed 5-7-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1413-90]

Judgments, Fines, Penalties, and Forfeitures

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This document assigns to the United States Attorneys responsibility for the enforcement of judgments, fines, penalties, and forfeitures imposed in their respective districts and assigns to the Executive Office for United States Attorneys (EOUSA) the responsibility for developing and implementing Department of Justice policy and procedures for the collection of criminal fines. The responsibility for collecting monetary penalties is now divided between the Department's litigating divisions and the United States Attorneys. However, the United States Attorneys are responsible for the collection of almost all judgments, fines, penalties, and forfeitures imposed in federal courts, including those imposed in cases prosecuted by the Department's litigating divisions. Because the United States Attorneys play the major role in actually collecting such monetary penalties, this amendment assigns to the United States Attorneys responsibility for the enforcement of judgments, fines, penalties, and forfeitures imposed in their respective districts as well as certain ministerial functions regarding the collection of unpaid criminal fines.

Historically, the Criminal Division established policy and procedures concerning the satisfaction, collection or recovery of criminal fines. However, because the United States Attorneys are responsible for the collection of almost all criminal fines imposed in federal court, this amendment assigns responsibility for establishing policy and procedures regarding the collection of criminal fines to EOUSA.

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: Laurence E. Fann, Acting Associate Director, Financial Litigation Staff, Executive Office for United States Attorneys, (202) 272-4017.

SUPPLEMENTARY INFORMATION: Judgments, fines (including special assessments, interest, restitution, and court costs), penalties, and forfeitures (including bail bond forfeitures) are imposed in connection with presecutions conducted by the various litigating divisions of the Department and the United States Attorneys.

Section 0.171 of title 28 CFR provides that each Assistant Attorney General is responsible for the satisfaction, collection or recovery of judgments, fines, penalties, and forfeitures (including bail bond forfeitures) arising in connection with cases under his jurisdiction and also that each United States Attorney is responsible for carrying out those collection activities.

Collection activities are handled primarily in the United States Attorneys' offices for a number of reasons, and the Department desires to amend the regulatory language to conform to actual practice. For example, each United States Attorney's office contains a Financial Litigation Unit where employees with collection expertise and familiarity with local procedures perform collection tasks on a regular basis. Furthermore, state law applies to the collection of federal judgments. Thus, § 0.171(a) is amended to assign responsibility for the enforcement of judgments, fines, penalties, and forfeitures to the United States Attorneys unless the Assistant Attorney General for a litigating division specifically notifies the United States Attorney that the litigating division will assume such enforcement responsibilities.

Historically, the Criminal Division has been responsible for establishing policy and procedures concerning the collection of criminal fines as well as policy regarding the imposition of criminal fines. However, the United States Attorneys conduct the majority of criminal prosecutions handled by the Department and enforce the unpaid criminal fines arising out of those prosecutions. Furthermore, the Department's litigating divisions refer uncollected criminal fines to the United States Attorneys for collections.

The Department has acknowledged a growing inventory of unpaid fines in the United States Attorney's offices and has determined that a centralized fine collection system should be developed to address that situation. To that end, it has decided that the function of establishing policy and procedures pertaining to the collection of criminal fines should be assigned to EOUSA. (Responsibility for establishing policy concerning the imposition of criminal fines would remain in the Criminal Division.) Thus, § 0.22 of title 28 CFR is amended by adding a new paragraph (e) to reflect the additional functions assigned to EOUSA.

In addition, EOUSA is directed to establish Department policy and procedures, including regulations for issuance by the Attorney General, pertaining to the application of tax lien provisions to criminal fines. Section 3613 of title 18 U.S.C. provides that a fine is a lien in favor of the United States upon all property belonging to the person fined and that certain provisions of the Internal Revenue Code of 1954 and of section 513 of the Act of October 17, 1940, Pub. L. 76-861, apply to a fine and to the lien imposed by 18 U.S.C. 3613 as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified to account for differences between the nature of the liability to pay a tax and the liability to pay a fine.

New § 0.171(c) assigns to the Director of EOUSA the responsibility for establishing policy and procedures, including the preparation of regulations pertaining to the application of tax lien provisions to criminal fines, to facilitate the collection of criminal fines.

In order to promote the efficient and effective collection of criminal fines, § 0.171 is amended by adding new paragraphs (d), (e), (f) and (g) which delegate to the United States Attorneys ministerial functions assigned to the Attorney General by (1) 18 U.S.C. 3612 regarding the collection of unpaid fines, including the waiver of interest and penalties where collection is unlikely; (2) 18 U.S.C. 3663(f)(4) and 3579(f)(4) (repealed with respect to offenses committed on or after November 1, 1987, but applicable to offenses committed prior to that date) regarding the receiving of restitution from a convicted defendant for transfer to the victim; (3) 18 U.S.C. 3565 (repealed with respect to offenses committed on or after November 1, 1987, but applicable to offenses committed after December 31, 1984, and prior to November 1, 1987) regarding the collection and payment of fines; and (4) 18 U.S.C. 3569 (repealed with respect to offenses committed on or after November 1, 1987, but applicable to offenses committed prior to that date) regarding the discharge from prison of an indigent prisoner with a committed fine.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This regulation is not a major rule within the meaning of Executive Order 12291. Therefore, a regulatory impact analysis has not been prepared. Finally, this regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Crime, Debts, Government employees, Forfeitures and seizures, Organization and functions (Government agencies), Penalties, Surety bonds, Whistlebowing.

Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

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

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.22 is amended by adding a new paragraph (e) to read as follows:

§ 0.22 General functions.

* * * * *

(e) Establish policy and procedures for the satisfaction, collection, or recovery of criminal fines, special assessments, penalties, interest, bail bond forfeitures, restitution, and court costs in criminal cases consistent with § 0.171 of this chapter.

3. Section 0.171 is amended by revising paragraph (a), redesignating paragraphs (c) and (d) as paragraph (h) and (i), and by adding new paragraphs (c), (d), (e), (f) and (g) to read as follows:

§ 0.171 Judgments, fines, penalties, and forfeitures.

(a) Each United States Attorney shall be responsible for conducting, handling, or supervising such litigation or other actions as may be appropriate to accomplish the satisfaction, collection, or recovery of judgments, fines, penalties, and forfeitures (including bail bond forfeitures) imposed in his district, unless the Assistant Attorney General, or his delegate, of the litigating division which has jurisdiction of the case in which such judgment, fine, penalty or forfeiture is imposed notifies the United States Attorney in writing that the division will assume such enforcement responsibilities.

* * * * *

(c) The Director of the Executive Office for United States Attorneys shall be responsible for the establishment of policy and procedures and other appropriate action to accomplish the satisfaction, collection, or recovery of fines, special assessments, penalties, interest, bail bond forfeitures, restitution, and court costs arising from the prosecution of criminal cases by the Department of Justice and the United States Attorneys. He shall also prepare regulations required by 18 U.S.C. 3613(c), pertaining to the application of tax lien provisions to criminal fines, for issuance by the Attorney General.

(d) The United States Attorney for the judicial district in which a criminal monetary penalty has been imposed is authorized to receive all notifications of payment, certified copies of judgments or orders, and notifications of change of address pertaining to an unpaid fine, which are otherwise required to be delivered to the Attorney General pursuant to 18 U.S.C. 3612. If an Assistant Attorney General of a litigating division has notified the United States Attorney, pursuant to paragraph (a) of this section that such division will assume responsibility for enforcement of a criminal monetary penalty, the United States Attorney shall promptly transmit such notifications and certified copies of judgments or orders to such division.

(e) With respect to cases assigned to his office, each United States Attorney—

(1) Shall be responsible for collection of any unpaid fine with respect to which a certification has been issued as provided in 18 U.S.C. 3612(b);

(2) Shall provide notification of delinquency or default of any fine as provided in 18 U.S.C. 3612 (d) and (e);

(3) May waive all or any part of any interest or penalty relating to a fine imposed under any prior law if, as determined by such United States Attorney, reasonable efforts to collect the interest or penalty are not likely to be effective; and

(4) Is authorized to accept delivery of the amount or property due as restitution for transfer to the victim or person eligible under 18 U.S.C. 3663 (or under 18 U.S.C. 3579 (f)(4) with respect to offenses committed prior to November 1, 1987).

(f) With respect to offenses committed after December 31, 1984, and prior to November 1, 1987, each United States Attorney is authorized with respect to cases assigned to his office—

(1) At his discretion, to declare the entire unpaid balance of a fine or penalty payable immediately in accordance with 18 U.S.C. 3565(b)(3);

(2) If a fine or penalty exceeds $500, to receive a certified copy of the judgment, otherwise required to be delivered by the clerk of the court to the Attorney General;

(3) When a fine or penalty is satisfied as provided by law,

(i) To file with the court a notice of satisfaction of judgment if the defendant makes a written request to the United States Attorney for such filing; or,

(ii) If the amount of the fine or penalty exceeds $500 to enter into a written agereement with the defendant to extend the twenty-year period of obligation to pay fine.

(g) With respect to offenses committed prior to November 1, 1987, each United States Attorney is hereby authorized, with respect to the discharge of indigent prisoners under 18 U.S.C. 3569, to make a finding as to whether the retention by a convict of property, in excess of that which is by law exempt from being taken on civil process for debt, is reasonably necessary for the convict's support or that of his family.

* * * * *

Dated: April 24, 1990.

Dick Thornburgh.

Attorney General.

[FR Doc. 90–10028 Filed 5–7–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 517

Training Wage Provisions of Fair Labor Standards Amendments of 1989

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Interim final rule; approval of information collection requirements; display of OMB control number.

SUMMARY: This document provides notice that the information collection requirements contained in the interim final rule implementing the training wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA), Regulations, 29 CFR part 517, have been approved by the Office of Management and Budget

(OMB) and assigned OMB control number 1215–0172. This document further provides for display of the OMB control number in the regulations.

DATES: These information collection requirements became effective April 1, 1990 and are approved through March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 1, 1990 (55 FR 7450), the Employment Standards Administration (ESA), Wage and Hour Division issued an interim final rule implementing the training wage provisions of the 1989 Amendments to FLSA, Regulations, 29 CFR part 517. When this interim final rule was published, the preamble noted that the reporting and recordkeeping requirements contained in these regulations had been submitted to OMB for review and would not become effective until OMB approval had been obtained. These information collection requirements have been approved by OMB through March 31, 1993, and assigned OMB control number 1215–0172. Accordingly, this document provides for display of the OMB control number in the regulations.

This document was prepared under the direction of Samuel D. Walker, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor.

List of Subjects in 29 CFR Part 517

Administrative practice and procedure, Manpower training programs, Minimum wages, Reporting and recordkeeping requirements.

Signed at Washington, DC, on this 2nd day of May 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

Accordingly, 29 CFR part 517 is amended as follows.

PART 517—TRAINING WAGE PROVISIONS OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1989

1. The authority citation for part 517 continues to read as follows:

Authority: Sec. 6, Pub. L. 101–157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

§ 517.102 [Amended]

2. A parenthetical is added at the end of the regulatory text for § 517.102 to read as follows:

(Approved by the Office of Management and Budget under control number 1215–0172)

§ 517.103 [Amended]

3. A parenthetical is added at the end of the regulatory text for § 517.103 to read as follows:

(Approved by the Office of Management and Budget under control number 1215–0172)

§ 517.104 [Amended]

4. A parenthetical is added at the end of the regulatory text for § 517.104 to read as follows:

(Approved by the Office of Management and Budget under control number 1215–0172)

§ 517.205 [Amended]

5. A parenthetical is added at the end of the regulatory text for § 517.205 to read as follows:

(Approved by the Office of Management and Budget under control number 1215–0172)

§ 517.206 [Amended]

6. A parenthetical is added at the end of the regulatory text for § 517.206 to read as follows:

(Approved by the Office of Management and Budget under control number 1215–0172)

[FR Doc. 90–10666 Filed 5–7–90; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–018]

Special Local Regulations for Marine Events; Veteran's Appreciation Day Canoe and Raft Race(s); Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Veteran's Appreciation Day Canoe and Raft Race. The event will consist of a canoe and raft competition involving various military Veteran's Association members. The competition will be held on the Elizabeth River parallel to Town Point Park and Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and expected congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event. Marine Traffic will be allowed to transit the Elizabeth River Channel between races.

EFFECTIVE DATE: The regulations in 33 CFR 100.510 are effective from 12 noon to 4 p.m., on May 27, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application on January 19, 1990 to hold a canoe and raft competition involving various military Veteran's Association members. The competition will be held on the Elizabeth River parallel to Town Point Park and Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia, on May 27, 1990. Marine traffic will be allowed to transit the Elizabeth River Channel between races. Since this is the type of event contemplated by these regulations and the safety of the participants would be enhanced by the imposition of special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented.

Dated: April 30, 1990.

P.A. Welling,

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

[FR Doc. 89–10606 Filed 5–7–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3763–9]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is disapproving a revision to the Michigan State Implementation Plan (SIP) for the Ford

Motor Company's Mt. Clemens vinyl plant located in Macomb County, Michigan. USEPA is disapproving the revision because it would relax the SIP for a source located in an area which lacks a federally approved 1982 Ozone SIP.

EFFECTIVE DATE: This final rulemaking becomes effective on June 7, 1990.

ADDRESSES: Copies of this revision to the Michigan SIP are available for inspection at the following address: U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 353–3849.

SUPPLEMENTARY INFORMATION: The Ford Motor Company's Mt. Clemens vinyl plant SIP revision request is in the form of a Stipulation of Entry of Consent Order and Final Order SIP No. 1–1985 (submitted on March 6, 1985) and supplement (submitted on April 29, 1986). The submittals requested a relaxation of volatile organic compound (VOC) emission limitations for the vinyl coating operations at the facility.

On July 20, 1988 (53 FR 27363), USEPA proposed to disapprove the Mt. Clemen's SIP revision and supplemental requests because the source is located in an area which lacks a federally approved 1982 Ozone SIP, and the State of Michigan had not submitted all the required elements to the Ozone SIP.

Only Ford Motor Company submitted comments on the proposal. A summary of Ford's comments and USEPA's responses are provided below:

1. *Comment:* USEPA failed to act on this SIP revision and supplement within the 4 month period prescribed by section 110 of the Clean Air Act. This principle has been verified in several court decisions resulting in dismissal of enforcement actions including: *American Cyanamid Co.* v. *EPA,* 25 ERC 1585 (5th Cir. 1987); *United States* v. *Alcan Foil Products, et al,* (W.D. Ky., 1988); *United States* v. *GM Corp.,* 27 ERC 13657 (1988). As a result of an enforcement action taken by USEPA and subsequent litigation, Ford closed down all vinyl coating lines in question, on or before July 25, 1988. At this juncture, USEPA's proposed disapproval appears completely meaningless.

Response: USEPA notes that, although several courts have now held that a 4 month requirement is applicable to revisions to a SIP, the issue remains unsettled. Furthermore, it is irrelevant to the question of whether USEPA should continue to process Michigan's SIP revision. USEPA is obligated to process a proposed SIP revision unless it has been formally withdrawn by the State, and Michigan has not withdrawn the Ford revision. USEPA must therefore take final action on the Ford Mt. Clemens SIP revision.

2. *Comment:* Nonetheless, if USEPA feels compelled to take action, Ford believes the SIP revision and supplement should be approved without reference to the remaining SIP package. Ford demonstrated a reduction in VOC emissions from approximately 3,800 tons per year (tpy) to 440 in the proposed SIP revision as a result of a combination of actions including the permanent shutdown of uncontrolled coating lines, process modifications and controlling coating line Nos. 7, 8, and 11.

Ford has demonstrated that the VOC emission limit for vinyl coating operations contained in the Michigan SIP is technically unachievable for its facility. These limits were based on USEPA's Control Technology Guidelines Document (May 11, 1977) which contained limited test data and did not include testing at a vinyl coating facility that produced vinyl coating products exclusively for automobile passenger vehicles (as does the Ford plant). Ford's product quality standards preclude reformulation to aqueous or high-solids based coatings.

Ford installed the Airco inert gas/solvent recovery system (Airco System) on coating line Nos. 7 and 8 in 1982. Subsequent testing showed that the system failed to achieve anticipated VOC control levels because of capture efficiency and solvent carry-out in the vinyl sheet leaving the oven.

Response: Michigan's proposed revision for Ford Mt. Clemens consists of less stringent emission limitations for lines 7 and 8 than are contained in its SIP and, therefore, constitutes a relaxation. Under USEPA's policy, as indicated in a July 29, 1983, memorandum from Sheldon E. Meyers, former Director of the Office of Air Quality Planning and Standards, USEPA cannot approve a SIP revision allowing relaxed emission standards in a nonattainment area, unless the State demonstrates that the SIP as a whole, as revised, will result in attainment by the applicable date. This requirement has not been met here. Macomb County, Michigan, is an ozone nonattainment area and, as such, must be subject to an USEPA approved SIP demonstrating attainment as expeditiously as practicable, but no later than the end of 1987.

Conclusion:

USEPA is today disapproving the Ford Mt. Clemens SIP revision because it would constitute a SIP relaxation in an area that lacks an approved 1982 ozone SIP. It should be noted that USEPA notified the Governor of Michigan, in May 1988, that its ozone SIP for the Detroit area is substantially inadequate to attain and maintain the National Ambient Air Quality Standard for ozone and that Michigan must revise the plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request to revise 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.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

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 9, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: April 24, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–10621 Filed 5–7–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[IN–080; FRL–3752–1]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to the Chattanooga-Hamilton County Portion of the SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 20, 1989, the State of Tennessee submitted revisions to the Chattanooga-Hamilton County portion of the State Implementation Plan (SIP).

The revisions included regulations for the City of Chattanooga, Hamilton County and the municipalities of: Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy-Daisy and Walden. Regulations for Hamilton County, Chattanooga and the 9 municipalities were originally approved by EPA in 1972 as an appendix to the SIP. Since that time the regulations have been revised several times and today EPA is approving the regulations that are equivalent to or not less stringent than the federally approved State regulations, disapproving the regulations that are not approvable, and taking no action on the remaining regulations.

DATES: This action will be effective on July 9, 1990, Unless notice is received by June 7, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

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

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460

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

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10842 at 10894), EPA approved the State Implementation Plan (SIP) for Tennessee, which recognized the Chattanooga-Hamilton County Air Pollution Control Bureau (CHCAPCB) as the local agency and included a control strategy demonstration based on the CHCAPCB activity. Since that time, the CHCAPCB has revised its regulations to reflect the changes that have occurred at the national and state level.

The new regulations were submitted to EPA by the State of Tennessee as a SIP revision (Board Order 05–89) on July 20, 1989. EPA determined that the previous control strategy demonstrations were adequate in protecting the National Ambient Air Quality Standards (NAAQS). EPA, then decided to approve the Chattanooga-Hamilton County and the 9 municipalities regulations as a transfer of enforcement authority from the state to the local. The following conditions and conclusions were used to arrive at this decision:

1. The local regulations must be equivalent to the corresponding federally approved State regulations.

2. The local regulations cannot be treated as a separable from the SIP, which the State submits and implements, but must be considered part of it.

3. Tennessee state law requires that the local regulations be equivalent to or not less stringent than the corresponding state regulations; therefore, Tennessee must certify to EPA that each regulation has been reviewed by the State and found to meet this requirement.

4. Tennessee must retain overall authority and responsibility for developing and implementing, including enforcing, the SIP.

Chattanooga, Hamilton County, and the 9 municipalities in Hamilton County have the same regulations for air pollution control except for codification. For convenience, in this notice all eleven sets of regulations will be referred to as the Hamilton County regulations and the Hamilton County codification will be used. In 1972, the following sections were approved:

Section 1..... Declaration of policy and purpose: title.
Section 2..... Air Pollution Control Board; Bureau of Air Pollution Control; persons required to comply with regulation.
Section 3..... Powers and duties of the Board: Delegation.
Section 4..... Enforcement of regulation: procedures for adjudicatory hearings.
Section 5..... Variances.
Section 6..... Emergencies.
Section 7..... Hearings and judicial review.
Section 8..... Confidentiality of certain records.
Section 9..... Rules, Regulations, Criteria and Limitations.
Rule 1—Title.
Rule 2—Regulation of Nitrogen Oxides.
Rule 3—Visible Emission Regulations.
Rule 4—Regulation of the Importation, Sale, Transportation Use of consumption of Certain Fuels.
Rule 5—Prohibition of Hand-Fired Fuel Burning Equipment.
Rule 6—Prohibition of Open Burning.
Rule 7—Incinerator Regulation.
Rule 8—Fuel Burning Equipment Regulations.
Rule 9—Regulation of Visible Emissions from Internal Combustion Engines.
Rule 10—Process Emissions Regulations.
Rule 11—Regulation of Transporting and Material Handling in Open Air.
Rule 12—Regulation of Odors in Ambient Air.
Rule 13—Regulation of Sulfur Oxides.
Rule 14—Nuisances.
Rule 15—Asbestos.
Rule 16—Beryllium.
Section 10..... Installation permit, temporary operating permit, certificate of operation.
Section 11..... Charges for technical reports.
Section 12..... Records.
Section 13..... Entry and Search Warrants.
Section 14..... General Requirements.
Section 15..... Purpose.
Section 16..... Definitions.
Section 17..... Invalidation of Dual Standards.
Section 18..... Right to File Abatement Suits.
Section 19..... Penalties.
Section 20..... Limitation.
Section 21..... Severability.

Since 1972, several sections have been added and/or revised. Sections 1, 2, 4, 6, 7, 8, 9 (Rules 1, 2, 9, 12, 14), 11, 12, 13, 14, 15, and 16 are essentially the same as when they were originally approved. Section 9, Rules 21 and 25.4 were approved in 1983. Rule 26 of section 9 is only contained in the Chattanooga regulations. These Reasonably Available Control Technology regulations (RACT) were approved as part of the redesignation from nonattainment to attainment of the primary total suspended particulate (TSP) standard in 1984. Rules 15 and 16 have been changed and are now New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. These rules are not part of the SIP and no action will be taken on them. Otherwise, the aforementioned Section and rules are reapprovable.

The revisions to sections 3, 5, 10–22, and 23 are equivalent to or more stringent than the federally approved state regulations and are approvable.

Section 9, Rules 3, 4–8, 10, 11, 13, 17, 18 (except 18.2(q)) and 25 (except 25.21) are approvable because they are equivalent to the federally approved State regulations. Section 9, Rule 18.2(q), the

innovative control technology provision, paragraph (2), is disapproved because it is equivalent to the disapproved State regulation 1200–3–9–.01 (4)(o)(2). The State regulation was disapproved because it required consultation with the Governor(s) of affected states when an innovative control technology waiver is granted instead of requiring the Governor(s) consent as required by EPA. Section 9, Rule 25.21 is disapproved because it is less stringent than the federally approved State regulation 1200–3–18–.21.

Final Action: Since the Hamilton County, the City of Chattanooga and the nine other Hamilton County municipalities' regulations (Board Order 05–89) are consistent with EPA policy and requirements, they are hereby approved except for Hamilton County, Section 9, Rules 18.2(q)(2) and 25.21; Chattanooga Section 4–41, Rule 18.2(o)(2) and 25.21; Collegedale Section 8–541, Rules 18.2(o)(2) and 25.21; East Ridge Section 8–741, Rules 18.2(o)(2) and 25.21; Signal Mountain Section 41, Rules 18.2(o)(2) and 25.21; Ridgeside Section 41, Rules 18.2(o)(2) and 25.21; Red Bank Section 8–341, Rules 18.2(o)(2) and 25.21; Lookout Mountain Section 41, Rules 18.2(o)(2) and 25.21; Lakesite Section 41, Rules 18.2(o)(2) and 25.21; and Soddy Daisy Section 8–141, Rules 18.2(o)(2) and 25.21. No action will be taken on Hamilton County Section 9, Rules 15 and 16; Chattanooga Section 4–41, Rules 15 and 16; Collegedale Section 8–541, Rules 15 and 16; Ridgeside Section 41, Rules 15 and 16; Lookout Mountain Section 41, Rules 15 and 16; Lakesite Section 41, Rules 15 and 16; Walden Section 41, Rules 15 and 16; and Soddy-Daisy Section 8–141, Rules 15 and 16 because Rules 15 and 16 are not SIP regulations.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above.

The public should be advised that this action will be effective July 9, 1990 publication in the **Federal Register**. However, if notice is received by June 7, 1990 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 1990. This action may not be challenged in later proceedings to enforce its requirements. (See 307(b)(2).)

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. These rules are eqivalent to the federally approved State regulations and maintain the status quo. Sources have not been adversely affected by the State regulations; therefore the conclusion can be drawn that small sources in Hamilton County will not be adversely affected by this decision.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 6, 1989. The Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this section 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.

List of Subjects in 40 CFR Part 51

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 20, 1990.

Lee A. DeHihns III,

Acting Regional Administrator.

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

PART 52—[AMENDED]

Subpart RR—Tennessee

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(100) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(100) Revisions to the Hamilton County portion of the Tennessee SIP which approved the regulations for Hamilton County, the City of Chattanooga and the nine other municipalities in Hamilton County adopted in Board Order 05–89 and submitted on July 20, 1989.

(i) *Incorporation by reference.* (A) The entire set of regulations, "The Hamilton County Air Pollution Control Regulation", as submitted on July 20, 1989, except for section 9, Rules 15, 16, 18.2(q)(2), and 25.21.

(B) The entire set of regulations, "The Chattanooga Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 4–41, Rules 15, 16, 18.2(o)(2), and 25.21, and as amended by Ordinances Nos. 8413, dated January 15, 1985; 8675, dated July 29, 1986; and 8705, except sections 5 and 6, dated September 30, 1986.

(C) The entire set of regulations, "The Collegedale Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 8–541, Rules 15, 16, and 18.2(o)(2).

(D) The entire set of regulations, "The East Ridge Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 8–741, Rules 15, 16, and 18.2(o)(2).

(E) The entire set of regulations, "The Lakesite Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 41, Rules 15, 16, and 18.2(o)(2).

(F) The entire set of regulations, "The Lookout Mountain Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 41, Rules 15, 16, and 18.2(o)(2).

(G) The entire set of regulations, "The Red Bank Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 8–341, Rules 15, 16, and 18.2(o)(2).

(H) The entire set of regulations, "The Ridgeside Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 41, Rules 15, 16, and 18.2(o)(2).

(I) The entire set of regulations, "The Signal Mountain Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 41, Rules 15, 16, and 18.2(o)(2).

(J) The entire set of regulations, "The Soddy-Daisy Air Pollution Control Ordinance", as submitted on July 20, 1989, except for section 8–141, Rules 15, 16, and 18.2(o)(2).

(K) The entire set of regulations, "The Walden Air Pollution Control Ordinance", as submitted on July 20,

1989, except for section 41, Rules 15, 16, and 18.2(o)(2).

(L) Tennessee Air Pollution Control Board Order 05–89, which became State-effective July 19, 1989, adopted regulations for Hamilton County, the City of Chattanooga and the nine other Hamilton County municipalities as revisions to the Hamilton County portion of the Tennessee SIP.

(ii) *Additional material.* (A) The July 20, 1989, submittal from the Tennessee Department of Health and Environment submitting the regulations for Hamilton County, Chattanooga and the nine other Hamilton County municipalities as revisions to the Hamilton County portion of the Tennessee SIP.

[FR Doc. 90–10619 Filed 5–7–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–30

Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the Office of Federal Contracts Compliance Programs' (OFCCP) hearing rules at 41 CFR part 60–30 to require application of the Department of Labor Office of Administrative Law Judges' (ALJ) Rules of Practice and Procedure, at 29 CFR part 18, in all administrative enforcement proceedings against Government contractors and subcontractors. The effect of this rule is to ensure that the ALJ's uniform rules of evidence, designed to provide a stable and coherent framework for resolving evidentiary issues, will be applied in all such proceedings.

EFFECTIVE DATE: May 9, 1990.

FOR FURTHER INFORMATION CONTACT: Annie A. Blackwell, Director, Division of Policy, Planning, and Review, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue NW., room C3325, Washington, DC 20210, Telephone (202) 523–9426 (VOICE) or 523–9430 (TTY).

SUPPLEMENTARY INFORMATION: On April 9, 1990, OFCCP published a final rule to repeal the evidentiary regulation at 41 CFR 60–30.18, which proscribed the application of formal rules of evidence in OFCCP administrative enforcement proceedings. The purpose of the repeal was to ensure that the new ALJ rules of evidence, designed to provide a stable and coherent framework for resolving evidentiary issues, would be applied in all such proceedings, pending and commencing on and after the effective date of the ALJ final rule. However, in order to accommodate concerns regarding the admissibility of administrative investigatory files in other Department of Labor proceedings, the ALJ rules are to be implemented on a staggered basis (see 55 FR 13219 (April 9, 1990)) based on whether the agency investigation was commenced prior to or after the effective date of the rule. Such result is contrary to the result OFCCP contemplated in promulgating the repeal. As explained in the repeal rulemaking, the objective in publishing the repeal in tandem with the ALJ rules was to ensure the immediate applicability of the ALJ uniform rules of evidence to OFCCP administrative proceedings. See 55 FR 13137,

SUPPLEMENTARY INFORMATION.

Accordingly, in order to ensure that the new ALJ Rules of Evidence will be applied to all OFCCP administrative proceedings, the OFCCP is today publishing a new final rule at 41 CFR 60–30.18 that expressly states that the ALJ Rules of Evidence at 29 CFR part 18, subpart B shall be applied. The new regulation supersedes, as of its effective date, the repeal of this provision published at 55 FR 13137, and is applicable to all administrative hearings pending or commencing on the effective date that are conducted under Executive Order 11246, as amended (Executive Order) and, pursuant to 41 CFR 60–250.29(b) and 60–741.29(b), to administrative hearings conducted, respectively, under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 2012, as amended, and section 503 of the Rehabilitation Act of 1973, as amended (section 503).

Waiver of Proposed Rulemaking

Because this rule is procedural in nature, it is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (see, 5 U.S.C. 553(b)(A)). In order to avoid the necessity of having to stay any pending proceedings, we find good cause to dispense with the 30-day delayed effective date requirement in 5 U.S.C. 553(d)(3). Accordingly, this rule will take effect simultaneously with the repeal of the 60–30.18 provision effective on the same day.

Executive Order 12291 and the Regulatory Flexibility Act

The Secretary has determined that this rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981) and, therefore, a regulatory impact analysis is not required. The Department further certifies that this rule will not have a significant economic impact on small entities. Accordingly, a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rulemaking.

Paperwork Reduction Act

This rule does not contain information collection requirements and therefore is not subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).*

Lists of Subjects in 41 CFR Part 60–30

Administrative practice and procedure, Civil Rights, Discrimination, Employment, Equal Employment Opportunity, Equal Opportunity, Government contracts, Government procurement, hearings, and nondiscrimination.

Signed at Washington, DC., this 3d day of May, 1990.

Elizabeth Dole,

Secretary of Labor.

William C. Brooks,

Assistant Secretary, Employment Standards Administration.

Cari M. Dominguez,

Director, Office of Federal Contract Compliance Programs.

Accordingly, title 41, chapter 60, part 60–30 of the Code of Federal Regulations is amended as set forth below.

PART 60–30 [AMENDED]

1. The authority citation for part 60–30 is revised to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319; 32 FR 14303 as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 2012.

§ 60–30.18 [Amended]

2. Part 60–30 is amended by adding § 60–30.18 to read as follows:

§ 60–30.18. Rules of evidence.

In any hearing, decision, or administrative review conducted pursuant to this part, all evidentiary matters shall be governed by Office of Administrative Law Judges' Rules of evidence at 29 CFR part 18, subpart B, *Provided however,* That the provision at

29 CFR 18.1104 which delays the effective date of the rule with respect to certain investigations does not apply.

[FR Doc. 90-10667 Filed 5-7-90; 8:45 am]
BILLING CODE 4510-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6779

[CO-930-00-4214-10; C-28655]

Opening of Land Subject to Section 24 of the Federal Power Act in U.S. Geological Survey Order Dated October 28, 1949, Which Established Powersite Classification No. 393; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 240 acres of land withdrawn by a U.S. Geological Survey Order which established the Bureau of Land Management's Powersite Classification No. 393. This action will permit consummation of a pending land exchange and retain the power rights to the United States. The land has been and continues to be open to mineral leasing, and to mining under the provisions of the Mining Claims Rights Restoration Act of 1955.

EFFECTIVE DATE: June 7, 1990.

FOR FURTHER INFORMATION CONTACT: Boris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-236-1752.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 41 Stat. 1075; 49 Stat. 846; 62 Stat. 275; 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO-531, it is ordered as follows:

1. U.S. Geological Survey Order dated October 28, 1949, which established Powersite Classification No. 393, will be opened to disposal by land exchange subject to the provisions of section 24 of the Federal Power Act as specified in Federal Energy Regulatory Commission determination DVCO-531-Colorado, insofar as it affects the following described land:

New Mexico Principal Meridian

T. 33 N., R. 11 E.,
Sec. 15, W½SW¼,
Sec. 22, NW¼.

The area described aggregates approximately 240 acres in Conejos County.

2. At 9 a.m. on June 7, 1990, the land described in paragraph 1, will be open to disposal by land exchange, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

3. The State of Colorado has waived its preference right for public highway rights-of-way and material sites as provided by the Act of June 10, 1920, as amended, 16 U.S.C. 818.

Dated: April 30, 1990.

Dave O'Neal,
Assistant Secretary of the Interior.

[FR Doc. 90-10669 Filed 5-7-90; 8:45 am]
BILLING CODE 4310-JB-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 206, 208, 215, 217, 219, 222, 223, 225, 226, 227, 232, 237, 244, 245, 246, 247, 251, 252, Appendices H and I

[Defense Acquisition Circular (DAC) 88-14]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-14 amends the DoD FAR Supplement (DFARS) coverage on Head of Contracting Activity; contract reporting; justification and approval for other than full and open competitive procedures; small disadvantaged business, historically black college and university, and minority institution participation in acquisitions and extension of five percent goal; Native Hawaiian Organizations and Indian Tribes; disadvantaged business status protests; misrepresentation of small business status; section 8(a) competitive thresholds; systems safety program; Appropriations Act restrictions; reporting inventions; cost or pricing data for communication service contracts; warranties; cargo preference; certification of claims; Appendix H, Military Standard Requisitioning and Issue Procedure (MILSTRIP); Appendix I, Material Inspection and Receiving Report; and miscellaneous editorial items.

DATES: *Effective Date:* April 16, 1990 except for subpart 204.6 and sections 247.573-1 and 252.204-7007 (Item III) which are effective October 1, 1990.

Comment Date: Comments on the three interim rules, Items IX, X, and XI, should be submitted to the address below by June 7, 1990 to be considered in formulating the final rules. Please cite DAR Case 88-331 in all correspondence concerning these three rules.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council. ATTN: Ms. Lucile Hughes, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), Room 3D139, Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rules

A determination has been made under authority of the Secretary of Defense to issue the regulations in Items IX, X, and XI of DAC 88-14 as interim rules. Compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating the final rules.

B. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The October 1, 1989 revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-12.

DAC 88-14, Item IX. Section 207 of the Business Opportunity Development Reform Act of 1988 (Act), Pub. L. 100-656, added Native Hawaiian Organizations to the list of groups presumed to be socially disadvantaged. Public Law 99-272 added similar coverage for Indian tribes. Amendments to accommodate these changes have been made in 219.001, 219.301-70(b)(2), and 252.219-7005.

DAC 88-14, Item X. Section 201(a) of the Act requires establishment within the Small Business Administration (SBA) of a Division of Program Certification and Eligibility and assigns the division responsibility for deciding protests regarding the status of a concern as a disadvantaged concern for purposes of any program conducted under the authority of section 8(d) of the Small Business Act. The SBA finalized its rules governing such protests on March 1, 1989 (54 FR 10271). Amendments have been made in 219.301-70(b)(3), 219.302(S-70)(3), and 252.219-7005.

DAC #88–14, Item XI. Section 405 of the Act provides specific penalties for misrepresentation of status as small business or small disadvantaged business for the purpose of obtaining a contract or subcontract under one of the small or small disadvantaged business preference programs authorized by sections 8(a), 8(d), 9, or 15 of the Small Business Act. Notice of the penalty has been included in 252.219–7005.

C. Public Comments

DAC 88–14, Items IX, X, and XI

These items are published as Interim rules. Public comment is invited.

DAC 88–14, Items I, V, XIV, XV, and XVI

These items are for informational purposes and do not contain revisions to the DFARS.

DAC 88–14, Items II, III, IV, VI, VIII, XII, XIII, XVII, XIX, XXIII, and XXV

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88–14, Items VII, XVIII, XX, XXII, and XXIV

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item VII. On May 23, 1989, a proposed rule was published in the **Federal Register** (54 FR 22337). The rule was revised June 6, 1989 (54 FR 24248) and June 22, 1989 (54 FR 26225).

Item XII. On July 18, 1989, a proposed rule was published in the **Federal Register** (54 FR 30101).

Item XVIII. On March 22, 1989, a proposed rule was published in the **Federal Register** (54 FR 11764).

Item XX. On June 30, 1989, a proposed rule was published in the **Federal Register** (54 FR 27655).

Item XXII. On December 6, 1989, a proposed rule was published in the **Federal Register** (53 FR 49212).

Item XXIV. On July 18, 1988, a proposed rule was published in the **Federal Register** (53 FR 27055).

DAC 88–14, Item XXI

An interim rule with request for comment was published in the **Federal Register** on April 21, 1989 (54 FR 16112). Revisions were made based on the public comments and a final rule was published in DAC 88–13, appearing in the **Federal Register** on December 29, 1988 (54 FR 53612). These further revisions are based on the paperwork burden analysis and the Defense Management Review of unnecessarily burdensome requirements. The revisions do not have a significant cost or administrative impact on contractors or offerors.

D. Regulatory Flexibility Act

DAC 88–14, Items II, III, IV, VI, VIII, XII, XIII, XVII, XIX, XXI, XXIII, and XXV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98–577. However, comments from small entities concerning the affected DoD FAR Supplement subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90–610 in correspondence.

DAC 88–14, Item VII

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. A Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the address above. Please cite DAR Case 89–23.

DAC 88–14, Items IX and XI

The requirements of the Act were addressed by the Small Business Administration in development of its regulations implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100–656, published in the **Federal Register** on March 23, 1989 (54 FR 12054).

DAC 88–14, Item X

The requirements of the Act were addressed by the Small Business Administration in development of its regulations implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100–656, published in the **Federal Register** on March 13, 1989 (54 FR 10271).

DAC 88–14, Item XVIII

This final rule will 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 it will affect only 190 contractors.

DAC 88–14, Item XX

This final rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it applies only to contracts for the production of a weapon system with a unit weapon system cost of $100,000 or for which the eventual total procurement cost is in excess of $10,000,000. These types of contracts are usually not awarded to small entities. An Initial Regulatory Flexibility Analysis was performed. Comments from small entities were solicited by **Federal Register** notice of June 30, 1989 (54 FR 27655). No comments were received that addressed the Regulatory Flexibility Act statement.

DAC 88–14, Item XXIV

This final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most small entities do not have contractual requirements to provide end items as government-furnished property to other contractors.

DAC 88–14, Item XXII

This final rule will 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 revision merely emphasizes a requirement in the current rule.

E. Paperwork Reduction Act

DAC #88–14, Items II, III, IV, VI, VII, VIII, IX, X, XI, XII, XIII, XVII, XIX, XX, XXII, XXIII, XXIV, XXV

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*.

DAC #88–14, Item XVIII

This rule imposes information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* OMB approved the requirement on July 10, 1989 for 182 hours.

DAC #88–14, Item XXI

This rule is based on the OMB terms of clearance under OMB control number 0704–0245.

List of Subjects in 48 CFR Parts 201, 202, 204, 206, 208, 215, 217, 219, 222, 223, 225, 226, 227, 232, 237, 244, 245, 246, 247, 251, and 252

Government procurement.

Linda E. Greene,

Deputy Director, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–14]

April 16, 1990.

All DoD FAR Supplement and other directive material contained in this circular is effective April 16, 1990, unless otherwise specified in the Item summary. Material effective April 16, 1990, is to be used upon receipt. Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S–70)(4).

Defense Acquisition Circular (DAC) 14 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The following summarizes the amendments, procedures, and information.

Item I—Rewrite of the Defense Federal Acquisition Regulation Supplement (DFARS)

The Secretary of Defense's July 1989 Defense Management Report (DMR) to the President concluded that much of the stifling burden of our DoD regulatory guidance, including DFARS, is self-imposed.

To correct this situation, the DoD formed a Regulatory Relief Task Force to review, in addition to other regulations, the DFARS and lower level supplements, and recommend revisions. The DoD also asked industry for its recommendations.

The Deputy Assistant Secretary of Defense for Procurement then charged the Defense Acquisition Regulatory (DAR) System, composed of the DAR Council, DAR Staff, and DAR Committees, to analyze all of the recommendations and totally rewrite the DFARS. The action plan calls for the DAR System to publish a proposed DFARS for public comment by August 1990, and a final DFARS by February 1991.

Our objective is to create a streamlined, well-written DFARS, with minimal supplementation below the DFARS level. To do this, we are:

—Getting rid of text and clauses that are unnecessary, are duplicative, inhibit good business practices, or do not add value;

—Consolidating lower level supplementation into DFARS;

—Reviewing thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors;

—Asking for maximum government and industry participation during the public comment period; and

—Rewriting the DFARS to put it in plain English. Some of the Items in this circular are a product of the DMR effort.

Item II—HCA Authority—CINCSOC

The Commander in Chief, United States Special Operations Command (CINCSOC) is added in the "Head of Agency" definition in 202.101. The CINCSOC shall have authority to exercise the functions of the Head of the Agency under chapter 137 of Title 10, United States Code.

Item III—Contract Reporting

DFARS Subpart 204.6 and subsections 247.573–1 and 252.204–7007 are revised to conform to recent changes in the Federal Acquisition Regulation. The only major change in the DD Form 350 reporting instructions is a change in the use of Item C4, which had been used for reporting competitive characteristics but now will be used to report sea transportation information. These revisions are effective on October 1, 1990 and shall not be used before that date. Revised DD Form 350 will be distributed prior to the October 1, 1990 effective date of the change.

Item IV—Data Universal Numbering System (DUNS) Number Reporting

The provision at 252.204–7004, Data Universal Numbering System (DUNS) Number Reporting, has been deleted as a similar provision has been added to FAR part 52.

Item V—Taxpayer Identification Number

FAR subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), addresses requirements for reporting contractors' Taxpayer Identification Number (TIN). The source of the requirement is the Tax Reform Act of 1988, which added section 6050M to the Internal Revenue Code. The IRS published final regulations implementing section 6050M in the **Federal Register** on December 6, 1989, to be effective January 1, 1989. The final regulations contain a requirement which is not currently in the FAR or DFARS.

Effective April 1, 1990, contracting officers must obtain a TIN as required by FAR subpart 4.9 for contract modifications if—

—The contract was awarded before January 1, 1989; the modification was or will be entered into on or after April 1, 1990;

—A Justification and Approval is required by part 6; and

—The contract amount is increased by $50,000 or more.

Item VI—Justification and Approval

DFARS 206.302–4 and 206.304 are added to implement sections 817 and 818 of the Fiscal Year 1990 Defense Authorization Act. Section 817 amends 10 U.S.C. 2304(f) to allow for certain exceptions to the requirements for written justification and approval (J&A) for other than full and open competitive procedures, when the basis for other than full and open competition is international agreement. Section 818 amends the J&A approval level requirements for proposed contract actions over $10,000,000. For proposed contracts between $10,000,000 and $50,000,000, senior procurement executives will be allowed to redelegate their authority to certain flag rank or GS–16 level officials. For proposed contracts over $50,000,000, the only official allowed to redelegate approval authority is the Under Secretary of Defense (Acquisition) when acting as the senior procurement executive for DoD.

Item VII—Implementation of 5% Goal for Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions

DFARS subparts 215.6, 217.4, 219.5, 219.7, 232.5, 244.3, and part 252 are revised to further enhance the opportunity for participation of small disadvantaged businesses (SDBs), Historically Black Colleges and Universities and Minority Institutions (HBCU/MIs) in Department of Defense acquisitions. These revisions require consideration of SDBs in leader company contracting, make the use of SDBs and HBCU/MIs an evaluation factor in source selections, revise the incentive and provide for an award fee for contractors who exceed SDB/HBCU/MI subcontracting goals, establish a progress payment rate of 90 percent for SDBs, make progress payments available to SDBs on contracts of $50,000 or more, establish a repetitive SDB set-aside procedure, and authorize prime contractors to restrict competition to SDBs in award of subcontracts.

Item VIII—Extension of 5% Goal for Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions

Section 831 of the FY90 DoD Authorization Act, Pub. L. 101–189,

extended the objectives and authorities of section 1207, Pub. L. 99–661, through fiscal year 1993. Parts 219 and 226 are revised to reflect this extension.

Item IX—Presumptive Eligibility of Native Hawaiian Organizations

Section 207 of the Business Opportunity Development Reform Act of 1988 added Hawaiian Organizations to the list of groups presumed to be socially disadvantaged. Public Law 99–272 added similar coverage for Indian tribes. DFARS 219.001, 219.301–70(b)(2), and 252.219–7005 are revised to accommodate these changes.

Item X—Disadvantaged Business Status Protests

Section 201(a) of the Business Opportunity Development Reform Act of 1988 requires establishment within the Small Business Administration (SBA) of a Division of Program Certification and Eligibility and assigns the Division the responsibility for deciding protests regarding the status of a concern as a disadvantaged concern for purposes of any program conducted under the authority of section 8(d) of the Small Business Act. The SBA finalized its rules governing such protests on March 13, 1989, (54 FR 10271). DFARS 219.301–70(b)(3), 219.302(S–70), and 252.219–7005 are revised to reflect these changes.

Item XI—Misrepresentation of Small Business Status

Section 405 of the Business Opportunity Development Reform Act of 1988 provides specific penalties for misrepresentation of status as small business or small disadvantaged business for the purpose of obtaining a contract or subcontract under one of the small or small disadvantaged business preference programs authorized by section 8(a), 8(d), 9 or 15 of the Small Business Act. DFARS 252.219–7005 is revised to include the notice of penalty.

Item XII—Section 8(a) Competitive Thresholds

DFARS 219.8 is revised to conform arrangement of the text and numbering to FAR revisions made in FAC 84–52.

Item XIII—Systems Safety Program

DFARS subpart 223.74, Systems Safety Program, has been deleted as a result of the Defense Management Review effort. DoDI 5000.36, System Safety Engineering and Management, continues in effect until cancelled or superseded.

Item XIV—Restriction on Acquisition of Multibeam Sonar Mapping Systems and Night Vision Image Intensifier Tubes and Devices

The Fiscal Year 1990 Appropriations Act provides that no fiscal year 1990 funds may be used for: (a) The acquisition of Multibeam Sonar Mapping Systems which are not manufactured in the United States (section 9073 of the Act); and (b) procurement from sources outside the United States of second or third generation night vision image intensifier tubes and devices (section 9069 of the Act); except when adequate domestic supplies of (a) or (b) are not available to meet DoD needs on a timely basis, the Secretary of the Service concerned, or a designee, may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriation of the House of Representatives and the Senate that such an acquisition must be made in order to acquire capability for national security purposes. This item is effective for any acquisition using Fiscal 1990 funds. If these restrictions appear in the Fiscal Year 1991 Appropriations Act, this item will be converted to coverage in DFARS subpart 225.70.

Item XV—Restriction on Acquisition of Supercomputers

Section 9045 of the Fiscal Year 1990 Defense Appropriations Act (Pub. L. 101–165) prohibits the use of Fiscal Year 1990 funds for the purchase of any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the Armed Services and Appropriations Committees of the Senate, and House of Representatives that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers. This item is effective for any acquisition using Fiscal 1990 funds. If this restriction appears in the Fiscal Year 1991 Appropriations Act, this item will be converted to coverage in DFARS subpart 225.70.

Item XVI—Excess Foreign Currencies (DFARS Subpart 225.76)

OMB Bulletin 90–04, dated December 28, 1989, is enclosed. It designates the Burmese kyat as excess for Fiscal Years 1990 and 1991 and the Sudanese pound as near-excess for Fiscal Year 1990.

Item XVII—Appropriations Acts Restrictions—Food, Clothing, Fabrics, Specialty Metals

Restrictions in DFARS subpart 225.70 and in the clause at 252.225–7009 on the acquisition of food, clothing, fabrics, and specialty metals are revised based on changes in the last two DoD Appropriations Acts.

Item XVIII—Reporting Inventions

A clause has been added at 252.227–7039 for use in requiring contractors to periodically report subject inventions under contracts which contain the clause at FAR 52.227–11, Patent Rights-Retention by the Contractor (Short Form). The prescription for use of the clause has been added as DFARS 227.303(a)(70).

Item XIX—Cost or Pricing Data for Communication Service Contracts

DFARS 237.7407(b) is revised to prohibit requiring certified cost or pricing data on communication service contracts of $25,000 or less.

Item XX—Warranties

DFARS 246.770–2(c) and 246.770–10(b) are added to address a recommendation made in GAO Report NSIAD–87–122, "DoD Warranties: Improvement Needed in Implementation of Warranty Legislation", and to prescribe procedures governing redesign as a contract remedy under major weapon system warranties.

Item XXI—Cargo Preference

The definition of supplies in DFARS subpart 247.5 has been revised to clarify the standard for identifying such items. The example of a reference to a military specification as a clear identifier of military use or ownership is inappropriate and has been deleted. In addition, two requirements for contractor submissions have been deleted—

—The requirement for submission of ocean-bills-of-lading with each invoice, and

—The requirement for submission of a certification as to the accuracy of information provided in support of a request for use of other than U.S.-flag vessels.

Item XXII—Certification of Claims

The clause at 252.233–7000, Certification of Requests for Adjustment or Relief Exceeding $100,000, has been expanded to include certification that a claim for equitable adjustment under a completed or substantially completed contract does not include costs which already have been reimbursed or

separately claimed and that it includes only its allocable share of indirect costs.

Item XXIII—Deletion of DFARS Appendix H, Military Standard Requisitioning and Issue Procedure (MILSTRIP)

As a result of the Defense Management Review effort, Appendix H, Military Standard Requisitioning and Issue Procedure (MILSTRIP), is deleted. Appendix H duplicated the MILSTRIP Manual, DoD 4000.25–1–M. Government personnel can obtain the manual through normal publications distribution channels. Contractors can obtain the manual at a current price of $20.22 from the Defense Logistics Agency, ATTN: DLA–XPD, Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304–6100. Revisions have been made in DFARS 208.7008–1, 245.302–2, and 251.102 to conform to deletion of the appendix.

Item XXIV—Appendix I, Material Inspection and Receiving Report

Instructions for completion of Block 19 of the DD Form 250, Material Inspection and Receiving Report, have been revised to correct an inadvertent error published in DAC #88–5. DFARS Appendix I–301, Block 19, paragraph (b) is deleted and paragraphs (c), (d), (e) are renumbered.

Item XXV—Editorial Revisions

(a) DFARS 201.403(b) (2) through (6) are revised to change the DFARS cites to FAR cites.

(b) DFARS 202.101 is revised to change the word "Acquisition" to "Production".

(c) DFARS 219.706 is revised to conform to FAR format.

(d) DFARS 222.7200 is revised to clarity.

(e) DFARS 225.302 is revised to substitute "the small purchase limitation" for the "$25,000" limitation.

(f) DFARS 225.600 and 226.603 are revised to update tariff schedule references and correct an address.

(g) DFARS 225.7000, 225.7004, 225.7006, 225.7009, 225.7010 and 225.7012 are revised to update/add the statutory citations.

(h) DFARS 245.401 is revised to change the word "of" to the word "on".

(i) DFARS 246.770–9 (a) and (b) are revised to change cite "10 U.S.C. 139a" to "10 U.S.C. 2432".

(j) DFARS 252.217–7306 is revised to change the prescription cite from "217.7301–25(b)(2)" to 217.7301–5(b)(2)".

(k) DFARS 252.223–7005 is revised by deleting the OMB reference.

(l) DFARS 252.225–7008 and 252.225–7014 are revised to update tariff schedule references and correct an address.

(m) DFARS 252.243–7000 is revised to change the cite "243.202–70(b)" to read "243.202(S–70)(2)".

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 201, 202, 204, 206, 208, 215, 217, 219, 222, 223, 225, 226, 227, 232, 237, 244, 245, 246, 247, 251, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

PART 201—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 201.403 is amended by revising paragraphs (b)(2) through (b)(6) to read as follows:

201.403 Individual deviations.

* * * * *

(b) * * *

(2) FAR subpart 27.4;

(3) FAR subpart 31.1;

(4) FAR subpart 31.2;

(5) FAR part 32 (except subparts 32.7, 32.8, and the Payment clauses in subpart 32.1);

(6) FAR section 3.104.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

3. Section 202.101 is amended by changing under the definition "Head of the Agency" the word "Acquisition" to read "Production" in both places; and by adding between the word "Force" and the word "and" the words "the Commander in Chief, United States Special Operations Command,".

PART 204—ADMINISTRATIVE MATTERS

4. Section 204.600 is added to read as follows:

204.600 Scope.

This subpart prescribes reporting requirements for two DoD reports contained in the Federal Procurement Data System (FPDS). The two reports, the Individual Contracting Action Report (DD Form 350) (see 204.671 and 204.675), and the Monthly Summary of Actions $25,000 or Less (DD Form 1057) (see 204.672), collectively are designated the Defense Contract Action Data System (DCADS). In addition, this subpart prescribes other DoD contract reports.

204.601 [Amended]

5. Section 204.601 is amended by removing in paragraph (a) the words "Defense Contract Action Data System"; by removing the parentheses from the acronym "DCADS"; and by placing in paragraph (d) a period after the word "Services" and removing the remainder of the sentence.

6. Section 204.602 is added to read as follows:

204.602 Federal Procurement Data System.

(c) The DD Form 350, Individual Contracting Action Report, is the DoD counterpart to the SF 279, FPDS Individual Contract Action Report. The DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, is the DoD counterpart to the SF 281, FPDS Summary Contract Action Report ($25,000 or Less).

(d) Procedures for obtaining a Contractor Establishment Code are at 204.671–5(b) Item B5A.

7. Sections 204.603 and 204.603–70 are added to read as follows:

204.603 Solicitation provisions.

204.603–70 Commercial and Government Entity (CAGE) Codes.

The contracting officer shall insert the provision at 252.204–7007, Commercial and Government Entity (CAGE) Code Reporting, when there is a reasonable expectation that an award may be made to an offeror whose CAGE Code is not available to the contracting office but will be available to the offeror(s).

8. Section 204.670 is added to read as follows:

204.670 DoD Contract Reporting Systems.

204.670–1 [Removed]

9. Section 204.670–1 is removed.

204.670–2 [Redesignated as 204.670–1 and Amended]

10. Section 204.670–2 is redesignated as 204.670–1 and the redesignated section 204.670–1 is amended by revising the introductory text for the first definition to read: " 'Commercial and Government Entity (CAGE) Code' means a code assigned or maintained by the Defense Logistics Services Center (DLSC) to identify commercial and government activities. CAGE Codes have also been known in the past as Federal Supply Codes for Manufacturers (FSCM) and Federal Supply Codes for Nonmanufacturers (FSCNM)."; and by removing paragraphs (a), (b), and (c).

204.670–3 [Removed]

11. Section 204.670–3 is removed.

204.670–4 [Redesignated as 204.670–2 and Amended]

12. Section 204.670–4 is redesignated as 204.670–2 and the redesignated

section is amended by changing in the title the word "Subpart" to read "Subsections"; by revising the first sentence to read: "The numbering in subsections 204.671–5 and 204.672–5 differs from the standard DFARS numbering system."; by adding a second sentence to read: "These subsections provide instructions for completing the parts of the DD Form 350 and the sections of the DD Form 1057 and are numbered to correspond to the structure of the forms."; and by amending the last sentence to change the reference "204.671–5(b)" to "204.672–5(b)".

204.671–1 [Amended]

13. Section 204.671–1 is amended by transferring in the first sentence the words "on DD Form 350" to the end of the sentence and by removing the second sentence.

14. Section 204.671–2 is revised to read as follows:

204.671–2 Purpose.

The DD Form 350, including automated facsimiles and electronic equivalents, is used to report individual contract actions and consolidated actions as set forth in 204.671–3.

15. Section 204.671–3 is revised to read as follows:

204.671–3 Applicability and coverage.

(a) *Structure.* DD Form 350 consists of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures, labor statute requirements, and contracting methodology. Part D gathers data relating to the various socioeconomic programs which apply to DoD acquisitions. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) *Responsibilities.* (1) Contracting offices shall prepare a DD Form 350 for all contracting actions which obligate or deobligate more than $25,000, including actions accomplished by a contract administration office on behalf of a contracing office, except for the following:

(i) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(ii) Transactions for purchase of land, or rental or lease of real property where the contracting action was executed by GSA.

(iii) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(iv) Transactions which involve Government bills of lading or transportation requests.

(v) Grants for basic research with educational institutions and other nonprofit organizations.

(vi) Orders placed by ordering activities against indefinite delivery contracts entered into by the Military Sealift Command or orders against indefinite delivery contracts for petroleum and petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported by the Military Sealift Command on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported by the contracting activity at the time of contract award.

(2) Contract administration offices accomplishing actions subject to DD Form 350 reporting shall transmit to the contracting office on whose behalf the actions were taken, a copy of the contractual instrument clearly annotated in the heading in large block letters "DD FORM 350 REPORTING COPY" within one working day after the action date.

(c) *Type of report.* The contracting office shall prepare DD 350 Forms as described below:

(1) A single DD 350 shall be prepared for each covered action except as described in paragraphs (c)(2) and (c)(3) of this subsection.

(2) Consolidated reports shall be prepared for:

(i) Awards to individuals in support of dependent schools, e.g., principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(ii) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(iii) Orders placed by the Services for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10–500. Orders under each such contract shall be consolidated monthly by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(iv) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

(3) Multiple reports are required for a single action under certain circumstances. Any reportable portion with a dollar value of $25,000 or less shall be reported on the DD Form 1057. These procedures will permit accurate reporting of set-asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Multiple reports are required when:

(i) Both the Foreign Military Sales Program and other programs are involved (see 204.671–5(b) Item B9);

(ii) More than one type of contract is involved and any nonpredominant portion exceeds $500,000 (see 204.671–5(c) Item C5(ii)).

(d) *Classification.* DD Forms 350 shall be submitted as unclassified documents. Should modification of coding of items on DD Form 350 be deemed necessary for security, the appropriate departmental data collection points identified in 204.671–4(b) shall be contacted for special instructions.

(e) *File copies.* The contract file shall contain the hardcopy DD Form 350, an automated facsimile or an electronic equivalent as directed by the headquarters of the department.

16. Section 204.671–4 is amended by revising paragraph (a); by removing in paragraph (a)(1) the words "the signed orignal of"; by substituting in paragraph (a)(1) the word "submitted" in lieu of the word "forwarded"; by substituting in paragraph (a)(2) at the end of the paragraph the words "Departmental Data Collection Point" in lieu of the words "activity set forth in 204.671–4(d) below"; by adding paragraph (a)(3); by redesignating the existing paragraph (b) as paragraph (c); by removing in the redesignated paragraph (c) the word "exactly"; by redesignating the existing paragraph (d) as paragraph (b); by adding in the first sentence of the redesignated paragraph (b) between the word "be" and the word "as" the words "to the Departmental Data Collection Points"; by substituting at the beginning of the redesignated paragraph (b)(5) the words "For all" in lieu of the word "All";

by adding in paragraph (b)(5) a comma after the word "Defense"; by removing in paragraph (b)(5) the word "shall"; by substituting in paragraph (b)(5) the reference "(b)(1)" in lieu of the reference "(d)(1)"" and by removing paragraphs (c) and (e), to read as follows:

§ 204.671–4 Due date and distribution.

(a) Except as provided in paragraphs (a)(1), (a)(2), or (a)(3) of this subsection, the contracting office shall submit the signed original of each DD Form 350, automated facsimile or electronic equivalent, within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office.

* * * * *

(3) For actions accomplished by a contract administration office, the contracting office shall prepare and submit the DD Form 350 within 3 working days after the receipt of the contractual instrument annotated " DD FORM 350 REPORTING COPY" (see 204.671–3).

* * * * *

17. Section 204.671–5 is amended by substituting in paragraph (b) at the beginning of paragraph (ii) under the undesignated paragraph entitled "Item B5A, Contractor Establishment Code.", the words "When the Contractor Establishment Code is not already on file or otherwise available to the contracting office, the CEC shall be obtained" in lieu of the words "The Contracting Establishment Code is available"; by adding in paragraph (b) in paragraph (i) under the undesignated paragraph entitled "Item B5B, Commercial and Government Entity (CAGE) Code." between the word "5-position" and the word "code" the word "CAGE"; by removing in paragraph (b) in paragraph (i) under the undesignated paragraph entitled "Item B5B, Commercial and Government Entity (CAGE) Code." the words "assigned by the Defense Logistics Service Center (DLSC)"; by substituting in paragraph (b) in paragraph (iii) under the undesignated paragraph entitled "Item B5B, Commercial and Government Entity (CAGE) Code." the words "When the CAGE Code is not already on file or otherwise available to the contracting office, the code shall be obtained from one" in lieu of the words "The CAGE code is available from one or more"; by adding in paragraph (b) in paragraph (iii)(B) under the undesignated paragraph entitled "Item B5B, Commercial and Government Entity (CAGE) Code." between the designation "H–8" and the word "publication" the word "microfiche"" by adding in paragraph (b) in paragraph (iii)(D) under the undesignated paragraph entitled "Item B5B, Commercial and Government Entity (CAGE) Code." between the word "Network" and the semi-colon the words "or dial-up capability"; by adding in paragraph (b) in paragraph (iii)(E) under the undesignated paragraph entitled "Item B5B, Commercial and Government Entity (CAGE) Code." a sentence following the first sentence to read: "The contracting officer shall assist an offeror in obtaining the required CAGE Code(s)."; by removing in paragraph (b) under the undesignated paragraph entitled "Item B6C, City or Place/State or Country Names." the second sentence; by removing in paragraph (c) under the undesignated paragraph entitled "Item C3, Extent Competed." at the end of the undesignated paragraph entitled "Code C—Follow-on to Competed Action." the words in parentheses "(see Item C4, Code C)"; and by changing the title and revising in paragraph (c) the undesignated paragraph entitled "*Item C4, Competitive Characteristics.*", to read as follows:

204.671–5 Instructions for completion of DD Form 350.

(c) *Part C of DD Form 350.*

* * * * *

Item C4, Sea Transportation. Enter the appropriate code below:

Code N—No. enter Code N if the contractor's response to DFARS 252.247–7202 indicates the contractor does not anticipate that any of the supplies being provided will be transported by sea.

Code Y—Yes. Enter Code Y if the contractor's response to DFARS 252.247–7202 indicates the contractor anticipates that any of the supplies being provided will be transported by sea.

Code U—Unknown. Enter Code U if the contractor did not complete the representation at 252.247–7202 or the solicitation did not contain DFARS 252.247–7202.

Item C5, Type of Contract.

* * * * *

204.671–6 [Amended]

18. Section 204.671–6 is amended by changing the reference in the first sentence to read "204.671–4(b)" in lieu of "204.671–4(d)".

204.672–1 [Amended]

19. Section 204.672–1 is amended by removing the last sentence.

204.675–2 [Amended]

20. Section 204.675–2 is amended by changing the reference in the first sentence of paragraph (a) to read "204.671–3(e)" in lieu of "204.671–3(d)".

PART 206—COMPETITION REQUIREMENTS

21. Section 206.302–4 is added to read as follows:

206.302–4 International agreement.

(c)(S–70) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document, which describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance (see FAR 6.302–4(b)), that have the effect of requiring the use of other than competitive procedures for the acquisition, and such document is approved by the competition advocate for the contracting activity.

22. Section 206.304 is added to read as follows:

206.304 Approval of the justification.

(a)(4)(S–70) For proposed contracts not exceeding $50,000,000, the senior procurement executive specified in 202.101 may delegate this authority as follows:

(A) To an officer or employee within the senior procurement executive's organization who—

(1) If a member of the armed forces, is a general or flag officer; or

(2) If a civilian, is serving in a position in Grade GS–16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees); or

(B) In the case of the Under Secretary of Defense for Acquisition (USD(A)), acting in the capacity as the senior procurement executive for DoD, the USD(A) may delegate—

(1) An Assistant Secretary of Defense; or

(2) With respect to an element of DoD, other than a military department, carrying out the procurement concerned, an officer or employee serving in or assigned or detailed to that element who—

(a) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(b) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than rear admiral.

(S–71) For proposed contracts over $50,000,000 this authority is not delegable, except in the case of the USD(A) acting in the capacity as the senior procurement executive for DoD. When acting as the DoD senior

procurement executive, the USD(A) may delegate as specified in 206.304(a)(4)(S–70)(B).

23. Section 206.305 is added to read as follows:

206.305 Availability of the justification.

(a)(S–70) The requirements of FAR 6.305(a) apply to documents prepared pursuant to 206.302–4(c)(S–70).

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7008–1 [Amended]

24. Section 208.7008–1 is amended by changing the designation at the end of paragraph (a)(1) to read "DoD 4000.25D–6–M" in lieu of "DoD 4000.25D"; and by changing the words in parentheses in paragraph (b)(1) to read "(see DoD 4000.25–1–M)".

PART 215—CONTRACTING BY NEGOTIATION

25. Section 215.605(a) is added to read as follows:

215.605 Evaluation factors.

(a) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, see 219.705–2(d).

PART 217—SPECIAL CONTRACTING METHODS

26. A new subpart 217.4 is added to read as follows:

Subpart 217.4—Leader Company Contracting

Sec.

217.401 General.
217.401–70 Consideration of small disadvantaged business concerns.

Subpart 217.4—Leader Company Contracting

217.401 General.

217.401–70 Consideration of small disadvantaged business concerns.

When leader company contracting is to be considered, special effort will be taken to select a small disadvantaged business (SDB) concern as the follower company. Where other than an SDB is selected as the follower company, the contracting officer shall document the contract file to reflect the extent of actions taken to identify SDB concerns for participation in the acquisition, and the rationale for selection of a non-SDB as the follower company.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.000 [Amended]

27. Section 219.000 is amended by changing the last sentence of the paragraph to read: "Section 831 of Pub. L. 101–189 extended the objective through Fiscal Year 1993."

219.001 [Amended]

28. Section 219.001 is amended by adding at the end of the section: "This term also means a small business concern that is owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian Organization as defined in regulations prescribed by the SBA at 13 CFR part 124, the majority of earnings of which directly accrue to the individual or entity upon which disadvantaged status is based."

219.201 [Amended]

29. Section 219.201 is amended by changing in the first sentence of paragraph (a) the words "Section 844 of Pub. L. 100–456" to read "Section 831 of Pub. L. 101–189"; and by changing the years "1987–90" to read "1987–93".

30. Section 219.301–70 is amended by adding a new sentence at the end of paragraph (b)(3) to read, "The contracting officer shall protest the disadvantaged status of any apparent successful offeror which has certified that it previously was determined to be non-disadvantaged by the SBA."; and by revising paragraph (b)(2) to read as follows:

219.301–70 Eligibility for Award.

* * * * *

(b) * * *

(2) The contracting officer may presume that socially and economically disadvantaged individuals include Black Americans (U.S. Citizens), Hispanic Americans (U.S. Citizens whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal), Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (U.S. Citizens whose ancestry and culture are rooted in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia), Subcontinent Asia (U.S. Citizens with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal) and any other individual/concern currently certified for participation in the section 8(a) program. In addition, the contracting officer may presume that concerns owned by Indian tribes and Native Hawaiian Organizations qualify as small disadvantaged business concerns.

* * * * *

219.302 [Amended]

31. Section 219.302 is amended by adding a sentence at the end of paragraph (S–70)(3) to read: "Protests which are filed before bid opening or notification of apparent successful offeror, in the case of a negotiated acquisition, are premature and shall be returned to the protestor by the contracting officer."; by adding between the first and second sentences of paragraph (S–70)(4) a sentence to read: "The referral shall include: (i) The portest; (ii) The date on which the protest was received and a determination as to timeliness; (iii) A copy of the protested concern's self-certification as to disadvantaged status; and (iv) The date of bid opening or date on which notification of apparent sucessful offeror was sent to all unsuccessful offerors."; by substituting "offeror" in lieu of the acronym "SDB" in the existing second sentence; and by adding a sentence at the end of paragraph (S–70)(4) to read: "When the contracting officer protests the SDB status of an apparently successful offeror, it may be the result of information brought to the contracting officer's attention by a third party, either ineligible to protest directly or ineligible to protest under the timeliness standard. In such instances, the contracting officer must be persuaded by the evidence presented before adopting such grounds for protest as his or her own."

219.501 [Amended]

32. Section 219.501 is amended by adding at the end of paragraph (g) three sentences to read: "In addition, once a product or service has been acquired successfully by a contracting office on the basis of an SDB set-aside, all future requirements of that office for that particular product or service, not subject to simplified small purchase procedures, shall be acquired on the basis of a repetitive SDB set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that the requirements of 219.502–72(a) can be met. Withdrawal of a repetitive SDB set-aside shall be in accordance with 219.502–72(d)."

219.501-70 [Amended]

33. Section 219.501–70 is amended by removing in the first sentence the word "and" and placing a comma between the words "Pub. L. 99–661" and the word "Section"; by adding between the words "Pub. L. 100–180," and the word "special" the words "and Section 831 of Pub. L. 101–189,"; and by changing the years "1987–90" to read "1987–93".

219.704 [Amended]

34. Section 219.704 is amended by adding paragraph (a)(1) to read: "(a)(1) The percentage goal for use of SDB concerns shall be a composite goal which includes anticipated use of HBCUs and MIs as subcontractors in addition to anticipated use of SDB concerns (See 252.219–7000. "; and by adding at the end of the second sentence of paragraph (a)(3) the words "and to restrict competition to SDB concerns."

35. Section 219.705–2 is added to read as follows:

219.705–2 Determining the need for a subcontracting plan.

(d) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, the extent to which offerors specifically identify, and commit to, SDB, HBCU or MI participation in performance of the contract (whether as joint venture, teaming arrangement, or traditional subcontracting arrangement) shall be an evaluation factor for source selection.

36. Section 219.705–4 is amended by adding a new paragraph (S–71) to read as follows:

* * * * *

219.705–4 Reviewing the subcontracting plan.

* * * * *

(S–71) In reviewing a subcontracting plan which proposes a goal of less than five percent for SDB concerns, the contracting officer shall consider the extent to which the offeror plans to utilize competition restricted to SDB concerns, HBCUs, or MIs.

219.706 [Amended]

37. Section 219.706 is amended by removing the paragraph designation "(a)".

38. Section 219.708 is amended by redesignating the first sentence of paragraph (c)(1) as (c)(1)(S–70); by adding text at the end of redesignated paragraph (c)(1)(S–70); by redesignating the remainder of the existing paragraph (c)(1) as (c)(1)(S–71); and by adding in the first sentence of redesignated paragraph (c)(1)(S–71) after the word "clause" the words "at 252.219–7009"; to read as follows:

219.708 Solicitation provisions and contract clauses.

* * * * *

(c)(1)(S–70) When contracting by negotiation, except as provided in (c)(2) of this section, the contracting officer shall insert the clause at 252.219–7009, Incentive Program for Subcontracting with Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219–9. In determining the amount of the percentage of incentive to be inserted in the clause and negotiated into the contract, the contracting officer should consider the type and extent of effort which will be required for the contractor to exceed the goal; i.e. unique outreach programs; use of SDBs and HBCUs or MIs in nontraditional areas; technical assistance required to qualify or assist SDBs and HBCUs or MIs; proximity of subcontractors to the prime contractor and potential difficulties incident thereto (See also FAR 19.705–1).

* * * * *

219.803 [Amended]

39. Section 219.803 is amended by redesignating paragraph (a) as paragraph (c); by changing the reference in the redesignated paragraph (c) to read "FAR 19.803(c)" in lieu of "FAR 19.803(a)"; by redesignating (c)(S–71) as paragraph (b); and by removing (c)(S–70) (i) and (ii).

40. Section 219.804–4 is added to read as follows:

219.804–4 Repetitive acquisition.

(a) When the SBA requests that a requirement be reserved for award of a contract (follow-on or otherwise) under the 8(a) Program, the request shall be honored, if otherwise appropriate, and the total SDB set-aside procedure shall not be used.

(b) An SBA request that a new requirement be reserved for the 8(a) Program need not be honored and a contracting officer may proceed with a total SDB set-aside if the SBA request is received after publication of a synopsis pursuant to 205.207(d)(S–72) or (S–73).

219.7000 [Amended]

41. Section 219.7000 is amended by changing the words "Section 844 of Pub. L. 100–456" to read "Section 831 of Pub. L. 101–189".

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

42. Section 222.7000 is amended by removing in paragraph (a) the words "and (c) below"; and by revising paragraph (b) to read as follows:

222.7200 Policy.

* * * * *

(b) This section shall not apply—

(1) When the unemployment rate in Alaska is less than the national average rate of unemployment as determined by the Secretary of Labor; or

(2) To contracts to be performed in whole or in part within the State of Hawaii unless the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor."

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 223.74—[Removed]

43. Subpart 223.74 is removed in its entirety.

PART 225—FOREIGN ACQUISTION

225.302 [Amended]

44. Section 225.302 is amended by substituting at the end of paragraph (S–72)(1)(ii) the words "when foreign cost is estimated not to exceed the small purchase limitation in FAR 13.000" in lieu of the words "which are estimated not to exceed $25,000 in foreign cost."

225.600 [Amended]

45. Section 225.600 is amended by substituting in the third sentence the words "Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30, Harmonized Tariff Schedule of the United States" in lieu of the words "Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States".

225.603 [Amended]

46. Section 225.603 is amended by substituting at the end of paragraph (b)(1) the words "Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30, Harmonized Tariff Schedule of the United States" in lieu of the words "Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States"; by substituting in the address in paragraph (b)(4)(i) following the word "ATTN:" the words "Chief, Customs Division, International Logistics Office" in lieu of the words "Customs Function"; by substituting in the first sentence of paragraph (b)(5)(i) the words "Chief,

Customs Division, International Logistics Office" in lieu of the words "Transportation Officer"; and by substituting in the last sentence of paragraph (b)(5)(i) the words "Chief, Customs Division, International Logistics Office" in lieu of the words "Transportation Office".

225.7000 [Amended]

47. Section 225.7000 is amended by substituting in the third sentence the words "at 10 U.S.C. 2507(a)" in lieu of the words "in Section 404 of Public Law 90–500"; by adding in the third sentence between the word "restriction" and the word "for" the words "at 10 U.S.C. 7309"; and by removing in the third sentence between the numbers "2507" and the word "on" the word "restriction".

48. Section 225.7002 is amended by revising the introductory text; by substituting in paragraphs (a)(5) and (a)(6) the dollar figure "$25,000" in lieu of "$10,000;" by revising paragraph (a)(7); by adding in paragraph (b) between the word "solicitations" and the word "expected" the words "and contracts"; by removing in paragraph (b) the comma and the words "and all small purchases and contracts which do have,"; by changing the dollar figure in paragraph (b) to read "$25,000" in lieu of $10,000"; by substituting in paragraphs (d)(1) and (d)(2) the dollar figure "$25,000" in lieu of "$10,000"; to read as follows:

225.7002 Restriction on food, clothing, fabrics, and specialty metals.

Except as provided in paragraph (a) of this section, contracting activities shall not acquire supplies consisting in whole or in part of any food, clothing, tents, tarpaulins, covers, cotton, and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions, but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

(a) * * *

(7) Any articles of food, individual equipment, tents, tarpaulins, covers, or clothing, or any form of cotton or other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, canvas products, or wool, as to which the Secretary concerned or a designee has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

* * * * *

225.7003 [Amended]

49. Section 225.7003 is amended by substituting in the last sentence the words "solicitations and contracts over $25,000" in lieu of the words "small purchases of $10,000 or more in all contracts".

225.7004 [Amended]

50. Section 225.7004 is amended by changing the reference at the beginning of the text to read "10 U.S.C. 2507(c)" in lieu of "10 U.S.C., Section 2400(c)".

51. Section 225.7006 is amended by revising paragraph (a) to read as follows:

225.7006 Restriction on Acquisition of Foreign Buses.

(a) 10 U.S.C. 2507(a) provides that funds appropriated for use by the armed forces shall not be available to acquire a multipassenger motor vehicle (bus) not manufactured in the United States, except as authorized by regulations promulgated by the Secretary of Defense to ensure that compliance with this subsection will not result in an uneconomical procurement action or adversely affect the national interest.

* * * * *

225.7009 [Amended]

52. Section 225.7009 is amended by removing at the beginning of the first sentence the words preceding the word "funds"; by changing the lower case "f" to a capital "F" in the word "funds"; by adding between the word "Defense" and the word "may" the words "for Fiscal Years 1984 through 1989"; and by adding between the word "may" and the word "be" the word "not".

225.7010 [Amended]

53. Section 225.7010 is amended by changing the reference in the first sentence to read "2507(b)" in lieu of "2400(b)".

225.7012 [Amended]

54. Section 225.7012 is amended by changing the reference at the beginning of paragraph (a) to read "2507(d)" in lieu of "2507".

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7001 [Amended]

55. Section 226–7001 is amended by removing in the first sentence the word "and" between the reference "99–661," and the word "Section"; by adding after the reference "Pub. L. 100–180," the words "and Section 831 of Pub. L. 101–189,"; and by changing the years "1987–89" to read "1987–93".

226.7003 [Amended]

56. Section 226.7003 is amended by changing in the first sentence the words "Section 844 of Pub. L. 100–456" to read "Section 831 of Pub. L. 101–189"; and by changing the years "1987–90" to read "1987–93".

PART 227—PATENTS, DATA, AND COPYRIGHTS

57. Section 227.303 is added to read as follows:

227.303 Contract clauses.

(a)(70) Pursuant to FAR 27.304–1(e), the contracting officer shall insert the clause at 252.227–7039 in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

PART 232—CONTRACT FINANCING

232.501–1 [Amended]

58. Section 232.501–1 is amended by revising the second sentence to read: "The customary progress payment rate for all other DoD contracts is 80 percent for large businesses, 85 percent for small businesses, and 90 percent for small disadvantaged businesses."

59. Section 232.502–1 is amended by adding paragraph (b)(1) to read as follows:

232.502–1 Use of customary progress payments.

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve $50,000 or more.

* * * * *

60. Section 232.502–4 is amended by adding paragraph (S–75) to read as follows:

232.502–4 Contract clauses.

* * * * *

(S–75) If the contract is with a small disadvantaged business concern, the contracting officer shall use the FAR clause at 52.232–16, with its Alternate I, and shall change each mention of the

progress payment and liquidation rates (excepting paragraph (k)) to the customary rate of 90 percent for small disadvantaged business concerns.

PART 237—SERVICE CONTRACTING

61. Section 237.7407 is amended by revising paragraph (b) to read as follows:

237.7407 Cost or pricing data.

* * * * *

(b) Even when not required by Public Law 87–653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805–2); however, certified cost or pricing data shall not be required for any communication service contract the total amount of which is $25,000 or less (see FAR 15.804–2). Situations in which cost or pricing data may be found necessary within the above policy are:

* * * * *

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.303 [Amended]

62. Section 244.303 is amended by adding at the end of the section an additional sentence to read: "Nothing in Supplement 1 should be read as precluding contractors from utilizing competition limited to small disadvantaged business concerns or Historically Black Colleges and Universities or Minority Institutions."

PART 245—GOVERNMENT PROPERTY

63. Section 245.303–2 is revised to read as follows:

245.303–2 Procedures.

When the contractor is to be responsible for preparing requisitioning documentation, the contract shall require such documentation to be prepared in accordance with DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP).

245.401 [Amended]

64. Section 245.401 is amended by substituting in the second sentence the word "on" in lieu of the word "of".

PART 246—QUALITY ASSURANCE

65. Section 246.700–2 is amended by adding paragraph (c) to read as follows:

246.770–2 Policy.

* * * * *

(c) When essential performance requirements are warranted, the warranty shall specifically identify redesign as a remedy available to the Government.

(1) The period during which redesign shall be available as a remedy shall not terminate before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, redesign shall not be included as a remedy available to the Government under those contracts until an alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that alternate source contractor (See 246.770–6).

246.770–9 [Amended]

66. Section 246.770–9 is amended by changing the reference in the first sentence of paragraph (a) to read "10 U.S.C. 2432" in lieu of "U.S.C. 139a"; and by changing the reference in the first sentence of paragraph (b) to read "10 U.S.C. 2432" in lieu of "10 U.S.C. 139a."

67. Section 246.770–10 is amended by adding paragraph (b) to read as follows:

246.770–10 Special contract clauses.

* * * * *

(b) Each clause describing a contractor's warranty shall specifically state whether or not redesign is an available remedy under the warranty (See 246.770–2).

PART 247—TRANSPORTATION

247.571 [Amended]

68. Section 247.571 is amended by substituting in the definition entitled "Supplies" the word "clearly" in lieu of the word "readily" in the first and last sentences of that definition and by removing the words "or a Military Specification" in the last sentence.

247.573–1 [Amended]

69. Section 247.573–1 is amended by removing paragraph (d) and by redesignating the existing paragraph (e) as paragraph (d).

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

70. Section 251.102 is amended by revising paragraph 2.b. and adding 2.b. (1) and (2) to the authorization form in paragraph (e); and by revising paragraph 5. of the authorization form in paragraph (e), to read as follows:

251.102 Authorization to use Government supply sources.

(e) * * *

b. Requisitioning from GSA or DoD. Orders will be placed in accordance with this authorization and. as appropriate, the:

(1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSA FEDSTRIP Operating Guide: FPMR 101–26.2 (41 CFR 101–26.2)). This guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402; or

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25–1–M). This manual is available from the Defense Logistics Agency, ATTN: DLA–XPD., Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304–6100. Orders shall include the activity address code cited in paragraph 5 below. Bills will not be issued by Government supply sources until after the supplies have been shipped. Payment shall be made promptly upon receipt of billings.

* * * * *

5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25–6–M) **Activity Address Code to which this Authorization applies is------ .

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Removed and Reserved]

71. Section 252.204–7004 is removed and the section marked "Reserved."

252.204–7007 [Amended]

72. Section 252.204–7007 is revised by substituting the reference "204.603–70" in lieu of "204.670–3(b)(1)" between the words "at" and "insert".

252.217–7306 [Amended]

73. Section 252.217–7306 is revised by substituting in the introductory sentence the reference "217.7301–5(b)(2)" in lieu of "217.7301–25(b)(2)."

74. Section 252.219–7005 is amended by changing the date of the provision to read "(APR 1990)" in lieu of "(JUN 1988)"; by inserting the word "unconditionally" in the first sentence of paragraph (a) of the provision, between the word "(51%)" and the word "owned"; by inserting the word "unconditionally" in the first sentence of paragraph (a) of the provision, between the word "is" and the word "owned"; by substituting in the first sentence of paragraph (a) the reference "124.109" in lieu of "124.110"; by adding at the end of paragraph (a) a sentence reading: "This

term also means a small business concern that is owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian Organization and which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113 respectively."; and by revising paragraphs (b), (c), and (e) of the provision to read as follows:

252.219-7005 Small Disadvantaged Business Concern Representation (DOD FAR Supplement Deviation).

* * * * *

(b) *Representations.* The Offeror represents that its qualifying ownership falls within at least one of the following categories (check the applicable categories):

_____ Subcontinent Asian (Asian-Indian) (U.S. Citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal)

_____ Asian Pacific Americans (U.S. Citizens with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia)

_____ Black American (U.S. Citizen)

_____ Hispanic American (U.S. Citizen with origins from South America, Central America, Mexico Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal)

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians, including Indian tribes or Native Hawaiian Organizations)

_____ Individual/concern currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C. 637(a))

_____ Other

(c) *Certification.*

(1) The Offeror represents and certifies, as part of its offer, that it is _____, is not _____ a small disadvantaged business concern.

(2) The Offeror represents and certifies, as part of its offer, that the Small Business Administration (SBA) has _____, has not _____ made a determination concerning the Offeror's status as a small disadvantaged business concern. If the SBA has made such a determination, the date of the determination was _____ and the Offeror certifies that it:

_____ was found by the SBA to be socially and economically disadvantaged as a result of that determination and that no circumstances have changed to vary that determination.

_____ was found by the SBA not to be socially and economically disadvantaged as a result of the determination, but circumstances which caused the determination have changed.

* * * * *

(e) *Penalties and Remedies.* The Offeror represents and certifies that the above information is true and understands that whoever for the purpose of securing a contract or subcontract under subsection (a) of Section 1207 of Public Law 99-661 misrepresents the status of any concern or person as a small business concern owned and controlled by minority (as described in subsection (a)) shall (i) be punished by imposition of a fine, imprisonment, or both; (ii) be subject to administrative remedies including suspension and disbarment; and (iii) be ineligible for participation in programs conducted under the authority of the Small Business Act.

(End of provison)

75. Section 252.219-7009 is amended by changing the date of the clause to read "(APR 1990)" in lieu of "(JUN 1988)"; by adding in paragraph (a) of the clause after the word "Colleges" the words "and Universities"; by substituting a new paragraph (b) and by revising Alternate I to read as follows:

252.219-7009 Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions

* * * * *

(b) If the Contractor exceeds its SDB/HBCU/MI subcontracting goal in performing this contract, it will receive at completion of contract performance _____ (Insert the appropriate number between 1 and 10) percent of the dollars in excess of the SDB/HBC/MI subcontracting goals in the plan.

* * * * *

Alternate I (APR 1990)

As prescribed at 219.708(c)(1), insert the following paragraph (c), and reidentify the existing paragraphs (c), (d), and (e) as (d), (e), and (f):

(c) With reference to small businesses other than SDBs, if the Contractor exceeds its small business subcontracting goals in performance of this contract, it will receive at completion of contract performance _____ (insert the appropriate number between 0-10) percent of the dollars in excess of the goal in the plan.

252.223-7005 [Amended]

76. Section 252.223-7005 is amended by removing in the last sentence of paragraph (a) of the clause the reference "(OMB No. 0704-0193)".

252.225-7008 [Amended]

77. Section 252.225-7008 is amended by changing the date of the clause to read "(APR 1990)" in lieu of "(AUG 1984)"; by substituting in the first sentence of paragraph (f)(iv) of the clause the words "Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30, Harmonized Tariff Schedule of the United States" in lieu of the words "Schedule B, Part 3, Item No. 832.00, Tariff Schedules of the United States"; and by substituting in the second sentence of paragraph (f)(iv) of the clause the words "Chief, Customs Division, International Logistics Office" in lieu of the words "Customs Function".

78. Section 252.225-7009 is revised to read as follows:

252.225-7009 Preference for certain domestic commodities.

As prescribed at 225.7002(b), insert the following clause:

Preference for Certain Domestic Commodities (APR 1990)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, which have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico: *Provided,* That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see DOD FAR Supplement part 225).

(End of clause)

252.225-7014 [Amended]

79. Section 252.225-7014 is amended by changing the date of the clause to read "(APR 1990)" in lieu of "(AUG 1984)" and by substituting in paragraph (e) of the clause the words "Chief, Customs Division, International Logistics Office" in lieu of the words "Customs Function".

80. Section 252.227-7039 is added to read as follows:

252.227-7039 Patents—reporting of subject inventions.

As prescribed at 227.303(a)(70), insert the following clause:

Patents—Reporting of Subject Inventions (APR 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject

inventions have been disclosed or that there are no such inventions.

(b) A final report within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government as irrevocable power to inspect and make copies of the patent application file.

(End of clause)

81. Section 252.233–7000 is amended by changing the date of the clause to read "(APR 1990)" in lieu of "(FEB 1980)"; and by adding a new paragraph (e) to read as follows:

252.233–7000 Certification of requests for adjustment or relief exceeding $100,000.

* * * * *

(e) If this is a claim for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

This claim includes only costs for performing the alleged change, and does not include any costs which have already been reimbursed or which have been separately claimed. All indirect costs claimed are properly allocable to the alleged change in accordance with applicable acquisition regulations. I am aware that the submission of a false claim to the Government can result in the assessment of significant penalties and fines, and that no proof of specific intent to defraud is required in either a civil or criminal prosecution for the submission of a false claim.

(End of clause)

252.243–7000 [Amended]

82. Section 252.243–7000 is amended by substituting in the introductory sentence in Alternate I the reference "243.202(S–70)" in lieu of "243.202–70(b)".

83. The clause at 252.247–7203 is amended by changing the date of the clause to read "(APR 1990)" in lieu of "(JAN 1990)"; by substituting in the first sentence of paragraph (a)(6) of the clause the word "clearly" in lieu of the word "readily"; by removing in the last sentence of paragraph (a)(6) the words "or a Military Specification"; by removing paragraphs (d) (8) and (9); by removing the introductory text of paragraph (e); by revising and moving the text of paragraph (f) to the beginning of paragraph (e); by redesignating paragraphs (g) through (i) as paragraphs (f) through (h) respectively; by substituting in the redesignated paragraph (g) the word "representation" in lieu of the words "representations and documentation"; and by revising the redesignated paragraph (h) to read as follows:

252.247–7203 Transportation of supplies by sea.

* * * * *

(e) The Contractor shall, within thirty (30) days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean-bill-of-lading, which shall contain the following information:

* * * * *

(h) The Contractor shall include this clause, including this paragraph (h), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder. Subcontractor bills of lading shall be submitted through the prime contractor to the parties and with the information specified in paragraph (e) of this clause.

(End of clause)

Appendix H to Chapter 2 [Removed]

84. Appendix H to chapter 2 is removed.

Appendix I to Chapter 2 [Amended]

85. Appendix I–301 is amended by removing paragraph (b) in the Instruction entitled "Block 19" and by redesignating the existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d) respectively.

[FR Doc. 90–10632 Filed 5–7–90; 8:45 am]
BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 55, No. 89
Tuesday, May 8, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-68-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, which currently requires the addition of a relay to the propeller brake control unit to maintain the electrical power supply, and replacement of the push button switch with a two-position mechanical switch. This action would also require the installation of a new brake and modification of the propeller brake control system. Additionally, this action would clarify the applicability to specify that the Model ATR42-300 and ATR42-320 series airplanes are the models affected. This proposal is prompted by reports of electrical problems causing the brake to engage prior to command. This condition, if not corrected, could lead to overheating of the propeller brake and damage to the engine.

DATES: Comments must be received no later than July 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-68-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 90-NM-68-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 17, 1989, the FAA issued AD 88-14-06 R1, Amendment 39-6202 (54 FR 18274; April 28, 1989), to require the addition of a relay to the propeller brake control unit to maintain the electrical power supply, and replacement of the push button switch with a two-position mechanical switch. That action was prompted by reports of electrical interference causing the brake to engage prior to command, incomplete brake locking due to interruption of the power supply, and unlocking of the propeller brake due to non-latching of the push button switch. This condition, if not corrected, could lead to overheating of the propeller brake and damage to the engine.

Since issuance of that AD, there have been additional reports of the propeller engaging prior to command on several airplanes modified in accordance with the existing AD, and, in one case, a fire occurred after engine shutdown. In light of these reports, it is apparent that the original modifications did not correct all the electrical problems associated with the propeller brake.

Aerospatiale has issued Service Bulletin ATR42-61-0022, Revision 1, dated September 25, 1989, which describes procedures to remove the existing propeller brake and install a newly developed, modified propeller brake. Aerospatiale has also issued Service Bulletin ATR42-62-0005, Revision 2, dated January 2, 1990, which describes procedures to replace the propeller brake control unit, modify the control logic of the propeller brake, and replace the hydraulic fuse with an electrovalve. Aerospatiale has also issued Service Bulletin ATR42-61-0023, Revision 1, dated December 1, 1989, which describes procedures to modify the propeller brake indicating logic so that the electrovalve remains open for 120 seconds after the hydraulic pumps have shut down. The Direction Generale de L'Aviation Civile, which is the airworthiness authority of France, has classified these service bulletins as mandatory, and has issued Airworthiness Directive 90-030-028(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 88-14-06 R1 with a new airworthiness directive that would require installation of a new propeller brake control unit and modification of the propeller brake and propeller brake indicating logic, in accordance with the service bulletins previously described.

Additionally, this action would clarify the applicability to specify that Model ATR42–300 and ATR42–320 series airplanes are the models affected.

It is estimated that 56 airplanes of U.S. registry would be affected by this AD, that it would take approximately 238 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required modification kits will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $533,120.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6202 (54 FR 18274; April 28, 1989), AD 88–14–06 R1, with the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42–300 and ATR42–320 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the propeller brake from overheating and causing damage to the engine, accomplish the following:

A. Within 100 hours time-in-service after May 29, 1989 (the effective date of AD 88–14–06 R1) for airplanes listed in Aerospatiale Service Bulletin ATR42–61–0013, Revision 1, dated December 8, 1987, modify the propeller brake electronic control wiring, in accordance with this service bulletin.

B. Within 100 hours time-in-service after May 29, 1989 (the effective date of AD 88–14–06 R1), for the airplanes listed in Aerospatiale Service Bulletin ATR42–61–0014, Revision 2, dated November 15, 1988, modify the propeller brake control unit, in accordance with this service bulletin.

C. Within 100 hours time-in-service after May 29, 1989 (the effective date of AD 88–14–06 R1), for the airplanes listed in Aerospatiale Service Bulletin ATR42–61–0010, Revision 3, dated December 19, 1988, replace the pushbutton switch with a two-position mechanical switch, in accordance with this service bulletin.

D. Within 180 days after the effective date of this AD, install a new brake control unit in accordance with Aerospatiale Service Bulletin ATR42–61–0005, Revision 2, dated January 2, 1990.

E. Within 180 days after the effective date of this AD, install a modified propeller brake in accordance with Aerospatiale Service Bulletin ATR42–61–0022, Revision 1, dated September 25, 1989.

F. Within 180 days after the effective date of this AD, modify the propeller brake indicating logic, in accordance with Aerospatiale Service Bulletin ATR42–61–0023, Revision 1, dated December 1, 1989.

G. As an alternative to paragraphs A through F., above, operators may remove the propeller brake from the airplane in accordance with Aerospatiale Service Bulletin ATR42–61–0016, Revision 1, dated September 1, 1988.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 1, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–10683 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–69–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 series airplanes, which would require modification of the cowl door latch arrangement and installation of pressure relief features on both engine cowlings. This proposal is prompted by reports of two in-flight engine fires wherein the engine cowl doors came open or came off, rendering the engine fire extinguishing system ineffective. This condition, if not corrected, could result in loss of engine fire extinguishing capability, and subsequent fire damage to the structure and the hydraulic system.

DATES: Comments must be received no later than July 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–69–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Richard P. Fiesel, Propulsion Branch, ANE–174; telephone (516) 791–7421. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 90–NM–69–AD. The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC–8–100 series airplanes. The FAA has determined that the propulsion system fire protection system can be rendered ineffective if an engine compartment explosion occurs. Overpressure from an explosion can cause deformation and/or loss of the engine cowling, in which case the fire extinguishant is not contained in the compartment long enough to be effective. Two in-flight incidents have occurred wherein fuel leaked into the engine compartment and led to explosions, causing cowl damage/loss and an uncontrolled fire. This condition, if not corrected, could result in loss of engine fire extinguishing capability, and subsequent fire damage to the structure and the hydraulic system.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8–71–13, Revision C, dated January 12, 1990, which describes procedures to modify the cowl door retention latch arrangement and install pressure relief features on both engine cowlings. This modification would improve the overpressure retention capability of the engine forward side cowling doors. Additional protection would be provided by the spring loaded pressure relief feature and additional door retention hooks introduced by this proposed modification. The door retention hooks are specifically designed to function only when the door is distorted by the overpressure forces and would act to maintain the normal latching provisions. Transport Canada has classified the service bulletin as mandatory, and has issued Airworthiness Directive No. CF–89–15 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the cowl door retention latch arrangement and installation of pressure relief features on both engine cowlings in accordance with the service bulletin previously described.

It is estimated that 35 airplanes of U.S. registry would be affected by this AD, that it would take approximately 120 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required modification kit will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $168,000.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada Ltd., de Havilland Division: Applies to de Havilland Model DHC–8–100 series airplanes, Serial Numbers 1 through 156 and 158 through 193, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent deformation or loss of the engine forward side cowl doors due to compartment overpressurization, and subsequent loss of fire extinguishing capability, accomplish the following:

A. Modify the cowl door retention latch arrangement and install pressure relief features on both engine cowlings, in accordance with the Accomplishment Instructions in de Havilland Service Bulletin No. 8–71–13, Revision C, dated January 12, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE–170.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

Issued in Seattle, Washington, on May 1, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-10684 Filed 5-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-65-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which would require a one-time high frequency eddy current (HFEC) inspection to detect cracks in the fork-end fittings of the wing upper skin stringers at the outboard side of the Wing Station 4155 joint, and repair or replacement, if necessary. This proposal is prompted by reports of cracking of the fork-ends on the outboard side of the joint due to stress corrosion. This condition, if not corrected, could result in reduced structural integrity of the wing.

DATES: Comments must be received no later than July 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 90-NM-65-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-27 series airplanes. There has been a recent report of cracking in the fork-ends on the outboard side of the joint due to stress corrosion. Installation stresses could have been introduced when the half-inch bolts at the coupling rods were tightened. These stresses, together with the stress corrosion-sensitive material, 7079-T6, from which the coupling rods are made, can lead to cracking of the fork-ends at the outboard side of the Wing Station 4155 joint. This condition, if not corrected, could result in reduced structural integrity of the wing.

Fokker has issued Service Bulletin F27/57-64, Revision 1, dated March 28, 1990, which describes procedures for a one-time high frequency eddy current (HFEC) inspection to detect cracks in the fork-end fittings of the wing upper skin stringers at the outboard side of the Wing Station 4155 joint, and repair or replacement of coupling rods, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 89-148.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time inspection to detect cracks in the fork-end fittings of the wing upper skin stringers at the outboard side of the Wing Station 4155 joint, and repair or replacement, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional action.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,600.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10102 and 10105 through 10624, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wing, accomplish the following:

A. Within 180 days after the effective date of this AD, perform a high frequency eddy current (HFEC) inspection of the fork-end fittings of the wing upper skin stringers at the outboard side of the Wing Station 4155 joint, in accordance with Fokker Service Bulletin F27/57-64, Revision 1, dated March 28, 1990.

B. If cracks are found in the lower part of the fillet radius, prior to further flight, blend until there is no crack indication, but do not exceed a maximum depth of 2.5 mm, in accordance with Fokker Service Bulletin F27/57-64, Revision 1, dated March 28, 1990. If the crack is still present after maximum blending, the affected coupling rods must be replaced prior to further flight.

C. If cracks are found in the upper part of the fillet radius, replace the affected coupling rods, prior to further flight, in accordance with Fokker Service Bulletin F27/57-64, Revision 1, dated March 28, 1990.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 1, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-10685 Filed 5-7-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Water Replacement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on proposed amendment to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules concerning hydrologic balance; water rights and replacement. The amendment is intended to limit the obligation to replace adversely affected water supplies to be consistent with State water right laws.

This notice sets forth the times and locations that the Indiana program and the proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on June 7, 1990; if requested, a public hearing on the proposed amendments is scheduled for 1:00 p.m. on June 4, 1990; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 23, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendments, a listing of my scheduled public meeting, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone (317) 232-1547.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program, effective July 29, 1982. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

The Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at 310 Indiana Administrative Code (IAC) 12–5–29 and 310 IAC 12–5–94 (Administrative Record No. IND–0683). The proposed changes are briefly summarized below:

The amendment to 310 IAC 12–5–29 adds the words "pursuant to a lawful order of an agency or court order under IC 13–2–2.5 or another state water rights law" to the first sentence which requires replacement of water rights. The words "within a reasonable time" are deleted from the first sentence following the word "replace". A new sentence is added to the rule which states: Water replacement rights are not determined by this article. The proposed amendments to 310 IAC 12–5–94 are identical to the proposed changes to 310 IAC 12–5–29 discussed above. Other changes to 310 IAC 12–5–29 and 310 12–5–94 are stylistic. The Director is reopening the comment period for thirty days to provide additional opportunity for public comments on the proposed water rights and replacement amendment.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by IDNR satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written Comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on May 23, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 23, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–10590 Filed 5–7–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE22

Adjudication; Pensions, Compensation, Dependency: New and Material Evidence; Standard Definition

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to define the term "new and material evidence." This amendment is necessary to clarify the meaning of the term as it is used in the adjudication process. The intended effect of this amendment is to provide a standard definition of the term to guide the deliberations of VA decisionmakers and appellate reviewers.

DATES: Comments must be received on or before June 7, 1990. This change is proposed to be effective thirty days after the publication of the final rule. Comments will be available for inspection until June 18, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA regulations provide that an original VA decision is binding upon the Department and is not subject to revision based on the same evidence, except by the proper appellate authorities, unless the decision is determined to be clearly and unmistakably erroneous or it gives rise to a difference of opinion among adjudicative agencies (38 CFR 3.104(a)). When notifying claimants that a prior decision remains in effect, we often advise them that the claim may be reopened only upon submission of "new and material evidence." That term has appeared in title 38, Code of Federal Regulations for many years without a formal definition.

Section 103 of Public Law 100–687 added new section 3008, dealing with reopened claims, to title 38, United States Code. Since that new section contains the term "new and material evidence" we are proposing a formal regulatory definition. The definition will be added at 38 CFR 3.156(a) and current paragraphs (a) and (b) of that section will be redesignated as paragraphs (b) and (c) respectively.

In order to qualify as "new" under the proposed definition, evidence, whether documentary, testimonial or in some other form, must be submitted to agency decisionmakers for the first time. For example, a veteran injured while on duty may not have realized immediately that the condition required medical attention and may have sought

treatment later that evening from a private physician. A compensation claim might later be denied if the service medical records contain no mention of treatment for the condition. Should the claimant subsequently submit proof of treatment by the civilian physician, that information would constitute new evidence on which the claim could be reopened. On the other hand, a photocopy or other duplication of information already contained in the VA claims folder does not constitute new evidence since it was previously considered; neither does information confirming a point already established, such as a statement from a physician verifying the existence of a condition which has already been diagnosed and reported by another physician. Even though such a medical evaluation is from a different doctor, it offers no new basis on which the claim might be reopened unless it contains new information, such as evidence that the condition first manifested itself earlier than previously established.

In order to be considered "material" under the proposed definition, the additional information must also bear directly and substantially upon the specific matter under consideration. If, for example, VA has previously determined that a back condition claimed by a World War II veteran is not service-connected, evidence that the claimant received treatment shortly after release from active duty might be considered new and material if VA had previously been unaware of that treatment. However, information addressing only the current severity of the condition submitted now, over 40 years after service, would have no bearing on the issue of whether the condition was incurred or aggravated during military service and would not warrant reopening the prior claim. Likewise, statements and affidavits attesting to the claimant's good character since his or her release from active duty would be irrelevant if the issue were the character of the claimant's military service, but any new information offering mitigating circumstances for an action which resulted in an "other than honorable" discharge would address the specific issue under consideration and warrant reopening the claim.

A determination by VA that information constitutes "new and material evidence" means that the new information is significant enough, either by itself or in connection with evidence already of record, that it must be considered in order to fairly decide the merits of the claim. It does not mean as a matter of course that the evidence warrants a revision of a prior determination.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Handicapped, Health care, Pensions, Veterans.

Approved: April 5, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

In § 3.156 existing paragraphs (a) and (b) are redesignated as paragraphs (b) and (c) and new paragraph (a) is added to read as follows:

§ 3.156 New and material evidence.

(a) "New and material evidence" means evidence not previously submitted to agency decisionmakers which bears directly and substantially upon the specific matter under consideration, which is neither cumulative nor redundant, and which by itself or in connection with evidence previously assembled is so significant that it must be considered in order to fairly decide the merits of the claim.

(Authority: 38 U.S.C. 210(c))

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[FR Doc. 90–10675 Filed 5–7–90; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1355, 1356 and 1357

Title IV–B and Title IV–E of the Social Security Act: Data Collection for Adoption and Foster Care

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Advance notice of public briefings on the notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services is issuing this advance notice of its intention to hold two public briefings on the Notice of Proposed Rulemaking (NPRM) which proposes to implement a system for the collection of adoption and foster care data in the United States (section 479 of the Social Security Act). When the rule becomes final, it will affect all States that administer State plans under title IV–B and Title IV–E of the Social Security Act.

DATES: The exact times, dates and locations of the briefings will be announced in the **Federal Register** at or around the time the NPRM is published. We expect the briefings to be held within three to four weeks after publication of the NPRM.

ADDRESSES: Indication of interest in attending these briefings should be directed in writing to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, Attention: Mike Ambrose.

FOR FURTHER INFORMATION CONTACT:

Mike Ambrose (202) 245–0821

or

Dan Liews (202) 245–0618

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services wishes to extend to all interested persons the opportunity to attend a briefing on the proposed rule governing a proposed national data collection system for adoption and foster care. Therefore, the public is advised of the Department's intention to hold two briefing on the NPRM, one in

the Wasington DC area and one in the west, possibly Denver, Colorado.

The briefings will be one day in duration and will review all aspects of the proposed rule. These briefings are not public hearings and will not substitute for the written comments requested from the public in relation the NPRM. Rather, the briefings will provide an opportunity for the Department to discuss and explain the various components of the proposed data collection system. Exact times, dates, and locations of the briefings will be provided in a **Federal Register** notice either published simultaneously with the NPRM or shortly thereafter.

In order to facilitate arrangments, the public is asked to indicate an intent to attend the briefings by sending a post card with name, address, and location preference to Mike Ambrose at the address listed above. In turn, respondents will receive a notice of the time, date, and location of the briefings and a copy of the NPRM. Please do not telephone to indicate an interest in attending.

Dated: April 13, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved April 30, 1990

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-10591 Filed 5-7-90; 8:45 am]

BILLING CODE 4130-01-M

Notices

Federal Register
Vol. 55, No. 89
Tuesday, May 8, 1990

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

Animal and Plant Health Inspection Service

[Docket No. 90-053]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permtis, Animals and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
90-088-01	The Upjohn Company.....	03-29-90	Cantaloupe and squash plants genetically engineered to express the viral coat proteins of Cucumber Mosaic Virus (CMV), Papaya Ringspot Virus (PRV), Watermelon Mosaic Virus-2 (WMV-2), and Zucchini Yellow Mosaic Virus (ZYMV).	California, Georgia, Michigan.
90-088-02	The Upjohn Company.....	03-29-90	Cantaloupe and squash plants genetically engineered to express the viral coat proteins of Cucumber Mosaic Virus (CMV), Papaya Ringspot Virus (PRV), Watermelon Mosaic Virus-2 (WMV-2), and Zucchini Yellow Mosaic Virus (ZYMV).	Georgia.

Done in Washington, DC, this 3rd day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-10639 Filed 5-7-90; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: May 23, 1990.

Place: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. 20024.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes (1) Grain quality provisions in the 1990 Farm Bill; (2) health and safety issues; (3) an update on wheat classification and research; (4) weighing activities; (5) agency financial matters; (6) insect infestation; (7) aflatoxin testing; and (8) international monitoring.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact John C. Foltz Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-654, telephone (202) 382-0219.

Dated: May 2, 1990.

John C. Foltz,

Administrator.

[FR Doc. 90-10642 Filed 5-7-90; 8:45 am]

BILLING CODE 3410-EN-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m., on May 25, 1990, the Hilton Hotel, 921 Southwest Sixth Avenue, Portland, Oregon 97204. The purpose of the meeting is to plan activities and programming for the comming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, H.J. Hamilton or Philip Montez, Director of the Western Regional Divison (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the Schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 30, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–10575 Filed 5–7–90; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on May 24, 1990, at the Red Lion, 18740 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Washington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 30, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–10576 Filed 5–7–90; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will be held on Monday, May 21, 1990, from 6 p.m. until 8 p.m. at 2106 North 53rd Street, Milwaukee, Wisconsin, for orientation of the newly rechartered SAC and to brief the Committee on procedures for the forum. On May 22–23, 1990, the Committee will hold a 2-day community forum at the Wisconsin Department of Natural Resources Building, rooms 140–141, 2300 North Martin Luther King Drive, Milwaukee, Wisconsin. The purpose of this meeting is to receive information on the impact of school desegregation upon quality of education for minority students in the Milwaukee public schools. On Tuesday, May 22 the meeting will convene at 9:30 a.m. and adjourn at 5:25 p.m. An evening session will begin at 7 p.m. and adjourn at 8:55 p.m. On Wednesday, May 23 the meeting will reconvene at 9:30 a.m. and adjourn at 12 p.m.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James L. Baughman, or Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 30, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–10577 Filed 5–7–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: 1990 Outreach Evaluation Survey.
Form number(s): D–1400, D–1400(L), D–1404.
Agency approval number: 0607–0677.
Type of request: Revision of a currently approved collection.
Burden: 1,875 hours.
Number of respondents: 7,500.
Avg. hours per response: 15 minutes.
Needs and uses: The purpose of this revision to the 1990 Outreach Evaluation is to add the Outreach Evaluation for Parolees and Probationers (D–1405). This study will be conducted after the census to define the attitudes, behaviors and awareness level of parolees and probationers toward the 1990 decennial census and to make a determination of the difficulty level in enumerating this group. The Census Bureau will use the data to compare the awareness, attitudes, and practices of the parolee and probationer population with those of the general population and to provide recommendations for improved coverage in future censuses.
Affected public: Individuals or households.
Frequency: One time only.
Respondent's obligation: Voluntary.
OMB desk officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–10650 Filed 5–7–90; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 473]

Temporary Extension of Authority for Subzones 22C, 22D, and 22E, Chicago, IL

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, on March 23, 1987, the Board conditionally approved an application submitted by the Illinois International Port District (IIPD), grantee of FTZ 22, for foreign-trade subzone status (SZ's 22C, D, and E) at the food products manufacturing plants of Power Packaging, Inc. (PPI), in Carol Stream (SZ 22C), West Chicago (SZ 22D), and

St. Charles (SZ 22E), Illinois (Board Order 347, 52 FR 10246);

Whereas, approval was subject to a 2-year time restriction (ending on 6/29/89), and a condition that limits the use of zone procedures to the manufacture of products that are subject to sugar-containing product quotas;

Whereas, on April 6, 1989, IIPD made application to the Board (FTZ Docket 4–89, 54 FR 15480) for a 2-year extension of authority;

Whereas, on June 29, 1989, authority was temporarily extended (Board Order 435, 54 FR 28455) for 1 year (to July 1, 1990), and the FTZ Staff finds that an additional temporary extention of authority would be in the public interest pending further review in light of ongoing legislative and other developments affecting the sugar program;

Now, therefore, the Board hereby orders:

That the authority for Subzones 22C, D, and E is extended to December 31, 1990, subject to all of the other conditions in Board Orders 347 and 435.

Dated: April 30, 1990.

Lisa B. Barry,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–10596 Filed 5–7–90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 472]

Temporary Extension of Authority for Subzone 41F, Milwaukee, WI

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, on March 23, 1987, the Board conditionally approved an application submitted by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of FTZ 41, for foreign-trade subzone status at the chocolate products manufacturing plant of Ambrosia Chocolate Company in Milwaukee, Wisconsin (Board Order 346, 52 FR 10247);

Whereas, approval was subject to a 2-year time restriction (ending on 4/24/89), and a condition that limits the use of zone procedures to the manufacture of products that are subject to sugar-containing product quotas;

Whereas, on March 2, 1989, FTZW made application to the Board (FTZ Docket 2–89, 54 FR 11257) for a 2-year extension of authority;

Whereas, on April 24, 1989, authority was temporarily extended (Board Order 431, 54 FR 18918) for 1 year (to May 1, 1990), and the FTZ Staff finds that an additional temporary extension of authority would be in the public interest pending further review in light of ongoing legislative and other developments affecting the sugar program;

Now, therefore, the Board hereby orders:

That the authority for Subzone 41F is extended to December 31, 1990, subject to all of the other conditions in Board Orders 346 and 431.

Dated: April 30, 1990.

Lisa B. Barry,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–10597 Filed 5–7–90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than May 31, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

Antidumping Duty Proceeding	*Period*
Argentina: Light-Wall Welded Rectangular Carbon Steel Tubing (A–357–802)	11/21/88–04/30/90
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A–351–602)	05/01/89–04/30/90
Brazil: Certain Iron Construction Castings (A–351–503)	05/01/89–04/30/90
Brazil: Certain Tubeless Steel Disc Wheels (A–351–606)	05/01/89–04/30/90
Brazil: Frozen Concentrated Orange Juice (A–351–605)	05/01/89–04/30/90
Brazil: Malleable Cast Iron Pipe Fittings (A–351–505)	05/01/89–04/30/90
Dominican Republic: Portland Cement, Other Than White, Nonstaining Portland Cement (A–247–003)	05/01/89–04/30/90
France: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–427–801)	11/09/88–04/30/90
India: Certain Iron Construction Castings (A–533–501)	05/01/89–04/30/90
India: Certain Welded Carbon Steel Standard Pipes and Tubes (A–533–502)	05/01/89–04/30/90
Italy: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–475–801)	11/09/88–04/30/90
Japan: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–588–804)	11/09/88–04/30/90
Japan: Impression Fabric (A–588–066)	05/01/89–04/30/90
Japan: Portable Electric Typewriters (A–588–087)	05/01/89–04/30/90
Romania: Ball Bearings and Parts Thereof (A–485–801)	11/09/88–04/30/90
Singapore: Ball Bearings and Parts Thereof (A–559–801)	11/09/88–04/30/90
Sweden: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–401–801)	11/09/88–04/30/90
Taiwan: Certain Circular Welded Carbon Steel Pipes and Tubes (A–583–008)	05/01/89–04/30/90
Taiwan: Malleable Cast-Iron Pipe Fittings, Other Than Grooved (A–583–507)	05/01/89–04/30/90
The Federal Republic of Germany: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–428–801)	11/09/88–04/30/90
The People's Republic of China: Certain Iron Construction Castings (A–570–502)	05/01/89–04/30/90
The Republic of Korea: Malleable Cast Iron Pipe Fittings, Other Than Grooved (A–580–507)	05/01/89–04/30/90
The United Kingdom: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–412–801)	11/09/88–04/30/90
Thailand: Ball Bearings and Parts Thereof (A–549–801)	11/09/88–04/30/90
Turkey: Welded Carbon Steel Standard Pipe and Tube Products (A–489–501)	05/01/89–04/30/90
Countervailing Duty Proceeding	
Brazil: Certain Heavy Iron Construction Castings (C–351–504)	01/01/89–12/31/89
Canada: Fresh Whole Atlantic Groundfish (C–122–507)	01/01/89–12/31/89

Antidumping Duty Proceeding	*Period*
Mexico: Ceramic Tile (C-201-003)	01/01/89-12/31/89
Singapore: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof (C-559-802)	09/06/88-12/31/89
Sweden: Viscose Rayon Staple Fiber (C-401-056)	01/01/89-12/31/89
Thailand: Ball Bearings and Parts Thereof (C-549-802)	09/06/88-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by May 31, 1990.

If the Department does not receive by May 31, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: April 30, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-10593 Filed 5-7-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-056]

Melamine From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on melamine from Japan because it continues to be of interest to interested parties.

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 3433) its intent to revoke the antidumping finding on melamine from Japan (42 FR 23683, February 2, 1977).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party listed on the service list. Interested parties who objected to the revocation were provided the opportunity to submit their comments no later than thirty days from the date of publication.

Scope of Finding

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this finding are shipments of melamine in crystal form, a fine white crystalline powder used to manufacture melamine formaldehyde resins. Through 1988 such merchandise was classifiable under item number 452.1020 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 2933.61.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Determination Not To Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that a finding is no longer of interest to interested parties. We received objections to our intent to revoke the antidumping finding on melamine from Japan.

Based on those objections by an interested party, the Department has concluded that the finding continues to be of interest to interested parties. Therefore, we are not revoking the antidumping finding on melamine from Japan in accordance with 19 CFR 353.25(d)(4)(iii).

This notice is in accordance with 19 CFR 353.25(d)(4)(iii).

Dated: April 30, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-10594 Filed 5-7-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-401]

Amendment to Final Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On March 9, 1990, the Department of Commerce published the final results of its administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers the period from March 1, 1988 through February 28, 1989.

After publication of our final results of antidumping duty administrative review, we received comments from Rubinetteria A. Giacomini, S.p.A. ("Giacomini") alleging ministerial errors. We have reviewed Giacomini's comments and agree that there were two ministeral errors in the final results. We have corrected the ministerial errors and have amended the final results.

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3798 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1990, the Department published in the **Federal Register** (55 FR 8972) the final results of its administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy.

After publication of our final results of antidumping duty administrative review, we received comments from Giacomini alleging ministerial errors. Pursuant to § 353.28 of the Commerce Department regulations published in the **Federal Register** on March 9, 1990 (55 FR 9046) (to be codified at 19 CFR 353.28),

petitioner had the opportunity to submit comments in response to Giacomini's allegations within business five days. We received no comments from petitioner.

Section 1333(b) of the Omnibus Trade and Competitiveness Act of 1988, which amended section 751 of the Tariff Act of 1930 ("the Act"), authorizes Commerce to establish procedures for the correction of ministerial errors in the final determinations issued by the Department. The law defines the term "ministerial error" to include errors in addition, subtraction, or other arithmetic functions, or clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial. In accordance with section 751(e) of the Act, we have reviewed Giacomini's comments and agree that there were two ministerial errors in the final results. Accordingly, we have corrected the ministerial errors and have amended the final results of administrative review for Giacomini for the period March 1, 1988 through February 28, 1989.

Ministerial Errors

We have corrected the following ministerial errors in our margin calculations for Giacomini for the period March 1, 1988 through February 28, 1989:

1. The weighted-average cost of manufacturing information and the weighted-average unit sales value information were not based on comparable products, which resulted in incorrect profit percentage calculations. Additionally, the unit sales values included models for which the Department did not have cost of manufacturing information. As a result, the Department was unable to determine a profit amount for those sales. Accordingly, the profit figures used in calculating the constructed value amounts were revised to include only model types sold in the third country which were comparable to the products sold in the United States and for which the Department had cost of manufacturing information. For purposes of calculating the constructed value of these third country models, we revised the weighted-average unit sales values, inland freight, imputed credit and direct selling expenses to include only those models for which we had cost of manufacturing information.

Additionally, the costs of manufacturing amounts for these models were revised to include the verified 1988–1989 weighted-average costs instead of the 1988 cost data originally submitted by Giacomini for each of the model types.

2. One third country model was inadvertently used in the calculation of the weighted-average foreign market value for one U.S. sale. This model was not comparable to the other models used to calculate the foreign market value for the product in question, and should not have been used in the calculation of foreign market value. We removed this model from the third country sales listing and used the appropriate remaining third country sales to calculate the weighted-average foreign market value for the U.S. sale in question.

Amended Final Results of Review

We have amended the final results of review as follows:

Manufacturer/exporter	Time period	Previous margin (%)	Amended margin (%)
Rubinetteria A. Giacomini, S.p.A.	03/01/88–02/28/89	4.51	3.06

Dated: April 30, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–10595 Filed 5–7–90; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Salinas, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months if $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period October 1, 1990 to September 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Salinas, California geographic service area.

The I.D. Number for this project will be 09–10–90006–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements including in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Peiodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is June 15, 1990. Applications must be postmarked on or before June 15, 1990.

ADDRESSES: San Francisco Regional Office, Minority Business Development

Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, May 25, 1990 at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. John Iglehart, Acting Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 2, 1990.

John F. Iglehart,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 90–10645 Filed 5–7–90; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Endangered Species; Application for Permit; Steven P. Cramer (P465)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant:*

Steven P. Cramer, Fisheries Consultant, 1140 NW Walnut Blvd., Corvallis, OR 97330.

2. *Type of Permit:* Scientific purposes.

3. *Name and Number of Species:* Chinook salmon (*Oncorhynchus tshawytscha*) up to 32,800.

4. *Type of Take:* The applicant proposes to conduct mark-recapture studies of juvenile winter chinook salmon to determine the factors influencing their survival as a they pass the Glenn-Colusa Irrigation District (GCID) screened diversion on the Sacramento River near Hamilton City. The study plan calls for capture, cold branding, and release of up to 12.8K juvenile winter chinook. This sample size is the calculated optimum for determining loss rate through the oxbow channel at two different flows. It is unlikely that the applicant will capture enough fish to reach this ideal sample size. The application expects that 10% to 20% of these fish will be recaptured once after being marked and released. Additionally, 500 to 20K juveniles will be captured, examined for marks and released. Some fish will be recaptured and re-released.

5. *Location and Duration of Activity:* Winter chinook will be sampled when they begin emerging from the gravel in mid-July and continue through October. The rotary screw trap will be fished at a fixed location at the lower end of the oxbow channel from which GCID diverts water from the Sacramento River.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. 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 hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, MD 20910, (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115.

Dated: May 1, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 90–10608 Filed 5–7–90; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Application for Permit; U.S. Fish and Wildlife Service (P45E & P45F)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant:*

U.S. Fish and Wildlife Service, Fisheries Assistance Office, P.O. Box 667, Red Bluff, CA 96080.

and

U.S. Fish and Wildlife Service, Fisheries Assistance Office, 4001 N. Wilson Way, Stockton, CA 95205.

2. *Type of Permit:* Scientific purposes.

3. *Name and Number of Species:* Chinook salmon (*Oncorhynchus tshawytscha).*

4. *Type of Take:* The Red Bluff biologists propose to take up to 5000 juvenile Sacramento River winter-run chinook salmon by seining, fykenetting, trawling and push-netting in the course of fishery monitoring and studies. The salmon will be examined for biological growth data, smoltification and health; up to 50 adult chinook salmon will be taken by electrofishing, drift gill-netting and by use of the upstream migrant fish trap. These adult salmon will be fitted with an externally attached radio telemetry transmitter; and up to 6,000 fertilized winter-run salmon eggs will be taken in equal proportions from each of five one male-to one-female matings (i.e., about 1200 eggs from each female) to be spawned at Coleman National Fish Hatchery near Anderson, CA during the months of May through August. All fish will be released at the capture site immediately after data is collected.

The Stockton Office biologists propose to take up to 100 juvenile chinook salmon by seining and trawling in the course of fishery monitoring. These salmon will be counted, measured and examined in the field, for biological data on growth, smoltification and fish health. Immediately after data is collected the fish will be returned alive to the river at site of capture.

5. *Location and Duration of Activity:* The Red Bluff staff will operate in the upper Sacramento River. River mile 160 to 302 during the course of a year. The Stockton staff will operate in the lower Sacramento River. River Mile 0 to River mile 146. The applicants requested a year to year permit with renewable options; however, NMFS will grant a 5-

year permit if the application is approved.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. 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 hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910;

Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 1, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–10609 Filed 5–7–89; 8:45 am]

BILLING CODE 3510–22–M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will hold a public meeting on May 14, 1990, at the Blue Beard's Castle Hotel, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

The Administrative Committee will begin meeting at 1 p.m., to discuss implications of the draft tuna bill (S. 1025), in relation to the Magnuson Fishery Conservation and Management Act. The Committee also will discuss the Caribbean Council's administrative operations.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: May 3, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–10693 Filed 5–7–90; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,842,884, "Formulated Milk Concentrate and Beverage" to Packers Central Inc., having a place of business in Kansas City, Kansas 66117. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention is a formulated milk concentrate emulsion comprising about 25–60% by weight of nonfat dry milk solids, 15–40% by weight of water, 3–40% by weight of a nondairy edible oil, and 0–35% by weight of sugar, wherein the weight ratio of nonfat dry milk solids to water is between 1:0.55 and 1:0.75 and wherein there is no added emulsifier.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 53, No. 178 (1988). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–10668 Filed 5–7–90; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Grant and Cooperative Agreement Awards; University of California, San Diego

AGENCY: Department of Energy.

ACTION: Determination of noncompetitive financial assistance.

SUMMARY:

Research and Development of Superconducting Gravimeter for Geothermal Technology

The Department of Energy, Idaho Operations Office, intends to award a grant noncompetitively to the University of California, San Diego, for the continued development of a superconducting gravimeter which will have sufficient sensitivity to model fluid movement within geothermal reservoirs. The award will be for approximately $65,000. The project is expected to be completed by October 30, 1992. The statutory authority for the proposed award is the Geothermal Research, Development, and Demonstration Act of 1974 (Pub. L. 93–40). The proposed highly specialized work is a continuation of previous development sponsored by DOE. Understanding movement of fluids within a reservoir is vital to the prediction of reservoir productivity and lifetime and is needed in order to properly manage geothermal fields. These activities will further advance the knowledge, and ultimately encourage the utilization of an environmentally benign renewable energy source that will help reduce dependence upon foreign energy sources and help to reduce atmospheric pollution. The renewal of this noncompetitive assistance is justified under subparagraph (A) of criteria listed in 10 CFR part 600, § 600.7, as follows: (A) The activity to be funded is necessary to the satisfactory competition of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

Procurement request number: 07–90ID12959.000.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Elizabeth M. Bowham (208) 526–1229, Contracting Officer.

Dated: April 25, 1990.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 90–10643 Filed 5–7–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Changes to DOE Energy Information Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of changes to the inventory of energy information reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the DOE's Office of Management and Administration, are not included in these notices.

During the second quarter of fiscal year 1990 (January 1, 1990 through March 31, 1990), changes were made to the October 1, 1989 inventory of DOE information collections, which was published in the **Federal Register**, 54 FR 46288, (November 2, 1989). (Changes made during the first quarter were published on February 13, 1990, 55 FR 5058).

The second quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EIA's Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–8800.

Authority: Sec. 3506, Pub. L. 96–511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506.

Issued in Washington, DC, May 2, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Energy Information Administration:				
EIA–807	Propane Emergency Telephone Survey	19050178	04/30/90	

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control no.	Expiration date	CFR citation
Civilian Radioactive Waste Management:				
NWPA–830R*	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Contract.	19010260	02/28/93	10 CFR 961.
NWPA–830R–A–F*	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Annual Report.	19010260	2/28/93	10 CFR 961.
NWPA–830R–G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Quarterly Report—Standard Remittance Advice—Annex A.	19010260	2/28/93	10 CFR 961.
Federal Energy Regulatory Commission:				
FERC–568*	Well Category Determination	19020112	12/31/92	18 CFR 271.703, 274, 275.
FERC–580	Fuel Purchase Practices	19020137	06/30/90	
FERC/581*	Management and Procurement Reporting and Recordkeeping Requirements.	19020130	05/31/90	48 CFR Subtitle A, Chapter 9.
Fossil Energy:				
FE–746R*	Import and Export of Natural Gas	19010294	01/31/92	10 CFR 205, 590.

*Does not utilize a structured form

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Conservation and Renewable Energy:				
CE–63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Cell Manufacturers Survey.	19010292	12/31/924	

REINSTATED DOE ENERGY INFORMATION COLLECTIONS—Continued

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Federal Energy Regulatory Commission:				
FERC-519*	Disposition of Facilities, Mergers, and Acquisitions of Securities.	19020082	1/31/93	18 CFR 33.
FERC-520*	Application for Authority to Hold Interlocking Directorate Positions.	19020083	1/31/93	18 CFR 45.

*Does not utilize a structured form.

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
Energy Information Administration:				
EIA-213	Typical Net Monthly Bills	19050129	02/09/90	

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE Numbers as previously listed	Changes
Energy Information Administration:	
EIA-6	Changed reporting basis from district and State level to State level only.
EIA-867	Requested approval for revised environmental question on Schedule IIIB.

[FR Doc. 90-10644 Filed 5-7-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF90-137-000, et al.]

Middle Falls Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 1, 1990.

Take notice that the following filings have been made with the Commission:

1. Middle Falls Limited Partnership

[Docket Nos. QF90-137-000]

On April 18, 1990, Middle Falls Limited Partnership (Applicant), submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility (FERC P.8610) is located on the Battenkill River in the Towns of Easton and Greenwich, Washington County, New York. The facility consists of electric generation equipment and appurtenant facilities. The net electrical power production is approximately 2,060 KW using water as its primary energy source. No other fuels will be used at the facility for any purpose.

The facility is owned by the Applicant, a New York limited partnership whose general and limited partners are Adirondack Hydro Development Corporation and two subsidiaries of an electric utility holding company, Dominion Energy, Inc. and Dominion Cogen NY, Inc.

Comment date: June 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. NYSD Limited Partnership

[Docket No. QF90-135-000]

On April 18, 1990, NYSD Limited Partnership, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility (FERC P. 7481) will be located on the Mohawk River in the Town of Waterford and the City of Cohoes, Saratoga and Albany Counties, New York. The net electrical power production will be 10.3 MW using water as its primary energy source. No fossil fuel will be used at the facility.

The facility will be owned by the Applicant, a New York limited partnership whose general and limited partners are Adirondack Hydro Development Corporation and two subsidiaries of an electric utility holding company, Dominion Energy, Inc. and Dominion Cogen NY, Inc.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, or operation, licensing and pollution abatement.

Comment date: June 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 90-10601 Filed 5-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1246-000, et al.]

Truckline Gas Co., et al., Natural Gas Certificate Filings

May 1, 1990.

Take notice that the following filings have been made with the Commission:

1. Truckline Gas Company

[Docket No. CP90–1246–000]

Take notice that on April 25, 1990, Truckline Gas Company (Truckline), P.O. Box 1642 Houston, Texas 77251–1642, filed in Docket No. CP90–1246–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Truckline proposes to transport natural gas for PSI, Inc. (PSI). Truckline explains that service initially commenced October 1, 1987, under § 284.106 of the Commission's Regulations, as reported in Docket No. ST88–524. Truckline explains that PSI has requested that such transportation service be performed under section 284.223. Truckline states other than this change, there would be no change in the service performed for PSI.

Truckline further explains that the peak day quantity would be 250,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 45,625,000 dekatherms. Truckline explains that it would receive natural gas for PSI's account at existing points of receipt in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle Eastern Pipe Line Company receipt in Douglas County, Illinois, and from the areas of Offshore Louisiana and Texas. Truckline states that it would transport and redeliver the natural gas to Texas Eastern Transmission Corporation in Beauregard Parish, Louisiana. Truckline states that service under Section 284.223 commenced on February 1, 1990, as reported in Docket No. ST90–2000

Comment date: June 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation, United Gas Pipe Line Co.

[Docket No. CP90–1248–000]

Take notice that on April 25, 1990, Texas Eastern Transmission Corporation (Tetco), One Houston Center, Houston, Texas 77010–2070, and United Gas Pipe Line Company (United), 600 Travis Street, Houston, Texas 77002, jointly referred as Applicants, filed a joint application in Docket No. CP90–1248–000, pursuant to section 7 of the Natural Gas Act, to implement a service agreement dated April 12, 1990, between the Applicants which modifies the sales service from United to Tetco covered under a previous service agreement, as amended, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that United was authorized to sell to Tetco up to a maximum daily quantity (MDQ) of 600,000 Mcf pursuant to the Commission's order issued September 30, 1985, in Docket No. CP85–368–000. It is stated that the service agreement implementing the authorization provided for three primary delivery points and six secondary delivery points. Applicants also state that the service agreement provides that Tetco is contractually entitled to reduce the MDQ by up to 100,000 Mcf each November 1 upon given appropriate notice.

It is then stated that on July 6, 1988, the Commission issued an order authorizing a reduced certificated level of 400,000 Mcf per day and a reduced D–1 billing determinant to 400,000 Mcf per day. It is then indicated that since that time disputes have occurred between United and Tetco involving, *inter alia*, the currently effective service agreement.

Applicants state that they have now executed a service agreement dated April 12, 1990, which resolves these disputes. Under the new agreement, Applicants have agreed to the following: (1) Establishes effective November 1, 1989, a new sevice level of 300,000 Mcf per day, along with reductions in the maximum daily delivery obligations at each of the three primary delivery points; (2) establishes a November 1, 1991, termination date of the new service agreement; (3) resolves all disputes and renders moot and filings pertaining to the existing service agreement; (4) requires the withdrawal of Texas Eastern's filing in Docket No. CP89–1572–000 subject to execution by the parties and any necesary regulatory approval of the revised service agreement; (5) requires the withdrawal of United's lawsuit against Texas Eastern in the District Court of Harris County, Texas, Cause No. 89–13297; and (6) requires United to file the required tariff sheet to implement the change in Tetco's MDQ.

To implement the April 12, 1990, service agreement, Applicants request authorization to reduce Tetco's MDQ from 400,000 Mcf to 300,000 Mcf and to modify Tetco's Maximum daily delivery obligations as detailed in the service agreement and to abandon the revised service agreement effective November 1, 1990. No abandonment of facilities is proposed.

Comment date: May 22, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company and Southern Natural Gas Company

[Docket Nos. CP90–1245–000; and CP90–1250–000]

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202 (Applicants), filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of various shippers under blanket certificates issued at Docket Nos. CP87–115–000 and CP88–316–000 respectively, pursuant to Section 7 of the NGA, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Docket No.	Shipper	Volumes (peak, average annual)	ST docket start up date	Receipt points (state)	Delivery points (state)	Rate schedule
CP90-1245-000	Centran Corp	[2] 250,000 250,000 91,250,000	ST90-2628 3-28-90	Various	Various	IT.
CP90-1250-000	Shell Gas Trading Company	[3] 33,000 33,000 12,045,000	ST90-2268 3-1-90	Various	Louisiana	FT.

[2] Dekatherms.
[3] Mcf.

4. El Paso Natural Gas Co.

[Docket No. CP90-1257-000]

Take notice that on April 26, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-1257-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Hunter Exploration Ltd. (Shipper) under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 154,500 MMBtu equivalent of natural gas on a peak day, 25,750 MMBtu equivalent on an average day, and 9,398,750 MMBtu equivalent on an annual basis for Shipper. It is stated that El Paso would receive the gas for Shipper's account at any point on El Paso's system and would deliver equivalent volumes to Shipper at various points on El Paso's system at the Arizona-California border. It is asserted that the transportation service would use existing facilities and would require not construction of additional facilities. It is explained that the transportation service commenced March 26, 1990, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-2544.

Comment date: June 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferenced upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instance notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instance request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10602 Filed 5-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-193-010]

North Penn Gas Co.; Filing of Refund Report

May 1, 1990.

Take notice that on March 28, 1990, North Penn Gas Company (North Penn) filed a report detailing its March 28, 1990, refund to Corning Natural Gas Corporation, as directed by the Commission's March 13, 1990, order in Docket No. RP85-193-009.

Any person wishing to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before May 10, 1990. A copy of the respective filing is on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10605 Filed 5-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10494-002; Washington]

Snoqualmie River Hydro; Surrender of Preliminary Permit

May 1, 1990.

Take notice that Snoqualmie River Hydro, permittee for the Lennox Creek Project No. 10494, to be located in Mt. Baker—Snoqualmie National Forest, on Lennox Creek in King County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 27, 1988, and would have expired on March 31, 1991.

The permittee filed the request on April 13, 1990, and the preliminary permit for Porject No. 10494 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10603 Filed 5-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10495-002; Washington]

Snoqualmie River Hydro; Surrender of Preliminary Permit

May 1, 1990.

Take notice that Snoqualmie River Hydro, permittee for the North Fork Snoqualmie Project No. 10495, to be located in Mt. Baker—Snoqualmie National Forest, on the North Fork Snoqualmie River and Illinois Creek in King County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 29, 1988, and would have expired on March 31, 1991.

The permittee filed the request on April 13, 1990, and the preliminary permit for Project No. 10495 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10604 Filed 5-7-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3764-1]

Agency Information Collection Activities Under OMB Review

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 the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Public comments must be submitted on or before June 7, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Environmental Radiation Ambient Monitoring System (ERAMS). (ICR #0877.3; OMB #2060-0015). This is a reinstatement of a previously approved collection.

Abstract: States and some local governments collect samples of air, pasteurized milk, rain water, and surface and ground water at certain intervals. These samples are sent to EPA's ERAMS, and are tested for radioactive contamination. EPA's ERAMS uses these data to estimate ambient levels of radioactive pollutants in the environment, to recognize trends in radiation levels, to assess the impact of fallout, and other intrusions of radioactive materials.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1.08 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: States and some local governments.

Estimated No. of Respondents: 332.

Estimated Total Annual Burden on Respondents: 9573 hours.

Frequency of Collection: Quarterly, monthly, twice weekly, and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530

Dated: May 1, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-10687 Filed 5-7-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3764-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Redcuction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 7, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS—Sulfuric Acid Plants (Subpart H). (EPA ICR #1057.05; OMB #2050-0122). This request would reinstate a previously approved collection for which clearance has expired.

Abstract: Owners and operators of Facilities which produce sulfuric acid must notify the delegated State or local authority of construction, modification, startups, shutdowns, malfunctions, and the date and results of initial performance tests. Respondents install, calibrate and maintain a continuous emissions monitor for sulfur dioxide, and record equipment operating parameters, including calculation of conversion factors. Alternative emission monitoring requirements are available for some sources. EPA uses this information to regulate sulfuric acid plant emissions which may contribute to air pollution or be anticipated to endanger public health or the environment.

Burden Statement: The public reporting burden for this collection of information is estimated to average 49 hours per respondent. Recordkeeping imposes a burden of 139 hours and forty minutes per respondent. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of surfuric acid plants.

Estimated Number of Respondents: 82.

Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 19,493.2 (reporting, 8,063.2; recordkeeping, 11,430).

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 1, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90–10688 Filed 5–7–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 1, 1990.

BACKGROUND

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendatons received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before May 22, 1990.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affaris, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Proposal to approve under OMB delegated authority the extension, with revision, of the following report:

1. *Report title:* Notice by Financial Institutions of, and Termination of, Activities as a Government Securities Broker or Government Securities Dealer.

Agency form number: FR G–FIN and FR G–FINW.

OMB Docket number: 7100–0224.

Frequency: On occasion.

Reporters: State member banks, foreign banks, state-chartered branches and agencies of foreign banks, and commercial lending companies owned or controlled by foreign banks.

Annual reporting hours: 50.

Estimated average hours per response: One.

Number of respondents: Fifty.

Small businesses are affected.

This information collection is mandatory (15 U.S.C. 78o–5(a)(1)(B)) and is not give confidential treatment.

Each financial institution that acts as a government securities broker or dealer is required to notify its appropriate federal regulatory agency of its broker-dealer activities by filing an FR G–FINN, unless exempted from the notice requirement by Treasury Department regulation. Financial institutions that have previously filed an FR G–FIN and that have terminated their broker-dealer activities must notify their appropriate federal regulatory agency by filing an FR G–FINW. The revisions involve changing the name of one of the federal agencies and making other minor editorial and organizational changes to the form and instructions.

Board of Governors of the Federal Reserve System, May 1, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–10623 Filed 5–7–90; 8:45 am]

BILLING CODE 6210–01–M

First Financial Corp., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Financial Corporation,* Wellington, Kansas; to engage *de novo* through its subsidiary, First National Bank, Wellington, Kansas, in community development activities under § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10624 Filed 5-7-90; 8:45 am]

BILLING CODE 6210-01-M

SCB Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 29, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire Yankton Savings and Loan Association, Yankton, South Dakota, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and in general insurance activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act and § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Yankton and Bon Homme Counties, South Dakota and Knox and a portion of Cedar County Nebraska.

Board of Governors of the Federal Reserve System, May 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10625 Filed 5-7-90; 8:45 am]

BILLING CODE 6210-01-M

Sam Sawyer, et al.; Change in Bank Control Notices, Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Sam Sawyer,* Tullahoma, Tennessee; to retain 4.7 percent of the outstanding shares that increased his total ownership from 9.8 percent to 14.5 percent as the result of a stock redemption of American City Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly acquire American City Bank, Tullahoma, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Clark H. Byrum,* to acquire an additional 45.6 percent, for a total of 68.9 percent; The Key Corporation, Indianapolis, Indiana, to acquire 6.54 percent; and Key Life Insurance Company, Indianapolis, Indiana, to acquire 18.4 percent of the voting shares of American State Corporation, Lawrenceburg, Indiana, and thereby indirectly acquire American State Bank, Lawrenceburg, Indiana. Comments on this application must be received by May 17, 1990.

2. *Dorothy B. Jurgens,* Janet L. Winningham & James B. Jurgens, as Trustee of the Ervin L. Jurgens Trust; to acquire 34.98 percent of the voting shares of Arthur Bancshares Corporation, Arthur, Illinois, and thereby indirectly acquire State Bank of Arthur, Arthur, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reelfoot Bank Employee Stock Ownership Plan,* Union City, Tennessee; to acquire an additional 9.33 percent of the voting shares of Reelfoot Bancshares, Inc., Union City, Tennessee, for a total of 24.90 percent, and thereby indirectly acquire Fulton Bank, Fulton, Kentucky, and Reelfoot Bank, Hornbreak, Tennessee.

Board of Governors of the Federal Reserve System, May 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10626 Filed 5-7-90; 8:45 am]

BILLING CODE 6210-01-M

UBF Holding Company, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a

written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 29, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1 *UBF Holding Company, Inc.*, Charleston, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of BankFirst Corp., McLean, Virginia, and thereby indirectly acquire Bank First, N.A., McLean, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Gwinnett Bancshares, Inc.*, Norcross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Gwinnett Bank, Norcross, Georgia.

2. *Valley Bancshares, Inc.*, Russellville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Valley State Bank, Russellville, Alabama.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capitol Bancorp, Ltd.*, Lansing, Michigan; to acquire 90 percent of the voting shares of Ann Arbor Commerce Bank, Ann Arbor, Michigan, a *de novo* bank.

2. *Financial Center Corporation*, Holland, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Paragon Bank, Holland, Michigan, a *de novo* bank.

3. *John Warner Financial Corporation*, Clinton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The John Warner Bank, Clinton, Illinois.

4. *Northwest Bancorp, Inc.*, Hoffman Estates, Illinois; to become a bank holding company by acquiring 79.89 percent of the voting shares of First National Hoffman Bancorp, Inc., Hoffman Estates, Illinois, and thereby indirectly acquire First National Bank of Hoffman Estates, Hoffman Estates, Illinois; and 80.52 percent of the voting shares of First Midwest Financial Corporation, Hoffman Estates, Illinois, and thereby indirectly acquire Charter Bank and Trust of Illinois, Hanover Park, Illinois.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Nichols Financial, Inc.*, Sunfish Lake, Minnesota; to become a bank holding company by acquiring 80.7 percent of the voting shares of First State Bank of Storden, Storden, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *F and M Bank Services, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants State Bank, Derby, Kansas.

Board of Governors of the Federal Reserve System, May 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–10627 Filed 5–7–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 15¼% for the quarter ended March 31, 1990. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: May 2, 1990.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 90–10674 Filed 5–7–90; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

[Announcement Number OH–90–029]

National Institute for Occupational Safety and Health; Health and Safety Programs for Construction Work

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), solicits cooperative agreement applications for health and safety programs for construction work that involve evaluation of work-related injuries and diseases, data management and analysis, and intervention activities.

Authority

The legislative authority for this program is contained in section 20 of the Occupational Safety and Health Act (29 U.S.C. 669(a)(1)).

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations and State and local governments. Applicants must have ongoing activities related to construction workers and be either organizations with joint labor-management agreements, occupational medicine clinics with established linkages with labor/management organizations, or State or local health departments with established linkages with labor/management organizations. One or more organizations may be subcontractors to the applicant organization in order to address certain "Recipient Activities" under Program Requirements for which the applicant organization does not have expertise or resources. Collaboration between the above different types of organizations to submit a joint application is strongly encouraged.

Available of funds

It is anticipated that $500,000 will be available for the first year of this program to support 5–7 cooperative agreement awards. The average award will be $85,000. Project periods may be up to 5 years, depending on availability of funds, with budget periods of 12 months. The award sizes will decrease in each succeeding year.

Purpose

The purpose is to address the hazards that construction workers face on the job. The program is intended to provide coordination and targeting, at locations of the country where construction work is a major activity, of efforts to identify, evaluate, and control work-related risks

that otherwise would cause adverse effects among the exposed workers.

Program Requirements

1. Recipient Activities: Build a capability in locations of the country where construction work is a major activity to accomplish the following:

a. Demonstrate the ability to perform clinical evaluations of workers employed in the construction industry for suspect occupational diseases or injuries.

b. Create systematic, confidential computer reporting systems that provide (1) Consistent documentation of specific occupational diseases and injuries of workers employed in the construction industry, (2) medical and occupational histories for individual workers who report to the clinic, and (3) continuous reporting of findings to the appropriate State government and to NIOSH.

c. Perform on-site evaluations of factors that are potentially responsible for the illness or injury. (To demonstrate to NIOSH the applicant's ability to gain access to the worksites to perform such evaluations, a written statement must be provided in the applications demonstrating unimpeded access to worksites as a result of existing State or local regulations or labor-management agreements.)

d. Provide technical consultation, education material, and training to workers and employers on the exposure situations that are observed to be potentially hazardous, and follow-up at appropriate times to determine what actions have been taken to prevent future occurrences.

e. Either directly or by interaction with qualified persons, including NIOSH staff, design and conduct demonstration projects of intervention approaches to determine the effectiveness of the interventions and show the general utility of the approaches in other similar settings (e.g., fall protection, hearing conservation, motor vehicle safety, and respiratory protection).

f. Analyze data collected and disseminate summary information semiannualy to workers, employers, and primary care providers in the area.

2. NIOSH Activities: a. Provide consultation and technical assistance in all phases of development, implementation and evaluation of these programs.

b. Provide guidance on the occupational conditions appropriate for reporting and intervention.

c. Provide technical assistance in defining survey instruments for evaluation of work histories, the work site, and the overall program itself. Also assist in defining the computer data bases that will be used to record, analyze, and transfer data. (Projects funded through a Cooperative Agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.)

d. Provide information and guidance for intervention activities that are developed in response to situations that arise.

e. Provide technical assistance in formulating plans for information dissemination.

Evaluation Criteria

Applications will be reviewed and evaluated by a dual review process. The initial review will be for scientific merit and conducted by an appropriate ad hoc peer review group. The secondary review for programmatic relevance will be made by an internal NIOSH committee.

Factors considered to be important for review include scientific significance of the project, adequacy of the methodology proposed to carry out the research, competence of the proposed staff in relation to the type of project involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, appropriateness of the budget request, availability of subject population(s) when applicable, and evidence of willingness to work cooperatively with appropriate federal staff.

Applicants must agree to finance an increasing share of the project cost from their own resources for each succeeding year.

Applicants must also give evidence of the existence of collaborative agreements among labor and management organizations to accomplish the objectives of the proposals.

Funding Priorities

It is anticipated that at least one award will be made to each of the types of organizations listed under Eligible Applicants, contingent on the receipt of meritorious applications.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 13.262.

Application Submission and Deadlines

1. Letter of Intent

Prospective applicants are asked to submit, by June 1, 1990, a letter of intent that includes a reference to the number and title of the Request for Applications, a descriptive title of the proposed effort, the name and address of the principal investigator, the names of other key personnel, and the participating institutions. The letter of intent is requested in order to provide an indication of the number and scope of applications to be reviewed. This letter of intent does not commit the sender to submit an application, nor is it a requirement for submission of an application.

2. Applications

Applications should be submitted on Form PHS–398 (revised October 1988). State and local government applicants may use PHS–5161 (revised March 1989), however, Form PHS–398 is preferred. Forms are available from the office listed below: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

The original and six copies of the application must be submitted to the address below on or before the specified receipt date in accordance with the instructions in the PHS–398 packet: Division of Research Grants, National Institutes of Health, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Please refer to Announcement Number OH–90–029 when requesting information. It is essential that applicants type "NIOSH Announcement Number OH–90–029" in item 2 on the face page of the PHS–398 application form. Applicants must affix the RFA label available in the 398 to the bottom of the face page. Failure to use this label could result in delayed processing of the application such that it may not reach the review committee in time for review.

3. Deadlines

The instructions in the Form PHS–398 packet should be followed concerning deadlines for either delivering or mailing the applications to comply with the deadline for this announcement. Applications shall be considered as meeting the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated receipt from a commercial carrier

or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Late applications will not be considered in the current competition and will be returned to the applicant. The application should be sent or delivered using the mailing label in the Form PHS-398 packet.

4. Receipt and Review Schedule

This is a one-time solicitation with the following review schedule:

Receipt of applications, July 9, 1990
Initial review, July
Secondary review, August
Earliest award date, September 1, 1990

Where to Obtain Additional Information

For Programmatic Information Contact: Roy M. Fleming, Sc.D., Associate Director for Grants, NIOSH, Centers for Disease Control, Building 1, Room 3053, MS-D30, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: (404) 639-3343.

For Business Information Contact: Lisa Tamaroff, Grants Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, NE., room 415, Atlanta, Georgia 30305, Telephone: (404) 842-6630.

Dated: May 2, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90-10646 Filed 5-7-90; 8:45 am]

BILLING CODE 4160-19-M

[Announcement No. OH-90-028]

Implementation of Occupational Safety and Health Prevention Strategies; National Institute for Occupational Safety and Health

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), solicits cooperative agreement applications for implementation of the "Proposed National Strategies for the Prevention of Leading Work-Related Diseases and Injuries." The purpose of the strategies is to provide guidance for a national initiative to reduce or eliminate problems associated with the workplace including the generation of knowledge about the risks and solutions to the HIV/AIDS hazard among certain worker groups. This initiative involves all parties interested in occupational safety and health matters, including government, academia, industry, labor, insurance companies, and the legal system. NIOSH proposes to stimulate cooperation with outside organizations that can contribute to the initiative.

Authority: The legislative authority for this program is contained in section 20 of the Occupational Safety and Health Act (29 U.S.C. 669(a)(1)) and section 501(c) of the Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 951).

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations which have an established network of health and safety professions that cover the spectrum of scientific disciplines and occupational concerns reflected in the "Proposed National Strategies." (Information on this report may be obtained from the individuals listed under "Where to Obtain Additional Information" section.) Eligible applicants may enter into contracts, including consortia agreements (as described in PHS Grants Policy Statement), as necessary to meet the requirements of this program and to strengthen the overall application.

Availability of Funds

Approximately $200,000 is available in this Fiscal year to fund one Cooperative Agreement. It is anticipated that between four to six component projects will be funded under this one agreement. Of the total $200,000 available, $100,000 will be for projects specifically related to HIV infection. The award will be made with 12 month budget periods within a project period of up to 5 years. Continuation awards within the project period are made on the basis of satisfactory progress and the availability of funds.

Program Requirements

1. Recipient—From among the following types of activities, applicants should propose to address those areas that are within the interests and strengths of their organizations:

a. Develop surveillance methods to identify and report problems that are not well defined at present. Seek information on new technologies and new occupations to predict hazards that may be associated with them. Profile changes that are occurring in industry and occupational safety and health. Evaluate the effectiveness of surveillance methods in directing the optimum prevention measures and in measuring the impact of prevention.

b. Develop knowledge through scientific research that is needed to accomplish the prevention steps defined in the "Proposed National Strategies" and to address the HIV/AIDS concerns. Conduct research on sampling and analysis of hazardous agents in the workplace, characterizing exposures, determining relationships between exposures and effects, understanding the mechanisms of disease, defining early stages of diseases, and developing controls or substitutes for hazardous agents.

c. Define and demonstrate good work practices to eliminate exposure to hazards. Develop communication models for informing management and labor of the nature of the work hazards and for modifying attitudes and behavior.

d. Meet annually with NIOSH representatives in Atlanta, Georgia, to discuss progress, exchange information, and to seek means of resolving problems which have arisen. Applicants should include travel funds in the proposal for this annual meeting.

e. Publish results of research in the appropriate scientific literature. (Projects funded through a Cooperative Agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.)

2. NIOSH—Representatives from NIOSH will assist, advise, and interact with the successful applicant in the following ways:

a. Provide consultation and technical assistance in planning, conducting, and evaluating prevention-related activities.

b. Provide scientific information related to the proposed research topics.

c. Meet annually with recipient in Atlanta, Georgia, to discuss progress, exchange information, and seek means of resolving problems which have arisen.

d. Collaborate in the development of surveillance methods for discovering and documenting problems that are not yet well defined.

e. Assist in predicting hazards that may be associated with new technologies and new occupations and characterize changes that are occurring in industry and occupation safety and health.

f. Assist in determining the effectiveness of surveillance methods in directing the optimum prevention measures and in measuring the impact of prevention.

g. Provide technical assistance in conducting scientific research.

h. Assist in the dissemination of information about good work practices to eliminate exposure to hazards.

i. Assist in encouraging schools of business and engineering to address more definitively the training of students in the recognition of work hazards and the need for prevention.

Evaluation Criteria

Applications will be reviewed and evaluated by a dual review process. The initial review will be for scientific merit and conducted by an appropriate ad hoc peer review group. The second review for programmatic relevance will be made by an internal NIOSH committee.

Factors considered to be important for review include scientific significance of the project, adequacy of the methodology proposed to carry out the research, competence of the proposed staff in relation to the type of project involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, appropriateness of the budget request, availability of subject population(s) when applicable, and evidence of willingness to work cooperatively with appropriate federal staff.

Applicants must also give evidence of the existence of a network of health and safety professionals within the organization who can address the range of issues covered in the "Proposed National Strategies."

Funding Priorities

Preference will be given to applications that are written to address broadly-based, multidisciplinary, research programs which have specific major objectives or basic themes. Each program should be directed toward a range of problems having a central focus, in contrast to independent unrelated projects.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 13.262.

Application Submission and Deadline

1. Letter of Intent:

Prospective applicants are asked to submit, by June 1, 1990, a letter of intent that includes a reference to the number and title of the RFA, a descriptive title of the proposed effort, the name and address of the principal investigator, the names of other key personnel, and the participating institutions. The letter of intent is requested in order to provide an indication of the number and scope of applications to be reviewed. This letter of intent does not commit the sender to submit an application, nor is it a requirement for submission of an application. This letter should be submitted to the Grants Management Officer (address given in item 2.)

2. Applications:

Applications should be submitted on Form PHS–398 (revised October 1988.) State and local government applicants may use PHS–5161 (revised March 1989); however, Form PHS–398 is preferred. Forms are available from the office listed below: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control 255 East Paces Ferry Road, N.E., room 300 Atlanta, Georgia 30305.

The original and ten copies of the application (Form PHS–398) or an original and two copies of the application (Form PHS–5161) must be received at the address indicated below on or before July 9, 1990: Division of Research Grants, National Institutes of Health, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Please refer to Announcement Number OH–90–028 when requesting information. *It is essential that applicants type "NIOSH Announcement Number OH–90–028" in item 2 on the face page of the PHS–398 application form. Applicants must affix the RFA label available in the 398 to the bottom of the face page.*

Failure to use this label could result in delayed processing of the application such that it may not reach the reveiw committee in time for review.

3. Deadlines:

The instructions in the Form PHS–398 packet should be followed concerning deadlines for either delivering or mailing the applications to comply with the deadline for this announcement. Applications shall be considered as meeting the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly–dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Late applications will not be considered in the current competition and will be returned to the applicants. The application should be sent or delivered using the mailing label in the Form–398 packet.

This is a one-time solicitation with the following review schedule:

Receipt of applications	Initial review	Secondary review	Earliest award date
July 9, 1990.	July	August	September 1, 1990.

Where to Obtain Additional Information

For Programmatic Information: Roy M. Fleming, Sc.D., Associate Director for Grants, NIOSH, Centers for Disease Control, Building 1, room 3053, MS–D30, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: (404) 639–3343.

For Business Information: Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, NE., room 415, Atlanta, Georgia 30305, Telephone: (404) 842–6630.

Dated: May 2, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90–10648 Filed 5–7–90; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 90M–0142]

Leocor, Inc.; Premarket Approval of Leocor Percutaneous Transluminal Coronary Angioplasty Catheter, Model 5S

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Leocor, Inc., Webster, TX, for premarket approval, under the Medical Device Amendments of 1976, of the Leocor Percutaneous Transluminal Coronary Angioplasty Catheter, Model 5S. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 30, 1990, of the approval of the application.

DATES: Petitions for administrative review by June 7, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

SUPPLEMENTARY INFORMATION: On February 9, 1989, Leocor, Inc., Webster, TX 77598, submitted to CDRH an application for premarket approval of the Leocor Percutaneous Transluminal Coronary Angioplasty Catheter, Model 5S. The catheter is indicated for use in patients with significant coronary artery disease who are acceptable candidates for coronary artery bypass graft surgery and who meet one of the following selection criteria:

1. Single or multiple vessel atherosclerotic coronary artery disease that is concentric and accessible to a dilatation catheter;

2. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary bypass graft surgery and who have recurrence of symptoms, and (a) Progression of disease, or (b) stenosis and closure of the grafts.

On September 25, 1989, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 30, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Tara A. Ryan (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 7, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 30, 1990

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 90–10629 Filed 5–7–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–90–3077]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Rental Rehabilitation Program, FR–1901–F–04.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: This final rule requires grantees and state recipients participating in the Rental Rehabilitation Program to report and maintain for monitoring, data related to tenants assisted both before and after rehabilitation. The rule also imposes recordkeeping burdens consistent with the requirements of section 17 and related laws and authorities.

Form Number: HUD–40014, 40014–B, 40014–A, 40015, 40015.1, 40018, 40018–A, 40021, 40022, and 40070.
Respondents: State or Local Governments.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	750		53.43		.7944		31,817.5
Recordkeeping	800		1		35.706		28,565

Total Estimated Burden Hours: 60,382.5.
Status: Revision.
Contact: Frances W. Bush, HUD, (202) 755–6296, Scott Jacobs, OMB, (202) 395–6880.

Date: May 2, 1990.

Proposal: Rental Rehabilitation Program, FR–2771–P–0.
Office: Community Planning and Development.
Description of the Need for the Information and its Proposed Use: The proposed rule will require grantees and state recipients who participate in the Rental Rehabilitation Program (RRP) to report and maintain for monitoring, data related to projects assisted with RRP funds. It will also impose reporting burdens consistent with the requirements of section 17 and related laws and authorities.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	8		1		3		24

Total Estimated Burden Hours: 24.
Status: New.
Contact: Frances W. Bush, HUD, (202) 755–6296, Scott Jacobs, OMB, (202) 395–6880.

Dated: May 2, 1990.

[FR Doc. 90–10637 Filed 5–7–90; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–680–00–4130–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (—), Washington, D.C. 20503, telephone 202–395–7340.

Title: Mining on Military Lands, 43 CFR 3828.
OMB approval number:
Abstract: Respondents supply information necessary for the Bureau of Land Management and the military department concerned to process plans of operation, evaluate the enviromental impacts to the lands monitor mineral exploration and development activities, and to ensure public safety. This information is needed to prevent unnecessary or undue degradation to the lands and to ensure the safe, uninterrupted, and unimpeded use of the lands for military purposes.
Bureau form number: None.
Frequency: Upon notification or filling.
Description of respondents: Individuals or multi-national entities exercising their rights under the Mining Law of 1872, as amended.
Estimated completion time: 2 hours.
Annual responses: 23
Annual burden hours: 46.
Bureau Clearance Officer. Geri Jenkins, 202–653–8853.

Hillary A. Oden,
Assistant Director—Energy and Mineral Resources.

[FR Doc. 90–10579 Filed 5–7–90; 8:45 am]
BILLING CODE 4310–84–M

[NV–930–00–4212–24; N–52354]

Realty Action; Filing of Application for Conveyance of Federally-Owned Mineral Interests; Nevada

Gerald Smith, ET AL has applied under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, 43 CFR part 2720; to purchase the Federal mineral interests in the following land:

Mount Diablo Meridian, Nevada

T. 23 S., R. 63 E., Sec. 11, NW¼.

FOR FURTHER INFORMATION CONTACT: Ben Collins, Las Vegas District Office, 4765 W. Vegas Dr., P.O. Box 26569, Las Vegas, Nevada 89126, 702–647–5000, for more information concerning this application.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, December 15, 1989, whichever occurs first.

Dated: April 27, 1990.

Colin P. Christensen,
Acting District Manager, Las Vegas, NV.

[FR Doc. 90–10670 Filed 5–7–90; 8:45 am]
BILLING CODE 4310–HC–M

[NV–050–00–4410–08]

Resource-Management Plans, etc.; Stateline Resource Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of public scoping period for stateline resource management plan and environmental impact statement (RMP/EIS).

SUMMARY: The scoping period for the Stateline RMP/EIS, as previously outlined in the **Federal Register**, Vol. 55, No. 60, Wednesday, March 28, 1990 has been extended from May 4, 1990 to May 31, 1990. Written comments must be received by May 31, 1990 in order to be considered in the scoping process.

DATES: Scoping period for the Stateline RMP/EIS ends May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Roger Alexander, RMP Team Leader, Stateline Resource Area, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126, (702) 647–5000.

Dated: May 1, 1990.

Daniel C.B. Rathbun,

Acting State Director, Nevada.

[FR Doc. 90–10647 Filed 5–7–90; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–00–4730–12]

Filing of Plats of Survey; Idaho

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 30, 1990.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and subdivision of certain sections, T. 11 S., R. 4 E., Boise Meridian, Idaho, Group No. 738, was accepted April 20, 1990.

The plat representing the dependent resurvey of a portion of the south boundary, T. 12 N., R. 3 W., portions of the boundary and subdivisional lines, and the subdivision of section 6, T. 11 N., R. 3 W., Boise Meridian, Idaho, Group No. 739, was accepted April 16, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 30, 1990.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 90–10671 Filed 5–7–90; 8:45 am]

BILLING CODE 4310–66–M

[MT–940–08–4520–11]

Land Resource Management; Survey Plat Filings: Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey for the following described land accepted April 10, 1990, will be officially filed in the Montana State Office, Billings, Montana, effective 30 days after publication.

Principal Meridian, Montana

T. 27 N., R. 47 E.

The plat representing the dependent resurvey of portions of the Eleventh Guide Meridian East through portions of Townships 26 and 27 North, between Ranges 46 and 47 East, portions of the subdivisional lines, the subdivision of sectional 31, the former bank meanders of the Missouri River in section 31, the survey of certain division of accretion lines and the present left bank meanders of the Missouri River in section 31, Township 27 North, Range 47 East, Principal Meridian, Montana. T. 26 N., R. 46 E.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines, subdivision of section 1, the former left bank of the Missouri River in section 1, the survey of certain division of accretion lines and a portion of the present left bank meanders of the Missouri River in section 1, Township 26 North, Range 46 East, Principal Meridian, Montana.

If protest against this survey, as shown on this plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissals affirmed.

These surveys were executed at the request of the Bureau of Indian Affairs.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: April 30, 1990.

Robert W. Faithful,

Associate State Director.

[FR Doc. 90–10631 Filed 5–7–90; 8:45 am]

BILLING CODE 4310–DN–M

[CA–940–00–4212–11; CACA 2182]

California, Realty Action; Termination of Classification for Recreation and Public Purposes; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of Termination of Classification for Recreation and Public Purposes, CACA 2182.

SUMMARY: The Notice of Termination of Classification for Recreation and Public Purposes (CACA 2182) published April 5, 1990 (55 FR 12748) is hereby corrected as follows:

The classification will be lifted from lot 14 and portion of M.S. 5233 located in sec. 4 of T. 6 S., R 6 E., Mount Diablo Meridian.

Dated: April 30, 1990

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89–10635 Filed 5–7–90; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of Draft Environmental Assessment and Land Protection Plan; Proposed Dahomey National Wildlife Refuge, Bolivar County, MS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment and land protection plan for the proposed establishment of Dahomey National Wildlife Refuge.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in Bolivar County, Mississippi. The purpose of the proposal is to provide protection and management for wintering waterfowl and other wildlife on approximately 12,000 acres of wetlands and associated habitats in the area. A Draft Environmental Assessment and Land Protection Plan has been developed by Service biologists in coordination with representatives from the Mississippi Department of Wildlife, Fisheries, and Parks; Ducks Unlimited; and the Mississippi Chapter of The Nature Conservancy, to consider the biological, environmental, and socioeconomic effects of acquiring 12,000 acres of waterfowl habitat in the area and establishing a national wildlife refuge. In the assessment, three alternatives and their potential impacts upon the environment are evaluated. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment and land protection plan will be available to the public on May 14, 1990. Written comments must be received no later than June 30, 1990, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to: Mr. Charles Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SW., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: Dahomey Plantation has been identified as one of the top four acquisition sites in Mississippi needed to help meet the goals of the North American Water Management Program (NAWMP). The Mississippi Delta has experienced wide scale habitat destruction and Dahomey Plantation represents the last remaining woodlands of any significance in the northern delta. The proposed refuge lands provide excellent waterfowl management potential through greentree reservoir development and retention of water in agricultural fields. The area would be a natural stop off for Canada geese traveling between refuges to the north and Yazoo National Wildlife Refuge. Since the area is in close proximity to the Mississippi River, migratory waterfowl should immediately begin to utilize the refuge as management commences.

The 8,500 acres of bottomland hardwood habitat within the proposed acquisition boundary also support a large deer herd and other game species including turkey, squirrel, and rabbit. Bobcat, coyote, mink, beaver, raccoon, and otter are the primary furbearers. The Dahomey woods, which are the largest in this part of the delta, serve as both a temporary home during migration and a permanent home for many species of passerine birds. The adjoining rice and bean fields offer similar habitat to many species of shore birds, wading birds, and waterfowl.

Dated: April 24, 1990.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 90-10578 Filed 5-7-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properities being considered for listing in the National Register were received by the National Park Service before April 28, 1990 Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properities under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 23, 1990.

Carol D. Shull,

Chief of Registration, National Register.

Florida

Marion County

Smith, E.C., House, 507 NE. 8th Ave., Ocala, 90000806

Georgia

Carroll County

McDaniel—Huie Place, 1238 SR 166 W., Carroll vicinity, 90000803

Fulton County

Rock Spring Presbyterian Church, 1824 Piedmont Ave. NE., Atlanta, 90000804

Gwinnett County

Craig, Robert, Plantation, 1504 Five Forks Trickum Rd., Lawrenceville vicinity, 90000805

Richmond County

Harrisburg—West End Historic District, Roughly bounded by 15th St., Walton Way, Heard Ave., Milledge Rd., and the Augusta Canal, Augusta, 90000802

IDAHO

Shoshone County

Kellogg Main Post Office (Historic US Post Offices in Idaho, 1900–1941), 302 S. Division, Kellogg, 90000793

INDIANA

Carroll County

Foreman—Case House, 312 E. Main St., Delphi, 90000811

Decatur County

Bromwell Wire Works, Jct. of First and Ireland Sts., Greenburg, 90000810

Hamilton County

Craig, William Houston, House, 1250 E. Conner St., Noblesville, 90000808

Marion County

Coulter Flats, 2161 M. Meridian St., Indianapolis, 90000807

Monroe County

Cantol Was Company Building, 211 N. Washington St., Bloomington, 90000812

Randolph County

Kirshbaum, Raphael, Building, NW. corner of Columbia and W. Pearl Sts., Union City, 90000813

Rush County

Washington, Booker T., School, 614 Fort Wayne Rd., Rushville, 90000809

Tippecanoe County

Upper Main Street Historic District, Roughly bounded by Ferry St., 6th St., Columbia St., and the Norfolk and Western Railroad tracks, Lafayette, 90000814

LOUISIANA

St. Charles Parish

Dorvin House, SR 18 NW of Hahnville, Hahnville vicinity, 90000799

MICHIGAN

Cheboygan County

Faunce-McMichael Farm, 11126 SR M-68, Burt Lake vicinity, 90000801

Genesee County

Genesee County Courthouse and Jail, 920 S. Saginaw St., Flint, 90000798

NEW YORK

Ontario County

Clifton Springs Sanitarium Historic District, E. Main St. between Crane and Prospect, Clifton Springs, 90000818

Otsego County

Swart—Wilcox House, Jct. of Wilcox Ave. and Henry St., Oneonta, 90000817

St. Lawrence County

Oswegatchie Pumping Station, Mechanic St. N of Lafayette St., Ogdensburg, 90000816

NORTH CAROLINA

Edgecombe County

Worsley—Burnette House, SR 1526 M of jct. with SR 1540, Conetoe vicinity, 90000791

Forsyth County

Conrad—Starbuck House, 118 S. Cherry St., Winston-Salem, 90000792

UTAH

Utah County

Alpine LDS Church Meetinghouse (Mormon Church Buildings in Utah), 50 N. Main, Alpine, 90000794

Peteetneet School, 50 N. 500 E., Payson, 90000795

VERMONT

Orange County

Mari-Castle, 41 S. Main St., Randolph, 90000796

Windham County

Milldean and Alexander—Davis House, Main St. near town center, Grafton, 90000815

Windsor County

Bethel Village Historic District Amendment (Boundary Increase),
SR 107 across the White R. and N to Central Vermont Railway tracks, Bethel, 90000797
Stockbridge Common Historic District,
Area around Stockbridge Common, including Maplewood Cemetery, Stockbridge, 90000800

[FR Doc. 90-10649 Filed 5-7-90; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 1, 1990.

The Office of Management and Budget (OMB) has been sent the following collection of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether Section 3504(h) of Public Law 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated public burden and the associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Request that applicant for naturalization for interview.
(2) N-430. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information requested on this form is needed in order to prepare a Certificate of Naturalization for an eligible petitioner for naturalization as proscribed in section 338 of the I&N Act.
(5) 350,000 estimated respondents at 4.583 hours each.
(6) 1,604,050 estimated annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Employment Eligibility Verification.
(2) I-9. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households, small businesses or organizations, businesses or other for-profit, State or local governments, farms, Federal agencies or employees, non-profit institutions. The I-9 was developed to facilitate compliance with Section 101 of the Immigration Reform and Control Act of 1986; making employment of unauthorized aliens unlawful will, and is, diminishing the flow of illegal alien workers into the United States.
(5) 90,000,000 estimated annual responses at .166 hours per response, 20,000,000 estimated recordkeepers at .083 annual burden hours per recordkeeper.
(6) 16,600,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,
Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 10580 Filed 5-7-90; 8:45 am]
BILLING CODE 4410-10-M

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 26, 1990 a proposed Consent Decree in *United States* v. *Illinois Asbestos Control, Inc., et al.*, Civil Action No. 89 C 6344, was lodged with the United States District Court for the Northern District of Illinois. The Complaint in this case alleged violations of certain notifiation and work practice standards of the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") for asbestos, promulgated under sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414, codified at 40 CFR part 61, subpart M, which relate to the renovation of buildings containing asbestos materials.

The proposed Consent Decree requires that Illinois Asbestos Control, Inc. ("IAC") comply with the NESHAPs. It also requires IAC to develop an asbestos control program, including the development of procedures and the designation of personnel, to achieve compliance with the NESHAPs. Under the proposed Decree, IAC will be subject to stipulated penalties for specified failures to comply with the NESHAPs. The proposed Decree also provides that IAC will pay the United States a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *Illinois Asbestos Control, Inc., et al.*, DOJ Ref. No. 90-5-2-1-1407.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, Room 1500, 219 S. Dearborn Street, Chicago, Illinois 60604, at the Region V Office of the United States Environmental Protection Agency, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-10588 Filed 5-7-90; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—the National Food Laboratory, Inc./ Continental White Cap, Inc.

Notice is hereby given that, on March 20, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), The National Food Laboratory, Inc./ Continental White Cap, Inc. filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identity of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was 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 identity of the parties to this agreement and the general areas of planned activity are given below:

The current parties are the following:

Beech-Nut Nutrition Corporation, Gerber Products Company, H. J. Heinz Company, The National Food Laboratory, Inc., Continental White Cap, Inc.

The area of planned activity is the coordination of testing efforts to facilitate the prompt development of an improved tamper-evident closure for baby foods. Under the joint venture the parties are testing a composite tamper-evident closure developed by Continental White Cap, Inc. ("White Cap"). The processors have reached tentative agreement as to the standardized features and specifications that must be met by an improved tamper-evident closure. These features may be modified by the processors during the course of the project. If the processors conclude that the composite tamper-evident closure developed by White Cap meets all prescribed criteria and standards, White Cap will use its best efforts to produce sufficient quantitites of the closure to meet total industry demand by August 1, 1991.

Any baby food processing company that is not a party to the agreement will be entitled to receive information concerning the research project on the condition that it (a) assure that there will not be premature public disclosure of the progress of the research and testing results, (b) prevent undue publicity concerning tampering and tamper-evident closures, (c) minimize the potential for confusion, misinformation and uncertainty concerning the development and use of an improved tamper-evident closure and (d) protect the intellectual property rights of the parties.

Joseph H. Widmar,

Director of Operations, Antitrust Divison.

[FR Doc. 90-10587 Filed 5-7-90; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on March 7, 1990 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, October 21, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, and January 16, 1990. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), and April 9, 1990 (55 FR 13200), respectively.

Effective December 30, 1989, Northern Telecom Limited became a shareholder of MCC and a participant in MCC's Packaging/Interconnect Technology program. Effective January 2, 1990, Magnetic Peripherals, Inc., an Associate Member of MCC, succeeded to Control Data Corporation's interest in MCC's Optics Technology and Computer Systems Technology program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-10585 Filed 5-7-90; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the national Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Miscroelectronics and Computer Technology Corporation ("MMC") on April 11, 1990 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, October 21, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, and March 7, 1990. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986, (51 FR 41132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), and April 9, 1990 (55 FR 13200), respectively. The **Federal Register** Notice in response to MCC's March 7, 1990 additional notification has not been published as of this date.

Effective March 31, 1990, Itasca Systems, Inc., an Associate Member of MCC, acquired Control Data Corporation's interest in the OODS

Project of MCC's Advanced Computing Technology program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-10586 Filed 5-7-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; U.S. v. Georgetown Steel Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Georgetown Steel Corporation,* was lodged with the United States District Court for the District of South Carolina on April 20, 1990. This action was brought pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b).

Under the proposed Consent Decree, Georgetown Steel Corporation agrees to comply with the new source performance standards, 40 CFR part 60(AA), governing the operation of electric arc furnaces. Georgetown Steel also agrees to pay a penalty of $235,000 to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Georgetown Steel Corporation,* D.J. Ref. 90-5-2-1-1111.

The proposed Consent Decree may be examined at the office of the United States Attorney, The Summerall Center, 19 Hagood Avenue, 10th floor, Charleston, South Carolian 29403 and at the Region IV office of the U.S. Environmental Protection Agency 345 Courtland Street, NW., Atlanta, Georgia 30365. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1647(D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natual Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $1.30 for copying costs ($0.10 per page) payable to "United States Treasurer."

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-10582 Filed 5-7-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Inspiration Consolidation Copper Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on April 19, 1990, a proposed Consent Decree in *United States and State of Arizona* v. *Inspiration Consolidation Copper Company,* Case No. CIV 87-365 GLO ACM, was lodged with the United States District Court for the District of Arizona. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Air Act, as amended (the Act), against the Inspiration Consolidation Copper Company ("ICCCo"). The Complaint alleged that ICCCo had failed to perform a fugitive sulfur dioxide emission evaluation as required by provisions of the federally enforceable Arizona State Implementation Plan ("SIP") for sulfur dioxide, in violation of the Act.

Under the proposed Consent Decree, ICCCo will pay a civil penalty of $140,000. The Decree also provides that although ICCCo is no longer the current owner of the smelter, ICCCo is required to cooperate fully with EPA and the State of Arizona by providing information concerning the ownership, management, operation and sale of the smelter.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States and State of Arizona* v. *Inspiration Consolidation Copper Company,* DJ # 90-5-2-1-1102.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the District of Arizona, Acapulco Building, suite 310, 110 S. Church Street, Tucson, Arizona; (2) the U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California; and (3) The Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, room 1647, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $1.30 ($0.10 per page) payable to "United States Treasurer."

George Van Cleve,

Deputy Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 90-10584 Filed 5-7-90; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree, Pursuant to Clean Water Act; Ohio Edison Co.

In accordance with Department policy, 28 CFR 50.7 notice is hereby given that on March 10, 1990, a proposed Joint Stipulation in *United States* v. *Ohio Edison Company,* Civil Action No. C87-1122A was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against the Ohio Edison Company for violation of its National Pollutant Discharge Elimination System permit under the Clean Water Act.

The joint stipulation requires the defendant to pay the sum of twenty-five thousand dollars ($25,000.00) to the United States Government.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ohio Edison Company,* D.J. Ref. 90-5-1-1-2660.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the

Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–10583 Filed 5–7–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Who will be required to or asked to report or keep records.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Rehabilitation Plan and Award
1215–0067; OWCP 16
On occasion
Businesses or other for profit; small businesses or organizations
6,000 respondents; 3,000 total hours; 30 min. per response; 1 form

This form is the plan for rehabilitation services submitted to OWCP by the injured worker and the rehabilitation counselor, and OWCP's award of payment from funds provided for rehabilitation.

The form summarizes the nature and costs of the rehabilitation program for a prompt decision on funding, to expedite continuation of the rehabilitation process.

Employment and Training Administration

Request for Additional UI Contingency Staffyears for the Quarter
1205–0169; ETA 2103
Quarterly
State or local governments
53 respondents; 212 total hours; 1 hour per response; 1 form

The ETA 2103 serves as a worksheet to develop the data needed to estimate the resources required to process unemployment insurance workload above the base level on the UI–2.

Signed at Washington, DC, this 3rd day of May, 1990.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 90–10665 Filed 5–7–90; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CRITICAL MATERIALS COUNCIL

National Commission on Superconductivity (NCOS); Meeting

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconduction technologies. The Commission will meet on May 22, 1990 in room 105 (Columbia Suite) of the River Inn Hotel, 924 25th Street, NW., Washington, DC., from 9 a.m. until 5 p.m. The meeting will be open to the public.

The proposed agenda is the following:

1. Status reports of the working groups and the progress of the report.
   (9 a.m. till 3 p.m)
   Lunch break (12 noon till 1 p.m.)
2. Public comment and further discussion.
   (3 p.m. till 5 p.m.)

Perry M. Lindstrom,

Acting Executive Director.

[FR Doc. 90–10618 Filed 5–3–90; 8:45 am]

BILLING CODE 3130–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Melville, New York; Aviation Accident

In connection with the investigation of the Avianca Airlines, Flight 052, Boeing 707 accident, Cove Neck, New York, January 25, 1990, the National Transportation Safety Board will convene a public hearing at 9 a.m. (eastern standard time), on Wednesday, June 20, 1990, at the Royce Carlin Hotel, in the Grand Ballroom, located at 598 Broad Hollow Road, Melville, New York 11747. For more information contact Michael Benson, Office of Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, telephone (202) 382–6607.

Dated: May 2, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–10663 Filed 5–7–90; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.

[Docket Nos. 50-254 and 50-265; ASLBP No. 90-609-02-OM]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Commonwealth Edison Company

Quad Cities Nuclear Power Station

Facility Operating License Nos. DPR-29 and DPR-30 EA 90-032

This Board is being established pursuant to the request by Mr. Robert L. Dickherber for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated February 23, 1990, entitled "Order Modifying License (Effective Immediately)." (55 FR 7797, March 5, 1990) The Order modified License Nos. DPR-29 and DPR-30 by adding the condition that Mr. Dickherber, a Fuel Handling Foreman with a Senior Operator License Limited to Fuel Handling, shall not participate in any licensed activity under License Nos. DPR-29 and DPR-30 without prior written approval of the Regional Administrator, Region III.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 30th day of April 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-10633 Filed 5-7-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-5043; ASLBP No. 90-610-01-SC]

Establishment of Atomic Safety and Licensing Board; Robert L. Dickherber

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Robert L. Dickherber

Senior Operator License Limited To Fuel Handling

No. SOP-2365-8 EA 90-031

This Board is being established pursuant to the request by Mr. Robert L. Dickherber, the Licensee, for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated February 23, 1990, entitled "Order Suspending License (Effective Immediately) and Order to Show Cause Why License Should Not Be Revoked." (55 FR 7798, March 5, 1990) Mr. Dickherber was ordered not to undertake any activities authorized by his Operator License and to show cause why his license should not be revoked.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 30th day of April 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-10634 Filed 5-7-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Federal Procurement Policy Office

Federal Construction Contractors; Private Bonding Markets; Access Improvement

AGENCY: Office of Federal Procurement Policy (OFPP).

ACTION: Solicitation of public comments on OFPP Task Group Report on Surety Bond Associations.

SUMMARY: Over the past several months, various Congressional and private sector interests have encouraged OFPP to consider alternatives to present bonding practices associated with Federal construction contracts. One of the main alternatives recommended was to allow individuals to form associations and have the associations issue bonds.

In response to that proposal, OFPP convened a small interagency task group to specifically consider the "surety association concept". The task group report is printed below for your review and comment.

It should be noted that the comment period on OFPP's February 8, 1990 solicitation of public comments and suggestions to improve access to private bonding markets for Federal construction contractors, has recently closed. Those comments are in the process of evaluation.

COMMENT DATE: Comments must be received on or before July 9, 1990.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Carol Dennis, Deputy Associate Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Room 9001, New Executive Office Building, Washington, DC 20503. Information or questions may be addressed to Ms. Dennis on (202) 395-3300, 395-6810.

SUPPLEMENTARY INFORMATION

Background

Surety bonds (performance and payment bonds) are required by the Miller Act (40 U.S.C. 270a-270d) prior to the award of any Federal construction contract in excess of $25,000. The performance bond protects the United

States in the event the prime contractor defaults. The payment bond protects suppliers and subcontractors by assuring that they will be paid for labor and materials furnished for the contract. Surety bonds are provided by corporations (generally insurance companies) and by individuals. Most states regulate corporations writing surety bonds under insurance statutes. The states generally do not regulate individuals who write surety bonds.

The Federal Procurement Data System (FPDS) shows for FY 88 that over $8.5 billion were obligated via some 15,200 separate actions for construction contracts requiring bonds. Contracts of $5 million or less comprised 60 percent of the dollars obligated and over 95 percent of the contract actions.

Small contractors, particularly small minority contractors, have traditionally had difficulty in obtaining corporate surety bonds. This problem has worsened in the last several years as corporate insurers have tightened eligibility criteria for bonds and for liability insurance in general. As a result, more and more small businesses are using individual sureties in lieu of corporate sureties.

However, only limited data are available on who uses individual sureties, the extent of their usage, and the amount of losses that have resulted from their use. A recent General Accounting Office (GAO) study which reported data from only two agencies, General Services Administration and the Department of Veterans Affairs, found individual surety usage in the ranges of 1.5 percent to 13.1 percent, with increases apparent between 1987 and 1988.

Prior to February 26, 1990, the Federal Acquisition Regulation (FAR) provisions did not provide adequate guidance to assist contracting officers in determining the acceptability of bonds secured by individuals. This resulted in several instances where some contractors and suppliers (in situations where the prime contractor had defaulted) were not able to collect money owed to them because the assets pledged by individual sureties were improperly valued, nonexistent, or not liquid. Revised FAR provisions, which became effective on February 26, 1990, were developed to correct these problems.

The revised FAR provisions will ensure that individual surety bonds, accepted by the Government on future contracts, are sound. It is expected, however, that the revised provisions will reduce the number of individuals interested in serving as individual sureties. Accordingly, the difficulties small businesses have in obtaining bonding may increase. Although these difficulties may be lessened by the Preferred Surety Bond Guarantee Program for small businesses, established by title II of Public Law 100–950, various Congressional and private sector interests have encouraged OFPP to consider bonds, backed by associations.

Report on Surety Associations

A surety bond association task group was established by OFPP in December 1989. Agencies and departments participating in the group were Treasury, Navy, Small Business Administration, and General Services Administration.

The purpose of the task group was to review and develop the "surety association concept" recommended by the various Congressional and private sector interests. Elements of the association concept considered by the task group are provided below.

The following views relative to the association concept reflect the opinion of the task group as to the minimum requirements for testing the association concept through a pilot program, if it is to be tested. Not all members of the task group, however, share the view that the concept should be tested.

Philosophy

The working philosophy underlying the task group approach was to be responsive to private sector and Congressional requests to try the association concept. However, the group wanted to ensure that sufficient financial reserves were available to both protect the Government from risk of default, and provide protection to subcontractors, suppliers, and others who might have to rely upon bonds provided by associations.

The philosophy of the task force was to allow the market and the private sector as much freedom as possible in structuring associations, as long as medium financial and other criteria were met.

Federal Executive Agent (FEA)

The association pilot test would require the appointment of a Federal executive agent (FEA) to write implementation procedures and to conduct the test. The procedures would comply with the policies outlined herein:

The FEA should solicit participation in the pilot program by:

(1) Publishing an announcement of the program and its procedures in the **Federal Register;**

(2) Contacting industry groups that have shown interest in bonding issues; and

(3) Familiarizing agency contracting officials and officers with the proposal.

The FEA would approve associations for the purpose of issuing Miller Act bonds, would maintain a list of approved associations, and be responsible for the audit, review, and evaluation of the surety associations. The FEA would review the written by-laws, rules, and procedures of all associations prior to approving them. It is anticipated that the FEA would ask other Federal agencies to participate in the review of the financial information provided by the associations.

The FEA in approving an association would retain the same flexibility and broad discretion as does the Treasury Department in deciding whether to place firms on its list of approved corporate sureties. The review of an association would go not only to the association as an entity but also to its members. Misrepresentations as to financial worth, failure to honor past obligations, evidence of a lack of integrity (including indictment), etc., are all reasons to deny approval. Similar to the Treasury list, the U.S. Government would assume no liability for the obligations of an approved association.

An approved association would immediately lose its approved status and be withdrawn from the approved list for the duration of the pilot program upon a written finding by the FEA that cause exists. The cause for withdrawal could be the same basis as would have initially precluded approval had the issue surfaced earlier. The FEA would have broad discretion, but cannot act arbitrarily and capriciously, to deny or withdraw approval. Removal from the approved list would be automatic and require no written finding if certain financial requirements were abrogated (see financial requirements below).

The FEA would administer the pilot program for a period of two years from the effective date of the implementing procedures, with an option for a one-year extension. The OFPP would have the option of terminating the program at any time if it determines such action appropriate or in the best interest of the public.

Association Financial Requirements

Initial Capitalization

A proposed association would require an initial funding of $2 million. The $2 million or "Capital Fund" (CF) would be in cash, cash equivalents, or readily marketable securities acceptable to the FEA, and would be placed in an escrow account with a federally insured financial institution in the name of the

FEA. The existence of a CF at a minimum level of $2 million would be a condition precedent to an association being on the approved list. If at any time the CF would fall below $2 million, the association would be automatically removed from the approved list and would be unable to transact any new business. Previously incurred obligations, duties, and liabilities of the association would remain.

Individual Financial Requirements

There would be a minimum net worth requirement for membership in an association. A member would designate assets to be included in the calculation of the member's net worth for association purposes. Fifty thousand dollars is the minimum net worth amount required to be designated by each member. Any designated asset must meet the asset acceptability guidelines as established by the FAR for individual sureties.

Membership agreements would clearly inform each individual of the Federal criminal penalties chargeable against an individual for providing false financial information.

Loss Reserves

A "Reserve Fund" (RF) would be established as a reserve for losses. A separate "fund" would be established for each "open" calendar year. Fifty percent of the gross written premiums (before agent commissions) would be deposited into this reserve fund. The remaining 50 percent of the gross written premiums would be retained by the association for their use and disposition.

At six month intervals after the end of the first calendar year, an actuary acceptable to the FEA would determine the reserves necessary to cover losses on the calendar year business. Amounts in the fund, in excess of the required reserves, would be distributed back to the association.

If an actuary determines the RF is underfunded, the association would be responsible for immediately funding the shortfall.

Should an actuary be unable to satisfactorily determine the necessary level of reserves, due to a lack of historical experience or other reasons, the RF would remain open and no funds distributed until such time as an acceptable actuarial opinion was obtained.

Association's net worth

An association's net worth would be defined as the central fund (CF) plus 50 percent of the members' combined designated net worth. The association's net worth shall be updated and certified quarterly, unless an individual member's designated net worth changed so dramatically as to require an immediate update and re-certification.

Bonding Limit

An association would be limited to writing individual risks not to exceed 10 percent of the association's net worth. Additionally, only contracts $5 million and under would be eligible to be bonded.

Exposure Limit

The association's total exposure limit would be six times (6x) the association's net worth. Exposure is defined as total penal amount outstanding (without diminution).

Bond Forms

For purposes of any pilot program, an association would use SF 24, 25, 25(a), 1414, and 1415; the appropriate association data would be inserted into the blanks now used for corporations.

Data Requirements

The following data would be provided by an association to the FEA. Some of the data would be required for the application process, other data would be submitted on a quarterly or annual basis for the FEA to review and evaluate.

Application Data

(1) Certification of compliance with applicable state laws for surety bonding.

(2) Copy of Charter or articles of association, by-laws, and other operating procedures.

(3) Name of association members.

(4) Financial data.

(5) Any other such information as the FEA may require.

Quarterly Reporting Data

(1) List of bonds issued—to include principal, surety, obligee, amount, duration, and contract or solicitation number.

(2) Minutes of business meetings and any changes to charters, etc.

(3) Schedule of rates charged for bonds, i.e., the range of rates.

(4) List of trouble notices, defaults, claim payments, contract completions and bonds in force.

(5) Internal quarterly financial statement and certification as to association and member net worth.

(6) Other program information as required by the FEA (for instance data on minority or small business usage) and permitted by law.

Annual reporting data

An *Audited* financial statement would be required to be submitted to the FEA, annually.

Structure of Association/Members

There would be no restriction as to the number of associations that could participate.

Membership in an association would be restricted to 15 or fewer members so that the association would be able to maintain adequate oversight of its membership.

As part of an application package to the FEA, an association would submit a written certification that it and its membership are in compliance with all applicable state laws regarding the issuance of surety bonds. The association would also indicate for informational purposes the states in which it intended to do business.

Bonding Issues

The association would be limited to writing only those bonds required by a Federal agency pursuant to the Miller Act. The contracting officer would have the same right in dealing with an association as in dealing with an individual surety to decrease the bond if the project so warrants.

The task group decided against placing a cap on the premiums charged by an association and against having the Federal agent charge an administrative fee to the association. The FEA would have the right at the end of any pilot project to review this issue.

Mechanics of Program Development

Each surety association would be responsible for developing the rules and procedures governing the internal workings of the association provided that certain minimal standards as articulated by the FEA are met.

Association and member liability

An association would be completely liable for all obligations of the association. (The U.S. Government would not be liable for any obligations of an association.) In addition, each association member would be jointly and severally liable, up to the amount of the member's designated net worth, for all obligations an association incurred while that individual was a member.

Dated: May 2, 1990.

Allan V. Burman,

Administrator.

[FR Doc. 90-10686 Filed 5-7-90; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix), of the first meeting of the President's Drug Advisory Council. This notice also describes the Council and its function.

Date and time: May 23, 1990 from 9 a.m. to 4 p.m. (with a 90-minute lunch break at noon).

Place: Conference room 22, Old Executive Office Building (OEOB), Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Cooney, Staff Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20503, (202) 466–3100.

SUPPLEMENTARY INFORMATION: The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy. The Council presently consists of twenty-seven Members, all of whom are distinguished leaders from the private and public sectors. All the Members of the Council also serve on one or more of five Subcommittees dealing with specific issues in drug policy. One of the Members of the Council has been designated the Chairman.

At the May 23 meeting, the Council will receive reports from the Subcommittees, and will discuss its future agenda. Members of the public interested in attending this meeting should contact the President's Drug Advisory Council, (202) 466–3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and social security number over the telephone, in order to facilitate clearance into the Old Executive Office Building.

John Walters,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 90–10581 Filed 5–7–90; 8:45 am]

BILLING CODE 3180–02–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service: Schedules A, B, and C; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606–1729.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on April 6, 1990 (55 FR 12973). Individual authorities established or revoked under Schedule A, B, or C between March 1, 1990, and March 31, 1990, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during March.

Schedule B

No Schedule B authorities were established or revoked during March.

Schedule C

Arms Control and Disarmament Agency

One Congressional Affairs Specialist to the Director, Office of Congressional Affairs. Effective March 27, 1990.

Air Force

One Secretary to the Assistant Secretary (Manpower and Reserve Affairs, Installation and Environment). Effective March 30, 1990.

Department of Agriculture

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective March 5, 1990.

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective March 9, 1990.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective March 13, 1990

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective March 14, 1990.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective March 15, 1990.

One Confidential Assistant to the Director, Intergovernmental Affairs. Effective March 15, 1990.

One Private Secretary to the Administrator, Agricultural Marketing Service. Effective March 19, 1990.

One Special Assistant to the Chief of Staff. Effective March 21, 1990.

One Staff Assistant to the Assistant Secretary for Administration. Effective March 21, 1990.

One staff Assistant to the Director, Programs and Planning, Office of Public Affairs. Effective March 21, 1990.

One Confidential Assistant to the Press Secretary. Effective March 26, 1990.

One Confidential Assistant to the Chief, Soil Conservation Service. Effective March 26, 1990.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective March 26, 1990.

Agency for International Development

One Special Assistant to the Assistant Administrator, Bureau for Private Enterprise. Effective March 16, 1990.

One Writer-Editor to the Assistant Administrator, Bureau of External Affairs. Effective March 16, 1990.

One Staff Assistant to the Senior Deputy Chairman. Effective March 16, 1990.

Administrative Office of the U.S. Courts

One Legislative Staff Assistant to the Legislative and Public Affairs Officer. Effective March 2, 1990.

One Writer-Editor to the Legislative and Public Affairs Officer. Effective March 2, 1990.

Department of the Army

One Secretary (Stenography), to the Assistant Secretary (Manpower and Reserve Affairs). Effective March 26, 1990.

One Secretary (Stenography), to the Assistant Secretary (Installations, Logistics and Environment). Effective March 26, 1990.

Council of Economic Advisers

One Secretary to a Council Member. Effective March 30, 1990.

Department of Commerce

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, International Trade Administration. Effective March 2, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Services, International Trade Administration. Effective March 14, 1990.

One Confidential Assistant to the Director, White House Liaison. Effective March 14, 1990.

One Special Assistant to the Assistant Secretary, National Oceanic and Atmospheric Administration. Effective March 23, 1990.

One Confidential Assistant to the Director, Office of External Affairs. Effective March 30, 1990.

Department of Defense

One Assistant Aircraft Coordinator to the Special Assistant for Airlift Operations to the Director, White House Military Office. Effective March 9, 1990.

One Research Analyst to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy). Effective March 12, 1990.

One Education Programs Officer to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy). Effective March 12, 1990.

Department of Energy

One Staff Assistant to the Assistant Secretary Management and Administration. Effective March 2, 1990.

One Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy. Effective March 5, 1990.

One Senior Program Analyst to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 6, 1990.

One Confidential Assistant to the Director, Press Services. Effective March 28 1990.

One Staff Assistant to the Assistant Secretary for Fossil Energy. Effective March 30, 1990

Department of Transportation

One Special Assistant to the Secretary for Special Projects to the Secretary. Effective March 1, 1990.

One Special Assistant to the Administrator, Federal Highway Administration. Effective March 2, 1990.

One Staff Assistant to the Administrator, Federal Highway Administration. Effective March 23, 1990.

One Special Assistant to the Special Assistant and Director for Drug Enforcement and Program Compliance. Effective March 30, 1990.

One Staff Assistant to the General Counsel. Effective March 30, 1990.

One Staff Assistant to the Administrator, Federal Aviation Administration. Effective March 30, 1990.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective March 30, 1990.

Department of Education

One Confidential Assistant to the Comptroller. Effective March 6, 1990.

One Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights. Effective March 6, 1990.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective March 6, 1990.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective March 6, 1990.

One Confidential Assistant to the Secretary's Regional Representative, Region V. Effective March 6, 1990.

One Special Assistant to the Director, Intergovernmental Affairs Staff. Effective March 8, 1990.

One Confidential Assistant to the Assistant Secretary for Civil Rights. Effective March 8, 1990.

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective March 16, 1990.

One Confidential Assistant to the Director, Private Sector Initiative Staff. Effective March 26, 1990.

One Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region III. Effective March 26, 1990.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective March 28, 1990.

One Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region X. Effective March 28, 1990.

One Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region IV. Effective March 28, 1990.

Environmental Protection Agency

One Director, Division of State/Local Relations to the Associate Administrator for Regional Operations and State/Local Relations. Effective March 12, 1990.

One Staff Assistant to the Associate Administrator for Regional Operations and State/Local Relations. Effective March 12, 1990.

One Special Assistant to the Assistant Administrator. Effective March 15, 1990.

One Staff Assistant to the Assistant Administrator, Office of Enforcement and Compliance Monitoring. Effective March 21, 1990.

One Deputy Associate Administrator for Congressional and Legislative Affairs to the Associate Administrator. Effective March 26, 1990.

Export-Import Bank of the United States

One Secretary to the President and Chairman. Effective March 13, 1990.

Federal Maritime Commission

One Secretary to the Chairman. Effective March 13, 1990.

General Services Administration

One Assistant General Counsel for Policy to the General Counsel. Effective March 30, 1990.

Department of Health and Human Services

One Staff Assistant (Scheduling), to the Director, Scheduling, Security and Protection. Effective March 27, 1990.

One Director, Office of External Affairs, to the Associate Commissioner, Office of Public Affairs, Social Security Administration. Effective March 27, 1990.

One Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions. Effective March 30, 1990.

One Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Communications). Effective March 30, 1990.

Department of Housing and Urban Development

One Special Assistant to the Regional Administrator—Regional Housing Commissioner. Effective March 13, 1990.

One Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective March 14, 1990.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective March 28, 1990.

One Special Assistant to the Assistant Secretary for Administration. Effective March 28, 1990.

Department of Interior

One External Affairs Officer to the Director, Minerals Management Service. Effective March 9, 1990.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective March 9, 1990.

One Special Assistant to the Assistant Director, Refuge, Fish and Wildlife Service. Effective March 14, 1990.

Department of Justice

One Attorney Advisor to the Assistant Attorney General (Civil Division). Effective March 21, 1990.

Department of Labor

One Special Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective March 15, 1990.

One Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 19, 1990.

One Staff Assistant to the Deputy Under Secretary for International Affairs. Effective March 23, 1990.

One Secretary to the Secretary of Labor. Effective March 26, 1990.

One Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective March 28, 1990.

Department of the Navy

One Private Secretary to the Assistant Secretary (Financial Management). Effective March 26, 1990.

National Endowment for the Arts

One Staff Assistant to the Senior Deputy Chairman. Effective March 26, 1990.

National Mediation Board

One Confidential Assistant to a Board Member. Effective March 26, 1990.

National Transportation Safety Board

One Special Assistant to the Chairman. Effective March 8, 1990.

Office of National Drug Control Policy

One Staff Assistant to the Special Assistant to the Director. Effective March 1, 1990.

One Confidential Assistant to the Associate Director for State and Local Affairs. Effective March 1, 1990.

One Staff Assistant to the Deputy Director for Supply Reduction. Effective March 16, 1990.

One Confidential Assistant to the Executive Assistant to the Director. Effective March 16, 1990.

One Special Assistant to the Chairman, President's Drug Advisory Council. Effective March 21, 1990.

One Staff Assistant to the Special Assistant to the Director. Effective March 21, 1990.

Small Business Administration

One Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective March 30, 1990.

Department of State

One Protocol Officer (Visits) to the Chief of Protocol. Effective March 1, 1990.

One Foreign Affairs Officer to the Chief of Protocol. Effective March 2, 1990.

One Secretary (Stenography) to the Assistant Secretary for Consular Affairs. Effective March 2, 1990.

One Secretary (Stenography) to the Chief Financial Officer. Effective March 2, 1990.

One Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs. Effective March 2, 1990.

One Deputy Assistant Secretary for Passport Services to the Assistant Secretary, Bureau of Consular Affairs. Effective March 26, 1990.

One Staff Assistant to the Secretary of State. Effective March 27, 1990.

United States Tax Court

One Trial Clerk to the Judge. Effective March 30, 1990.

Department of Treasury

One Principal Senior Deputy to the Director, Office of Thrift Supervision. Effective March 7, 1990.

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective March 26, 1990.

One Special Assistant to the Deputy Treasurer of the United States. Effective March 30, 1990.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 comp., P. 218

Constance Berry Newman,

Director.

[FR Doc. 90–10638 Filed 5–7–90; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Railroad Job Vacancies.

(2) *Form(s) submitted*: N.A.

(3) *OMB Number*: 3220–0122.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: N.A.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Businesses or other for-profit, Small businesses or organizations.

(8) *Estimated annual number of respondents*: 250.

(9) *Total annual responses*: 750.

(10) *Average time per response*: .16667 hours.

(11) *Total annual reporting hours*: 125.

(12) *Collection description*: Under section 12(k) of the Railroad Unemployment Insurance Act, the Railroad Retirement Board maintains a list of railroad job vacancies available with rail carriers. The collection obtains notice of the job vacancies. The information is used to find jobs for individuals separated from railroad employment.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Shannah Koss-McCallum (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 90–10589 Filed 5–7–90; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27951; File No. S7–8–90]

Options Price Reporting Authority; Filing and Immediate Effectiveness of Amendment to Professional Subscriber Fees Under OPRA's National Market System Plan

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 18, 1990, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,[1] which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act.

OPRA has designated this proposal as one establishing or changing a fee pursuant to Rule 11Aa3–2(c)(3)(i) under the Act, which renders the fee effective upon the Commission's receipt of the filing. The Commission is publishing this notice to solicit comments on the amendment fom interested persons.

[1] *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

I. Description and Purpose of the Amendment

The amendment rule change will provide for a new, temporary surcharge of $300 payable by those persons (vendors, direct-connect subscribers, news services and exchanges) who have direct access to OPRA's processor, for each month or portion thereof, commencing May, 1990, during which such persons obtain such access by means of OPRA's old 2-line service, instead of the new 4-line service. This sucharge will remain in effect, unless extended, through July, 1990, at the end of which the 2-line service is scheduled to be discontinued.

II. Request for Comments

Pursuant to Rule 11Aa3–2(c)(3) under the Act, the amendment and the surcharge became effective upon filing with the Commission, except that OPRA has determined that delayed effectiveness shall apply, as described in Item I. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

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 communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying at the principal office of OPRA. All submissions should refer to the file number S7–8–90, and should be submitted by May 29, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(27).

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10614 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 34–27966; PA–12]

Privacy Act of 1974; Removal of Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of privacy act systems of records no longer maintained by the commission.

SUMMARY: In accordance with the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission") is giving notice of the removal of notices issued under the Privacy Act covering systems of records that are no longer maintained by the Commission.

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202–272–2474), Kimberly Warren (202–272–3610), or Fran L. Paver (202–272–2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with guidelines issued by the Office of Management and Budget pursuant to the Privacy Act (OMB Circular A–130, Appendix I), the Securities and Exchange Commission recently conducted an extensive review of its published systems of records notices. During the course of this review, the Commission identified 25 notices covering systems of records no longer used or maintained by the Commission. For the most part, these changes are the result of closed branch offices (Cleveland, Detroit and St. Louis), and consolidated records covered under other systems of records notices. Accordingly, the Commission is now deleting the notices for these obsolete systems of records from future **Federal Register** publications.

* * * * *

The following systems of records are no longer used or maintained by the Securities and Exchange Commission and accordingly, the corresponding notices are deleted from the **Federal Register**:

System no.	System name
SEC–28	Employee Photograph File-SEC.
SEC–29	Employees Current Card File-SEC.
SEC–37	Investor Service Complaint Index-SEC.
SEC–50	Office of Personnel Position Classification Files-SEC.
SEC–55	Public Utility Regulation Branch Files-SEC.
SEC–61	Atlanta Regional Office General Index of Files-SEC.
SEC–65	Chicago Regional Office Index Cards-SEC.
SEC–67	Cleveland Branch Office Broker-Dealer Files-SEC.
SEC–68	Cleveland Branch Office Index Cards-SEC.
SEC–69	Cleveland Branch Office Investigatory Files-SEC.
SEC–70	Cleveland Branch Office Investment Adviser Files-SEC.
SEC–73	Denver Regional Office and Salt Lake Branch Office Cross Reference Index Cards-SEC.
SEC–74	Detroit Branch Office Broker-Dealers Files-SEC.
SEC–75	Detroit Branch Office Index Cards-SEC.
SEC–77	Detroit Branch Office Investment Adviser Files-SEC.
SEC–81	Los Angeles Regional Office Broker-Dealer Files-SEC.
SEC–83	Los Angeles Regional Office Investment Adviser Files-SEC.
SEC–84	Miami Branch Office General Index of Files-SEC.
SEC–86	New York Regional Office Index of Complaints-SEC.
SEC–88	New York Regional Office Master Card Index-SEC.
SEC–89	New York Regional Office Regulation A Work File-SEC.
SEC–91	St. Louis Branch Office, Inquiry, Complaint and General Reference Files-SEC.
SEC–92	St. Louis Branch Office Investigative Files-SEC.
SEC–95	Los Angeles Regional Office Regulation A Files-SEC.
SEC–96	Seattle Regional Office Master Card Index and Related Regulatory, Investigatory, and Legal Files System (MCI System)-SEC.

Dated: May 1, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10615 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27961; File No. SR–CBOE–88–20]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Extending Exemptions Relating to Basket Trading

I. Introduction

On October 26, 1989, the Securities and Exchange Commission ("Commission" or "SEC"), approved a proposed rule change submitted by the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") to trade

"market basket contracts," on the floor of the Exchange.[1] As part of the proposal, the Exchange requested certain exemptions under Rules 11Aa3–1 and 11Ac1–1 of the Exchange Act.[2] The Exchange requested, pursuant to Rule 11Aa3–1(g) exemptions from the Rule's requirements to report transactions in reported securities pursuant to an effective transaction reporting plan and to disseminate on a consolidated basis the total trading volume for each component stock of the market basket contracts.[3] The CBOE also requested, pursuant to Rule 11Ac1–1(d), an exemption from the Rule 11Ac1–1 requirement that disseminated quotations include the size associated with those quotations.[4] The Commission granted the first exemption, but only gave a six-month exemption for the dissemination on a consolidated basis of the total trading volume for each component stock, and for the dissemination of the size associated with those quotations.[5] The CBOE has now requested an extension of the temporary exemptions.[6]

II. Discussion

Pursuant to Rule 11Aa3–1 [7] the CBOE is required to collect and disseminate transaction data on securities listed and traded on the Exchange. More specifically, Rule 11Aa3–1 requires that the Exchange disseminate transaction reports for individual reported securities traded on the Exchange,[8] and that the Exchange disseminate on a consolidated basis trading volume for each of the component stocks represented by market basket contracts.[9]

For the first six months of basket trading, the CBOE did not disseminate on a consolidated basis the total daily trading volume in individual securities represented by basket trades. Volume in market basket contracts has been reported over the Options Price Reporting Authority ("OPRA") system, as a result of reporting each market basket transaction as it takes place, and in an end-of-day message through OPRA.[10]

While the Commission is aware of the limited usefulness of price information on the underlying securities in the baskets, it believes that dissemination of the share volume in the underlying securities is important information and should be included in the daily consolidated volume for each of the underlying securities.[11] Because this presents a number of technological difficulties for CBOE, and because the volume in basket trading during the first six months has been low, the CBOE has requested an extension of the exemption for disseminating on a consolidated basis the total trading volume for each component stock. The Commission believes that it is appropriate to extend the conditional relief from Rule 11Aa3–1 through January 31, 1991.

CBOE also requested an extension of the exemption from Rule 11Ac1–1(b)(1), which requires that disseminated quotations on market basket contracts include the size associated with the quote. Because OPRA, the facility through which CBOE basket quotes are reported, cannot disseminate size, the Commission has agreed to extend the temporary exemption from the Rule through January 31, 1991.

The CBOE will be required, however, to file with the Commission a proposal describing how it will consolidate the total daily trading volume for component stocks with volume from the other markets trading those securities and to include the size associated with quotations in market basket contract, or submit to the Commission the reasons why its exemption should be extended on or before November 1, 1990.

III. Conclusion.

The Commission believes that the transaction and quotation reporting mechanisms for trading market baskets on CBOE are designted to provide accurate, timely information on basket trading. Moreover, given the institutional character of stock portfolio trading for which market basket trading is designed, the Commission believes that the Exchange's chosen reporting mechanisms are consistent with the maintenance of fair and orderly markets and the protection of investors. Accordingly, based upon the aforementioned factors, the Commission finds that the requested exemptions under Rules 11Aa3–1 and 11Ac1–1 are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 11A of the Act and Rules 11Aa3–1(g) and 11Ac1–1(f) thereunder, that the following exemptions be, and hereby are, extended through January 31, 1991: (1) A temporary exemption from the requirement of paragraph (b)(2)(iv) of Rule 11Aa3–1 that the CBOE provide for the dissemination of the total daily trading volume of the component stocks in market basket contracts on a consolidated basis; and (2) a temporary exemption from the requirement of paragraph (b)(1) of Rule 11Ac1–1 that the CBOE disseminate the quotation sizes associated with quotations on market basket contracts.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10612 Filed 5–7–90; 8:45 am]

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[Release No. 34–27975; File No. SR–NASD–88–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Order Granting Accelerated Approval of Amendment To Proposed Rule Change of the National Association of Securities Dealers, Inc. Relating to the OTC Bulletin Board Display Service

I. Introduction

On June 9, 1988, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–88–19) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to establish a one-year pilot program testing a new service, the OTC Bulletin Board Display Service ("Bulletin Board Service" or "Service"), for securities traded over-the-counter that are neither included in the NASDAQ System nor listed on a national securities exchange (collectively referred to as "non-

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[1] *See* Securities Exchange Act Release No. 27383, (October 26, 1989) 54 FR 45846.

[2] 17 CFR 240.11Aa3–1(g) and 240.11Ac1–1(d) (1989).

[3] *See* letter from Nancy R. Crossman, First Vice President and General Counsel, CBOE, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated October 11, 1989.

[4] *See* letter from Nancy R. Grossman, First Vice President and General Counsel, CBOE, to Teresa Fink, Attorney, Branch of National Market System Regulation, Division of Market Regulation, SEC, dated October 19, 1989.

[5] *See* Securities Exchange Act Release No. 27391 (October 26, 1989) 54 FR 45878.

[6] *See* letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Christine A. Sakach, Branch Chief, National Market System Regulation, Division of Market Regulation, SEC, dated April 26, 1990.

[7] 17 CFR 240.11Aa3–1 (1989).

[8] Rule 11Aa3–1(c)(1) and (2). "Reported securities" are securities for which there is in effect a transaction reporting plan.

[9] Rule 11Aa3–1(b)(2)(iv).

[10] OPRA is the entity responsible for collecting, processing, consolidating and disseminating market data from the U.S. options market.

[11] Information in the underlying securities is disseminated through Consolidated Tape Association facilities (for listed securities) and NASDAQ (for NASDAQ/NMS securities).

[1] 15 U.S.C. 78s(b)(1) (1982).

NASDAQ securities").[2] The Commission received 9 comment letters in response to its notice.[3] This order approves the proposal.

II. Description of the Service

The NASD requests that the Commission approve a one-year pilot program of the Bulletin Board Service. The Service is designed to capture and display quotation information (including unpriced indications of interest) entered by NASD member firms that function as market makers in non-NASDAQ securities. The Service will operate on a real-time basis (during market hours) allowing eligible member firms to view, enter, and update information on a real-time basis on certain non-NASDAQ securities. Market makers' participation in the Service will be voluntary, and those market makers who elect to participate will incur no minimum obligation as to time or the number of non-NASDAQ securities that they may select for inclusion in the Service.

Members will enter and update information displayed through the Service through NASDAQ terminal devices or Workstation units authorized for Level 3 NASDAQ service. NASD member firms will be able to retrieve Bulletin Board information, on a real-time basis, by means of NASDAQ terminal devices or Workstation units authorized either for Level 2 or Level 3 NASDAQ service. The NASD believes that providing access to Level 2 subscribers will facilitate the handling of retail orders in non-NASDAQ securities by member firms that do not function as market makers.

The NASD is to provide the Service for a pilot period of one year, with actual operations commencing 30 days after the date of the Commission's approval order. NASD members utilizing NASDAQ-authorized equipment will not incur a separate service charge for access to market makers' input captured in the Service data base.[4] NASD members that register as market makers in Bulletin Board securities ("Market Maker Participants" or "Participants") will incur a charge for displaying their trading interest through the Service. Specifically, a Market Maker Participant will pay $85 per month for the first 10 securities listings (or any part thereof), and $37 per month for each additional lot of five listings (or any part thereof) or $74 per month for each additional lot of ten listings (or any part thereof).[5]

The non-NASDAQ securities chosen for inclusion by participating market makers will be separately accessed and identified by utilization of the prefix "3" with the issue's four or five letter symbol code.[6] Market Maker Participants will be provided a scan function enabling them to view all securities in which they have registered. Initially, access to the Service will be limited to registered broker-dealers who are NASD members and subscribe to either Level 2 or Level 3 NASDAQ service. Participants will be permitted to enter two-sided or one-sided quotes for one unit of trading (*i.e.*, 100 shares) at a specified price, to designate whether a priced bid or priced offer is firm, to solicit a bid or offer without stipulating a price, to advertise a general interest in trading a particular security without specifying a price, and to insert an indicator (UNS) next to a priced entry to identify it is an unsolicited customer indication of interest.[7]

The display of information contemplated by the Bulletin Board Service can be demonstrated by the following example.

P	3 ABCD		ABC Development Corp.	
BADR	10	*F*	F11 *F*	800–250–1620
DBCC	10	*F*	11 *F*	212–646–1000
WALC	10⅛	*F*	11	202–898–1000
MATS	9.5	*F*	11.25	800–909–2100
BAGN	10		13	800–243–6120
BOTE	10⅛		11⅛	303–525–4230
RJAA	b.w.			800–126–1423
DANI				641–202–2087

This hypothetical display reflects the trading interests of eight market makers who have elected to participate in the Bulletin Board Service by entering information on the stock of ABC Developoment Corp., a non-NASDAQ issue. The sequencing of market maker information shown on the screen display is determined by an algorithm incorporated into the system design.[8] For example, market makers BADR and DBCC appear at the top because they have entered two-sided, firm quotes. Market makers WALC and MATS appear next because both have firm bids, but non-firm offers. Because WALC's firm bid is superior in price, WALC is listed ahead of MATS.[9] BOTE and BAGN follow all market makers displaying a firm bid price because their priced bids are not designated as "firm." BAGN, however, ranks ahead of BOTE on the basis of time priority. Finally, RJAA and DANI are listed below all other market makers because neither firm has made a priced entry. Multiple firms with unpriced entries in a particular security will be listed by time priority. In this example, RJAA appears

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[2] *See* Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096 ("Release 34–25949"). The NASD submitted three amendments. The first was a technical amendment submitted on August 10, 1988. Amendment No. 2 was submitted on February 2, 1989, (Securities Exchange Act Release No. 26545, February 14, 1989, 54 FR 7901), and Amendment No. 3 was submitted on July 20, 1989, (Securities Exchange Act Release No. 27062, July 28, 1989, 54 FR 31905). Amendment No. 4 expanded the update restriction to encompass all foreign securities/ADRs. Accordingly, the Bulletin Board will only provide a static display of market maker's quotations or indications of interest in these securities twice daily. *See* Amendment No. 4 submitted January 30, 1990.

[3] *See* letters to Jonathan G. Katz, Secretary, SEC, from: James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc. ("NYSE"), dated October 13, 1988, ("NYSE letter"); Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange, Inc. ("Amex"), dated October 14, 1988, ("Amex letter"); Darby J. Whalen, Vice President, Dain Bosworth, Inc., dated October 26, 1988; Jerry Williams, Chairman, Williams Securities Group, Inc., dated September 9, 1988; Mark R. Edwards, dated September 8, 1988; Jim Angel, dated September 2, 1988; and Andrew Thomas, dated September 1, 1988. The NASD received one comment letter on the proposal. *See*, letter from John L. Watson, III, President, Securities Traders Association, to Joseph R. Hardiman, President, NASD, dated November 14, 1988. The National Quotation Bureau submitted a letter after Amendment No. 2 was published. *See* letter from Harvey L. Pitt, Fried, Frank, Harris, Shriver & Jacobson, counsel for NQB, dated February 16, 1989. Amex submitted two letters after Amendment No. 3 was published. *See* letter from Gordon L. Nash, Senior Executive Vice President, Amex, dated August 30, 1989; and letter from James R. Jones, Chairman of the Board, Amex, dated April 24, 1990.

[4] Since the information will be available through standard NASDAQ terminals, the charges applicable to NASDAQ Level ⅔ service and equipment will continue to apply.

[5] In this context, "listing" refers to a line of quotations, priced or unpriced, firm or non-firm, one-sided or two-sided, or indications of interest entered by a Participant in a Bulletin Board security.

[6] The numeric prefix will differentiate a quotation display for a non-NASDAQ security from a quote display for a NASDAQ security. The universe of securities eligible for quotation through the Service will not include any security authorized for inclusion in the NASDAQ System or listed on a national securities exchange.

[7] The NASD stated that although designating quotations as "firm" is optional, once a Participant designates a quote as firm, it must honor the entry for at least 100 shares. The NASD also stated that failure to do so will constitute a violation of Article III, section 1 of the NASD Rules of Fair Practice, which requires that members conduct their business in accordance with just and equitable principles of trade. *See* Release 34–25949 at 2.

[8] The algorithm for ranking the display of market makers' entries will work in the following manner: (1) All two-sided firm quotes will be displayed first and ranked in price/time sequence; (2) all one-sided firm quotes will be displayed second and ranked in price/time sequence; (3) all quotations ranked by price will be sequenced according to the bid price; (4) all non-firm quotations will be displayed after the firm quotes (two-sided and one-sided) and will be sequenced solely on the basis of time; and (5) unpriced entries will appear last, and with entries of "bid wanted"/"offer wanted" being displayed ahead of other unpriced entries; multiple unpriced entries will be sequenced on the basis of time.

[9] The priced entries of WALC and MATS illustrate the Service's capacity to accept quotations in fractions or in decimal form.

ahead of DANI solely because of the former's indication of "bid wanted" ("B.W."). Finally, it should be noted that all firms registering as market makers in non-NASDAQ securites must enter their respective telephone numbers. These will be displayed regardless of whether a firm inserts a priced entry.

The NASD stated that it would be able to ensure within its own systems that displays of Bulletin Board information can be differentiated from market data displays on NASDAQ issues by affixing a special identified to covered securities and assigning a special key (*P*) to retrieve information on non-NASDAQ securities included in the Service. The NASD will require vendors to implement comparable procedures as a condition of their receiving Bulletin Board information from the NASD.

Foreign securities/American Depositary Receipts ("ADRs"), including those of issuers that are exempt from the Act's reporting requirements pursuant to Rule 12g3–2(b) under the Act,[10] will be displayed in static form and market makers will only be permitted to update quotations for them twice daily. More specifically, market makers will be permitted to update their individual quotes/indications in foreign securities daily between 9 and 9:30 a.m. and 12 and 12:30 p.m. (ET).[11] Thus, each market maker in a foreign security will be allowed a maximum of two updates per day in each of those securities. The NASD will enforce compliance with this operational requirement through an automated surveillance report. The new report will identify every instance in which a market maker updates his quote in a foreign security outside the prescribed time periods or enters multiple updates within those periods in a particular foreign security. Such occurrences will be viewed as apparent violations of the Service's operational requirements and be forwarded to the NASD's Market Surveillance Committee for review and possible disciplinary action. The Market Surveillance Committee may place limitations on or suspend the market maker's quote update capability in the Bulletin Board Service, and/or a disciplinary sanction pursuant to Article III, section 1 of the NASD Rules of Fair Practice.[12]

To facilitate administration of the update restriction, the NASD will add an "F" or "Y" to the respective trading symbols of foreign securities and ADRs that are eligible for quotation in the Service.[13] The NASD stated that it has reviewed historical information furnished by the Commerce Clearing House/National Quotation Bureau ("CCH/NQB") [14] on securities quoted in the Pink Sheets [tm] ("Pink Sheets") to locate issues/ADRs that had not been identified previously, and that it will monitor Rule 15c2–11 filings processed by CCH/NQB in connection with market maker registrations to quote foreign securities/ADRs. Finally, the NASD represented that, shortly after the Service commences operation, a letter will be sent to market makers that have registered to quote foreign securities/ADRs. The letter will request that they re-check their market-making positions against the automated directory and notify the NASD of any foreign issues/ADRs that have not been identified with an "F" or "Y," respectively, so the NASD may promptly amend the directory. The NASD believes that these efforts should ensure that the identified securities are appropriately distinguished with an "F" or "Y" appended to their Bulletin Board trading symbols.

During the pilot period, the NASD will provide CCH/NQB, twice daily, with a static transmission of data captured in the Service's data base.[15] The first transmission will occur at approximately 12 noon Eastern time to be used for publication of the next day's Pink Sheets.[16] The second transmission, consisting of end-of-day information, will occur after the Service closes and be provided to subscribers of CCH/NQB's electronic delivery service the following morning.[17] As to both the Pink Sheets and CCH/NQB's electronic delivery system, the priced entries of Market Maker Participants will appear in the form of a stringline.[18]

During the twelve-month pilot, CCH/NQB will monitor, as the NASD's agent, Participants' compliance with Rule 15c2–11 [19] under the Act and coordinate those functions with the NASD.[20] If the required information has not been filed on a security eligible for the Service, CCH/NQB will promptly notify the NASD. Upon such notification, the NASD will request that the market maker produce that information or justify the basis for claiming an exemption.[21] To compensate CCH/NQB for this and other services, the NASD will pay CCH/NQB an amount derived from the Participant fees proposed in this filing.[22] The proposed fees are

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[10] 17 CFR 240.12g3–2(b) (1989).

[11] An update may consist of a market maker inserting a new priced quotation or substituting an unpriced indication for a priced entry. Market makers in foreign exempt securities (and in all other Bulletin Board Securities) will have the option of designating their priced entries as firm or non-firm quotations.

[12] Article III, section 1 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. During the Service's pilot period, the standard contract governing market maker participation will reference the limitations applicable to quotation of foreign exempt securities.

[13] The NASD stated that it has already identified many of these securities in connection with its processing of price and volume information reported by member firms under Schedule H to the NASD By-laws and by reviewing the Commission's published listings of securities eligible for the Rule 12g3–2(b) exemption.

[14] CCH/NQB is a securities information vendor that, among other things, publishes daily listings of market-maker quotations in securities eligible for inclusion in the Service.

[15] The elements of information which will be transmitted to CCH/NQB from the Service's data base include, but need not be limited to: (1) Market maker identifications (including trading room telephone numbers, if authorized by the individual participants); (2) security identifications and symbols used by the NASD; (3) all priced entries as well as indications of interest inserted by participating market makers; and (4) any condition codes applicable to individual securities. The NASD will not assess CCH/NQB a charge for the static transmissions of data from the Service's data base. CCH/NQB, however, will bear all costs associated with the telecommunication line and any support equipment needed to receive or process the NASD's transmissions.

[16] Presently, CCH/NQB is the only vendor of static, OTC quotation information that has expressed interest in receiving such a transmission. CCH/NQB currently has agreements with other vendors to electronically disseminate static information contained in the printed Pink Sheets [tm].

[17] Electronic delivery service refers to CCH/NQB's arrangement with Quotron for the electronic dissemination of static quotation information.

[18] The stringline will identify each Participant by a four character alpha symbol followed by the firm's bid and/or offered prices, and an indicator to designate whether the bid and/or offer price is firm. In instances where a Participant enters only a bid or an offer price, an alpha prefix designating the price as a bid or offer will appear.

[19] 17 CFR 240.15c2–11. For a description of Rule 15c2–11, *see* text at note 35, *infra*.

[20] For example, CCH/NQB will verify that a market maker who seeks to place a new listing in the Service or Pink Sheets has furnished the information required by Rule 15c2–11(a)(5) with CCH/NQB.

[21] CCH/NQB will transmit a copy of the required information supplied by a Market Maker Participant to the Commission and the NASD at least two days prior to publication of a new listing in the Service. CCH/NQB will be capable of making Rule 15c2–11 information available to other broker-dealers upon request.

[22] The NASD will reimburse CCH/NQB for the cost of monitoring market makers' compliance with Rule 15c2–11 for quotations initiated in the Pink Sheets; the preparation, maintenance and distribution of CCH/NQB's historical database of price and issuer information to market professionals and the public; the provision of customary library and research services; and an agreement not to create a system in competition with the Service for up to three years.

identical to those currently assessed by CCH/NQB for market maker listings in the Pink Sheets. At the conclusion of the Service's pilot period, the NASD will rebate to participants any Service revenue remaining after satisfaction of the NASD's obligations to CCH/NQB and recovery of costs incurred in developing and operating the pilot Service.

III. Comments

The Commission received 9 comment letters in response to its notice of the proposed rule change. With three exceptions, the commentators generally favored the implementation of the Service. The five commentators who favored the Service stated that they believe the proposal will benefit investors, market participants and firms by making trading in non-NASDAQ securities more effective and less costly.[23]

The Security Traders Association ("STA") stated that the Service represents a further step in the development of a national market system because it provides a uniform means of inter-dealer communication in the non-NASDAQ market.[24] The STA, however, expressed concern regarding the maintenance of historical records which reflect past market prices for Pink Sheets stocks. It therefore urged the NASD to assure that there be some form of preservation in "hard copy" of this information. The NASD subsequently addressed these concerns in its filing of Amendment No. 2.[25]

The New York Stock Exchange ("NYSE") questioned whether foreign securities exempt from the registration requirements of the Act pursuant to the "information-supplying exemption" of Rule 12g3–2 may be included in the Service.[26] Currently, the Rule provides an exemption from registration pursuant to section 12(g) of the Act only for foreign securities not quoted in an "automated inter-dealer quotation system."[27]

The NYSE argued that the Service is an "automated interdealer quotation system" within the meaning of paragraph (d) of the Rule. Therefore, foreign securities quoted in the system should not be exempt from registration under section 12(g) pursuant to Rule 12g3–2(b). The NYSE maintains that, should the Commission not specify that foreign exempt securities be excluded from the Service absent registration, a "loophole" would be created in the regulatory scheme developed in 1983 to ensure that investors have access to adequate information on securities quoted in automated systems.[28]

The American Stock Exchange ("Amex") also voiced concern regarding the application of Rule 12g3–2.[29] Like the NYSE, the Amex believes that to permit unregistered foreign issuers eligible to be quoted in the Service to qualify for the information-supplying exemption would undermine the policy adopted in the 1983 amendment.

In addition, the Amex raised concerns over the potential inclusion of domestic securities in the Service. Amex believes that the lack of regulatory requirements applicable to the Service, and the quality and quantity of issuer information available, raise significant concerns about the protection of investors. It further stated that the Service could be used to evade what may be perceived by some issuers to be burdensome exchange or NASDAQ listing requirements and the on-going regulatory framework that accompanies listing.

In its comment letter on Amendment No. 3, Amex reiterated its concern that the inclusion of unregistered foreign securities in the Service would discourage foreign issuers from registering with the Commission, listing on an exchange and complying with the various resultant requirements, since they would no longer have to do so to gain access to the U.S. markets.[30] The Amex stated that these concerns were underscored by the apparent proliferation of activity in sponsored and unsponsored ADRs, and urged the Commission to conduct a study of the ADR market before rendering its determination on this aspect of the proposal.

Although Amendment No. 3 limited the manner in which market makers would be permitted to quote foreign securities/ADRs, Amex does not believe the NASD explained how the limitation would negate the benefits the Service would provide in terms of heightened visibility, access and exposure, which led to the elimination of the information-supplying exemption for NASDAQ securities. Amex argued that the fact that market makers will not be able to update their quotes on a real-time basis does not negate the significant advantages inclusion in the Service will provide as compared to ordinary listing in the Pink Sheets.

IV. Discussion

The Commission has determined that it is appropriate to approve the implementation and operation of a one-year pilot program of the Bulletin Board Service. Implementation of the Service is consistent with sections 15A(b) (6) and (11),[31] and 11A(a)(1)[32] of the Act.

Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. In addition, section 11A(a)(1) articulates the Congressional findings and policy goals and objectives respecting the development of a national market system.[33] Esssentially, the Congress found that new data processing and communication techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance opportunities to achieve best execution and promote competition among market participants.

Implementation of the Bulletin Board Service will allow the market makers in non-NASDAQ securities to enter and

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[23] See, *e.g.*, letter from Darby J. Whalen, Vice President, Dain Bosworth, Inc., dated October 26, 1988.

[24] Letter form John L. Watson, III, President, STA, to Joseph Hardiman, President, NASD, dated November 14, 1988.

[25] Amendment No. 2 describes the agreement between the NASD and CCH/NQB that provides that CCH/NQB will continue to collect, process and maintain its historical records, library/research services and other market data publications covering OTC securities.

[26] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 13, 1988.

[27] As a general matter, paragraph (b) of Rule 12g3–2, which allows foreign private issuers to use an "information-supplying exemption" from the registrations requirements of section 12(g) of the Act, applies if the issuer provides the Commission with whatever information the issuer must provide in its home country.

[28] In 1983, the Commission amended Rule 12g3–2 making the exemption unavailable for securities quoted in an "automated inter-dealer quotation system." Securities Exchange Act Release No. 20264 (October 6, 1983), 48 FR 46736 ("Amendment Order").

[29] *See* letter from Carrie E. Dwyer, Senior Vice President and General Counsel, Amex, dated October 14, 1988. The Amex further argued that inclusion of such securities would also be inconsistent with proposed Regulation S (Securities Act Release No. 6838, July 11, 1989, 54 FR 30063) and Rule 144A (Securities Act Release No. 6839, July 11, 1989, 54 FR 30076). This argument ignores the difference between secondary market reporting requirements and Securities Act registration requirements.

[30] *See* letter from Gordon L. Nash, Senior Executive Vice President, Amex, to Jonathan G. Katz, Secretary, SEC, dated August 30, 1989.

[31] 15 U.S.C. 78o–3 (1982).

[32] 15 U.S.C. 78k–1 (1982).

[33] Although section 11A does not provide the Commission with authority to approve a self-regulatory organization's proposal, it is relevant in that it sets forth the Act's general policy goals for securities markets.

update quotation information on a real-time basis.[34] This capability should enhance the efficiency of pricing and foster competition within the interdealer market for a particular security. Similarly, order entry firms will have real-time access to the trading interest being displayed by market makers in each covered security. Such access will assist them in negotiating the execution of customer orders at the best available price. Because the Bulletin Board display includes the telephone numbers of participating market makers, this feature should expedite the retail firms' processing of market orders. Assuming that a sufficient number of market makers participate, the NASD envisions expanded access to Bulletin Board information through commercial services offered by vendors. That development will comport with the Congressional goal of broadening the distribution of market information to investors.[35]

Section 15A(b)(11) of the Act authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Essentially, the Service's design and display features achieve the regulatory purposes contemplated by section 15A(b)(11) of the Act. For example, the preferential ranking of market makers entering two-sided, firm quotes reflects the NASD's effort to display quotation information for non-NASDAQ securities in a fair and informative manner. Similarly, the NASD's commitment to take enforcement action against any market maker who fails to honor quotes designated as "firm" should deter the entry of misleading or fictitious quotations by participating member firms.

Because the pilot program includes the imposition of a fee upon Market Maker Participants, it is necessary to examine the fee in relation to the requirements of section 15A(b)(5) of the Act. That provision requires the equitable allocation of reasonable charges among members for the use of any facility or system that the NASD operates. The proposed fee structure tracks that of CCH/NQB for market maker listings in the Pink Sheets publication, which the Commission regards as a reasonable standard for establishing an interim fee applicable to the Service's pilot phase. Such a standard is appropriate because of the NASD's present inability to project the user population over which the Service's cost would be spread, the extent to which OTC market makers will elect to become Participants, or the additional subscriber population that may be interested in receiving Bulletin Board information after the pilot has terminated. Essentially, Market Maker Participants will be charged the same price they currently pay to display priced entries in OTC securities through a widely-recognized quotation medium. Thus, OTC market makers choosing the Service in lieu of the Pink Sheets will not incur additional costs unless they increase their respective market making commitments in eligible securities. Because participation in the Service is voluntary, individual market makers will assess whether the Service or one of the printed quotation mediums (including the Pink Sheets) is best suited to their needs.

To facilitate commencement of the Service, the NASD has requested that the Commission grant certain exemptions from Rule 15c2–11 under the Act.[36] Rule 15c2–11 is intended to prevent broker-dealers from furnishing initial quotations for over-the-counter securities in the absence of information about the issuer. Under the rule, a broker-dealer must have in its records certain information about the issuer prior to publication or submission of quotations in a quotation medium.

The NASD has requested an exemption from Rule 15c2–11 under the Act to permit a Market Maker Participant to initiate quotations in the Service [37] without furnishing to the NASD the information required by the rule for certain issuers.[38] Specifically, a Participant would be exempt from furnishing the information if it previously has submitted such information for that issuer to CCH/NQB and has been publishing quotations for the security without an interruption of more than four consecutive business days, or if it submits the information to CCH/NQB in connection with a provision of the working agreement between the NASD and CCH/NQB regarding review of Rule 15c2–11 information furnished by Participants. The NASD also has requested an exemption under Rule 15c2–11 to permit inter-system "piggybacking" [39] during the first 60 calendar days of the Service's operation. The NASD has sought the exemption to permit a Market Maker Participant during the start-up phase of the Service to look to another interdealer quotation system, *i.e.*, the Pink Sheets, to determine whether the security satisfies the piggyback exception in that system and, if so, to permit the initiation of quotations in the Service without having the Rule's specified information.[40]

The Commission believes that the requested exemptions from Rule 15c2–11 are appropriate to avoid duplicative submissions and to facilitate start-up of

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[34] While the Commission hopes that use of the Bulletin Board will result in more accurate quotations for the securities quoted in the Service, the Commission believes that it is necessary to acknowledge the limited usefulness of those quotations. For example, in the context of mark-up calculations the Commission has repeatedly cautioned that quotations in many cases may not be acceptable evidence of "prevailing market price." *In re* Alstead, Dempsey & Strangis, Inc., 47 SEC 1034 (1984). This is particularly true, for quotations for inactively traded, non-firm dominant securities, which frequently are subject to negotiation and thus may have little value for markup determinations, *Id.* In fact, the Commission has made clear that quotations may be used to establish the prevailing market price only in the limited circumstances where: (1) There are no contemporaneous inter-dealer transactions (which are generally better evidence of the prevailing market price) and (2) the validity of the quotations to be used to determine markups can be shown by comparing them with actual inter-dealer transactions in that security. The Commission believes that these long-established principles will continue to be relevant for securities quoted in the Bulletin Board.

[35] The Commission emphasizes that any continued exclusion beyond the pilot period of private vendors and the investing public from access to the quotation information maintained in the Bulletin Board System would appear to be inconsistent with the Act.

[36] The NASD's request for exemptive relief under Rule 15c2–11 is set forth in Release 34–25949, as supplemented by letter to Kathryn V. Natale, Assistant Director, Division of Market Regulation, SEC, from Michael J. Kulczak, Special Counsel, Office of General Counsel, NASD, dated March 14, 1989.

[37] The Service is an interdealer quotation system (which is a type of quotation medium), as defined in paragraph (e)(2) of Rule 15c2–11, 17 CFR 240.15c2–11(e)(2).

[38] Rule 15c2–11(d), 17 CFR 240.15c–11(d), requires a broker-dealer submitting a quotation to an interdealer quotation system for a security covered by paragraph (a)(5) of the Rule to furnish the information required by that paragraph to the interdealer quotation system, in the form prescribed by the system, at least two days before the quotation is published.

[39] Under Rule 15c2–11(f)(3), the "piggyback" exception, the rule's information gathering requirements are inapplicable when a security has been the subject of quotations in an interdealer quotation system for at least 12 business days during the previous 30 calendar days, with no more than four consecutive business days elapsing without a quotation. In addition, the Commission notes that the parameters of the relief granted to the NASD may be altered if the amendments to 15c2–11, as proposed in Securities Exchange Act Release No. 27247 (September 14, 1989), are adopted.

[40] After the initial 60 days of operations, the Service will have the capability to monitor entries daily for compliance with the rule's piggyback provision. If a security is not quoted for four consecutive business days, it will be dropped from the Service and require a Rule 15c2–11 submission prior to initiation or resumption of quotations.

the Service, and today has issued a separate letter granting the exemptions pursuant to paragraph (h) of Rule 15c2–11.[41] The Commission notes, however, that in all other respects a Market Maker Participant must comply with Rule 15c2–11 when submitting or publishing quotations in the Service. Accordingly, for a security that does not qualify for the limited Rule 15c2–11 exemption for inter-system piggybacking granted today, a Market Maker Participant must have in its records the information required by Rule 15c2–11 to initiate quotations in the Service.[42] Additionally, if a Participant has not previously furnished information to CCH/NQB respecting a particular issuer and cannot qualify for the inter-system piggybacking exemption granted today, it must furnish the information to the NASD pursuant to Rule 15c2–11(d). The NASD will provide a form for a Market Maker Participant's submission of paragraph (a)(5) information and will develop procedures for supplying the data to the Commission.

Moreover, the NASD's working agreement with CCH/NQB regarding review of Market Maker Participants' compliance with Rule 15c2–11 does not affect the NASD's responsibility as a self-regulatory organization to secure compliance with Rule 15c2–11 (including the information gathering requirements) by Market Maker Participants.[43] In this regard, the NASD recently submitted a proposed rule change amending Schedule H of the NASD's By-Laws.[44] The amendment would require that, before initiating or resuming quotations for securities covered by Rule 15c2–11, a member file with the NASD one copy of the information needed to comply with the rule at least three business days prior to publication of the quotation. The amendment, which must be filed with and approved by the Commission before the NASD can implement it, would apply to securities quoted in the Pink Sheets, the Service, or any other interdealer quotation system subject to the rule.

As part of its proposal, the NASD also proposed to allow the inclusion of foreign securities to be displayed in static form and be updated only twice daily, including those that are exempt from registration under section 12 of the Act pursuant to the information-supplying exemption under Rule 12g3–2(b) ("exempt foreign securities").[45] Generally, the exemption is available to certain issuers if the issuer provides the Commission with whatever information the issuer must provide in its home country. The exemption is not available, however, to issuers whose securities are quoted in an "automated inter-dealer quotation system."[46] The NASD has requested that the Commission find that its proposed Bulletin Board Service is not "an automated inter-dealer quotation system" as that term is used in Rule 12g3–2. As discussed above, however, the Amex and the NYSE argued against such a finding by the Commission.[47]

The Amex and NYSE argued that the language of Rule 12g3–2 should preclude application of the exemption for foreign securities included in the Service.[48] Both also note that when the Commission amended the Rule in 1983 it was recognizing that the introduction of NASDAQ to the OTC market resulted in a market for NASDAQ securities that was in significant respects the same as that for listed stocks.[49] Amex argues that the Bulletin Board Service is an equivalent change in the Pink Sheet market that the introduction of NASDAQ was to the OTC market. Moreover, the NYSE argues that access to the Service and the avoidance of the registration requirements under the Act provide significant incentives to issuers to have their securities quoted in the Service and as such create a loophole in Rule 12g3–2 that the 1983 amendment to the rule was intended to prevent. The NYSE believes that this provides the NASD a significant competitive advantage.

The Commission disagrees with the Amex and NYSE and has preliminarily concluded that the NASD may allow Participants to include exempt foreign securities in the Service in the limited way described above.[50] The Commission, however, will review this decision at the end of the one-year pilot period to determine whether its assumptions about how these securities trade will continue to hold true.

The Commission is basing its decision on a number of factors. First, the Commission disagrees with the NYSE and the Amex that the information contained in the NASD's proposed Bulletin Board Service for exempt foreign securities is essentially the same as that in NASDAQ and thus should not be available for issues exempt from registration under Rule 12g3–2(b).[51] Unlike NASDAQ, which allows real-time, unlimited quotation updates, Bulletin Board Participants can only update quotations on foreign securities twice daily, once between 9 and 9:30 a.m. and once between 12 and 12:30 p.m. (ET).[52] Thus, the quotation entered will generally be stale non-firm indications of interest, entirely different in nature from the real time dissemination of quotations through NASDAQ.

Accordingly, the Commission believes that its interpretation of Rule 12g3–2(d)(3) will not create a significant loophole in section 12 that will result in a significant competitive advantage for the NASD at the expense of the exchanges. As has been discussed above, there will be significant differences between being traded in the Bulletin Board Service and being traded in NASDAQ or on exchanges, including the fact that there will be no continuous market, mandatory firm quotations or

[41] 17 CFR 240.15c2–11(h).

[42] For a more detailed description of a market maker's obligations under Rule 15c2–11, *see* Securities Exchange Act Release No. 27247 (September 14, 1989), 54 FR 39194.

[43] *See* sections 15A(b) (6) and (11) of the Act, 15 U.S.C. 78o–3(b) (6) and (11).

[44] *See* Securities Exchange Act Release No. 27694 (February 8, 1990) 55 FR 5532.

[45] 17 CFR 240.12g3–2(b).

[46] 17 CFR 240.12g3–2(d)(3). In 1983 the Commission amended Rule 12g3–2 to delete the information-supplying exemption in Rule 12g3–2(b) "for securities quoted in an automated inter-dealer quotation system, *i.e.*, NASDAQ." Securities Act Release No. 6493 (October 6, 1983), 48 FR 46736.

[47] Although Amendment No. 3 addressed these concerns by limiting the display of foreign securities and ADRs to static form, the Amex submitted a second letter stating that it still objected to their inclusion in the system. (*See* discussion *infra.*) The NYSE, however, did not submit a comment letter on Amendment No. 3.

[48] The NYSE surveyed other Commission rules and noted that in some, the terms "automated inter-dealer quotation system" or "inter-dealer quotation system" are used and, in others, the term "NASDAQ" is used. The NYSE thus concluded that when the Commission intended particular provisions to apply only to NASDAQ it expressly so stated. The Commission disagrees with this narrow reading. Although in some instances the Commission may specifically have focused on NASDAQ, it is inappropriate to automatically conclude that whenever an arguably broader term like "automated inter-dealer quotation system" is used the Commission had already decided its applicability to systems not yet in existence.

[49] The Amex believes that the fact that NASDAQ brought increased visibility, access and exposure to the OTC market was the basis for the elimination of the exemption.

[50] For purposes of all other rules, regulations, forms and schedules under the Securities Act and the Securities Exchange Act, the Bulletin Board Service will not be considered an "automated interdealer quotation system" or an "electronic interdealer quotation system."

[51] The NYSE argues that these two systems are the same because, in both, market makers can enter firm quotes and can suffer the same discipline if they fail to honor those quotes.

[52] The Commission disagrees with the Amex that this limitation on update capability does not represent "a significant difference in the treatment of these securities." Letter from Gordon L. Nash, Senior Executive Vice President, Amex, to Jonathan G. Katz, Secretary, SEC, dated August 30, 1989. On the contrary, the Commission believes that this is a significant limitation on market makers. Limiting market makers' ability to update their quotations for a security virtually guarantees that those market makers will always enter only non-firm quotations or indications of interest.

market maker obligations for securities quoted in the Bulletin Board Service. The Commission believes that those differences should provide incentives for issuers that wish to voluntarily enter the U.S. markets to list their securities on one or more national securities exchanges or NASDAQ. Accordingly, for these reasons the Commission does not believe the system as presently designed for foreign securities, is an automated quotation system for purposes of Rules 12g3–2(b). Again, the Commission emphasizes that these conclusions are preliminary and the Commission will review them at the end of the one-year pilot period.

Finally, the Commission finds good cause for approving the proposed rule change (Amendment No. 4) prior to the thirtieth day after the date of publication of the notice of filing. The instant filing does not raise any new substantive issues nor does it modify the basic operational features of the Service. Further, because the Commission approval of the Service will only permit a pilot operation for one year, interested parties will have an additional opportunity for comment when the NASD seeks authorization for permanent approval.

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 31, 1990.

V. Conclusion

In view of the above, the Commission concludes that the proposed rule change is consistent with the requirements of the Act, in paticular, sections 15A and 11A, and that it is appropriate to grant the NASD approval of the one-year pilot program of the Bulletin Board Service.

It is therefore ordered, pusuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved for a one-year pilot program, ending May 1, 1991.

By the Commission.

Dated: May 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 10611 Filed 5–7–90; 8:45 am]

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[Release No. 34–27950; Filed No. SR–NASD–90–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Late Trade Reporting

On March 8, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–90–14), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), that codifies in Schedules D and G of the NASD By-Laws (pertaining to NASDAQ and listed securities, respectively) the requirement that trades be reported within 90 seconds after execution.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 27827 (March 20, 1990), 55 FR 11283. The Commission received no comments on the proposal. This order approves the proposal.

In its filing with the Commission, the NASD stated that the NASD's transaction reporting plan for NASDAQ National Market System ("NMS") securities requires reporting of trades within 90 seconds after execution. Transactions by NASD members in listed securities are also required to be reported within 90 seconds pursuant to the Consolidated Tape Association ("CTA") plan. These requirements are codified in Schedules D and G of the NASD By-Laws (pertaining to NASDAQ and listed securities, respectively). The Schedules provide that members reporting executions in applicable securities after the 90 second time frame must indicate that the reports are late by attaching an identifier to each report.

The NASD, along with other participants of the CTA, have recently focused on the occurrences of late trade reporting in their markets. As a result, the NASD's Market Surveillance Department conducted a review of all transactions reported as late during a three month period December 22, 1988 through March 21, 1989. This study revealed that during the three months, 14 firms submitted a number of late trade reports ranging from 2.4% to 44.3% of their total trades. Although some of the late reports were due to the firms' experiencing temporary systems outages and difficulties in transmitting trade data to the tape, the Association believes that it is appropriate to remind NASD members of their trade reporting responsibilities, and to make the failure to report transactions in a timely manner a violation of the Rules of Fair Practice.

The NASD stated that the instances of late trade reporting in listed and NASDAQ/NMS securities, both during market hours and reports deferred until after the close, required revisions to Schedules D and G to clarify members' obligations. In addition to these amendments, the NASD Board of governors proposed adding an interpretation to explain the obligations of timely trade reporting and the consequences of a pattern or practice of later trade reporting.

The NASD believes that reminding NASD members of their obligations of timely trade reporting is appropriate and necessary, especially because the Automated Confirmation Transaction service ("ACT"), which has been approved by the Commission for self-clearing firms, requires participants to submit trade data to ACT in reportable securities within the same time frames as the trade reporting rules, i.e., within 90 seconds.

The Commission believes that the statutory basis for the proposed rule change is consistent with the Act, particularly section 15A(b)(6) of the Securities Exchange Act of 1934. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market."

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–NASD–90–14, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant ot delegated authority, 17 CFR 200.30–3(12).

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10655 Filed 5–7–90; 8:45 am]

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[Release No. 34-27967; File No. SR-NYSE-89-22]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Specifications and Content Outline for the Modified Series 7-UK Representatives Examination

On August 10, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to introduce specifications and a content outline for their modified Series 7 Examination for United Kingdom ("UK") representatives.

The proposed rule change was noticed in Securities Exchange Act Release No. 27168 (August 22, 1989), 54 FR 35959 (August 30, 1989). No comments were received on the proposal.

The NYSE has proposed that a qualified registered representative, in good standing, of The Securities Association ("TSA") [3] that is applying to become a registered representative with an Exchange member organization can satisfy the examination requirement under NYSE Rule 345.15 by obtaining a passing score of 70% on an abbreviated version of the Series 7 Examination.[4] Essentially, the modified Series 7 Examination deletes those substantive sections of the standard Series 7 which overlap with the TSA examination.

To become registered with the Exchange, such persons will be required to take a special ninety (90) question examination dealing with U.S. securities laws, regulations, sales practices and special products drawn from the standard Series 7 Examination.[5]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] TSA is a UK self-regulatory organization which regulates members of the UK exchanges and broker-dealer firms, and has rulemaking authority granted to it by the Securities and Investments Board.

[4] The proposed examination is a modified version of the General Securities Representative Examination ("Series 7"), a comprehensive examination covering the general securities industry, which is administered by the National Association of Securities Dealers ("NASD").

[5] The modified Series 7 Examination does not cover municipal securities and, therefore, a candidate who passes only the modified examination will not be eligible to sell municipal securities. Persons seeking municipal securities registration will be required to pass the standard Series 7 or the modified Series 7 plus the Series 52. Although registration under the modified Series 7 Examination may not be recognized by U.S. securities exchanges other than the NYSE, the NYSE has had discussions with the NASD concerning their adoption of the modified Series 7 Examination.

Furthermore, consideration will be given to the candidate's previous experience for the purpose of satisfying the Exchange's four-month training requirement pursuant to Exchange Rule 345.15.

Similarly, a U.S. Series 7 qualified registered representative will be able to satisfy TSA qualification requirements by either (1) passing TSA's equivalent version of the proposed modified Series 7 Examination or (2) meeting an experience criterion (*e.g.*, if the candidate has been a registered person with "continuous relevant experience" since January 1, 1987, TSA will waive the examination requirement).

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and 6(c)(3)(B) of the Act.[6]

The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the exchange "perfect the mechanism of a free and open market." Given the continuous increase in the internationalization of the securities markets, the Exchange's proposal is one attempt to answer the demand for ease of access between the U.S. and UK markets. In this regard, the modified Series 7 Examination is part of an examination approach whereby UK representatives can avoid taking partially duplicative examinations, yet still meet the same examination requirements as U.S. representatives. Thus, the Commission believes that the proposal will facilitate the registration of UK representatives with the Exchange, thereby promoting the competitiveness of the NYSE, both domestically and internationally. Moreover, U.S. representatives will receive substantially reciprocal treatment from TSA, thus easing their access to the UK market.

The Commission believes that the proposal also is consistent with the section 6(c)(3)(B) requirement that the Exchange establish standards of training, experience and competence for persons associated with Exchange members and member organizations. The modified Series 7 Examination provides a comprehensive coverage of the topics fon the standard Series 7 Examination that are not covered on the TSA examination. Accordingly, the modified Series 7 Examination, along with the TSA examination, adequately measures the qualifications of UK representatives.[7]

[6] 15 U.S.C. 78f (b)(5) and (c)(3)(B) (1982).

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: May 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10656 Filed 5-7-90; 8:45 am]

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[7] The proposed Content Outline for the modified Series 7 Examination is a comprehensive guide to the topics to be included on the examination. It will familiarize examination candidates with the range of subjects covered by the examination as well as provide some indication as to the depth of knowledge required. The Content Outline also includes sample questions so that the candidates will be familiar with the types of questions used on the examination.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-27948; File No. SR-NASD-90-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Reduction in Service Charges for the Computer Assisted Execution Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is reducing the service charges for the Computer Assisted Execution Service ("CAES") from $.01 per share to $.005 per share.

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association recently reviewed the background and current pricing structure for CAES. When CAES was first operational, the service charge to members utilizing the system was set at a level to recover development costs and to operate the system efficiently. That charge was $.005 per share. Subsequently, the fees were raised to $.01 per share to cover additional costs incurred by the Association in connection with the CAES service, and because of reductions in participant use of the service. The members using CAES understood that the $.01 fee was to be reduced to the original level upon recovery of development costs or increase in CAES usage. Although costs continue to be incurred by the Association in operating CAES, traffic through the service has increased and costs will be offset in part by transaction charges and in part by the revenues derived from the NASD's portion of Consolidated Tape Association revenues in listed securities.

The Association believes that the recent increase in CAES usage will continue and therefore, proposes to reduce the CAES rate from $.01 to $.005 per share and to monitor CAES traffic to determine whether further rate adjustments will be appropriate in the future. In determining to adjust the rate back to its original fee, the Association notes the potential benefit of a rate reduction upon utilization of CAES for the execution of transactions in listed securities. The NASD's CAES service should become increasingly competitive with the adjusted service charges and would offer members an alternative vehicle for effecting transactions other than on an exchange floor in listed securities.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934. Section 15A(b)(5) requires that the rules of the NASD "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The reduction in CAES fees reflects the current costs of operating the system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not forsee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of 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 proposed rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 thereunder because the proposal is "establishing or changing a due, fee, or other charge," imposed by the Association upon its members. At any time within 60 days of the filing of such 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number of the caption above and should be submitted by May 21, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10657 Filed 5–7–90; 8:45 am]

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[Release No. 34–27968; File No. SR–NASD–90–2]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Broker-Dealers' Compliance With Rule 15c2–11

The National Association of Securities Dealers, Inc. ("NASD") submitted on January 8, 1990, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [1] ("Act") and Rule 19b–4 [2] thereunder to amend Schedule H to the NASD By-Laws to require member firms, before initiating or resuming quotation of a non-NASDAQ over-the-counter security in any quotation medium, to file with the NASD a copy of the information needed to comply with Rule 15c2–11 [3] under the Act and certain additional information.

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 27694, February 8, 1990) and by publication in the Federal Register (55 FR 5532, February 15, 1990). The Commission received two comment letters with respect to the proposed rule

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] 17 CFR 240.15c2–11 (1989).

change.[4] The NASD, in turn, responded to the SIA comment letter.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change assists the NASD in fulfilling its statutory obligations under section 15A(b)(2) that requires a registered securities association to be so organized and have the capacity to enforce compliance by its members and associated persons with the provisions of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rule change is consistent with sections 15A(b)(6) and (11) in that the rule change is designed to prevent fraudulent or manipulative acts and practices and promotes just and equitable principles of trade and that it assists the NASD in governing the form and content of quotations for securities.

As noted, the only significant comment the Commission received came from the SIA. The SIA objects to the proposed rule change because it believes that the proposed rule change unduly expands the responsibilities of a broker-dealer by requiring provision of information regarding the basis upon which an initial or resumed priced entry was made. According to the SIA, because of the burdensomeness of the increased responsibilities the SIA foresees in supplying the basis of the information for entering a price, the new requirement may deter market makers from entering quotations. Further, the SIA objects to the proposal because the NASD membership did not have the opportunity to comment on the proposed rule change prior to submission to the Commission and because the Commission has yet to adopt the proposed amendments to Commission Rule 15c2–11. Accordingly, the SIA requested that either the NASD send the proposal to the membership for comments or, the Commission delay approval until final action on the amendments to Rule 15c2–11.

In response to the SIA comments, the NASD stated that: (1) The requirement that market makers justify the pricing of "initial bids/offers is integral to its enhanced oversight of members' compliance with Rule 15c2–11 as well as with the NASD's efforts to curb abusive trading practices in so-called 'penny stocks' "; (2) implementation of the proposed changes to Schedule H before Commission adoption of the amendments to Rule 15c2–11 should not be delayed because the proposed changes have been drafted to recognize the possibility of future changes to the Rule and, if necessary, Schedule H can be amended to conform to any unforeseen changes to the Rule; and (3) the call for membership comment is unnecessary under the NASD's Articles of Incorporation and By-Laws and further, changes to NASD schedules to the By-Laws, including Schedule H, do not require a membership vote.

The Commission has considered the SIA's comment, together with the NASD's response thereto, and determined that the implementation of the changes to Schedule H should not be delayed. Although the SIA believes that the proposal may deter some market makers from making priced entries, the SIA has pointed to no evidence that such events will occur and, in any event, the Commission believes that when priced entries are made, information pertaining to the basis upon which the price was determined is critical to effective NASD surveillance of market making activity and is necessary to deter and detect unlawful activity in low-priced securities of little-known companies.

Further, with regard to the request for NASD member comment on the proposal, the Commission notes that NASD rules do not require any such comment period. Moreover, interested persons could have availed themselves of the comment period after Commission publication of notice of the proposed rule change in the **Federal Register**. Finally, although the Commission has not yet taken final action on the proposed amendments to Rule 15c2–11, the NASD proposal has been drafted to recognize that the Commission may adopt additional or modified information requirements upon final action with respect to Rule 15c2–11 and thus, the Commission does not believe it necessary to delay such an important surveillance tool as encompassed in the proposed changes to Schedule H.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10658 Filed 5–7–90; 8:45 am]

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[4] Letters from: (1) Alison Baur of San Francisco, California, to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("Commission"), received March 13, 1990 ("Baur letter"); and (2) John T. Shinkle, Chairman, Federal Regulation Committee, Securities Industry Association ("SIA"), to Jonathan G. Katz, dated April 10, 1990. The SIA letter is discussed in the text.

The Baur letter poses several questions that reflect, in general, a misunderstanding of the application of the proposed rule change and of Rule 15c2–11. For example, the Baur letter inquires about the reason for the NASDAQ exemption from the new Schedule H requirements. Rule 15c2–11, of course, specifically excepts from its coverage publication or submission of a quotation in the over-the-counter market for a security admitted to trading on a national securities exchange (if traded on that exchange on the same day or on the day before submission or publication of the quotation) or a security authorized for quotation in an interdealer quotation system operated by a registered securities association, *i.e.*, NASDAQ. *See* 17 CFR 15c2–11 (f)(1) and (f)(5).

Similarly, in response to the letter's third question inquiring about the applicability of Schedule H to quotation media other than the Pink Sheets, the Commission notes that Schedule H conforms to the scope of Rule 15c2–11 and, accordingly, the requirements are applicable to other interdealer quotation media to the extent that Rule 15c2–11 would apply.

The Baur letter also asks: (1) Whether broker-dealers must file the required Schedule H information with the Commission as well as with the NASD and (2) what constitutes full compliance with Rule 15c2–11. Rule 15c2–11 requires that a broker-dealer have and maintain in its records the required information about a security and make it reasonably available upon request to any person expressing an interest in a proposed transaction in the security. However, under paragraph (d) of Rule 15c2–11, a broker-dealer submitting a quotation for a security of an issuer included in paragraph (a)(5) must furnish to the interdealer quotation system, in the form prescribed by the system, the information regarding the security and the issuer specified in paragraph (a)(5) of the Rule. Finally, the Commission notes that a discussion of the elements constituting full compliance with Rule 15c2–11 exceeds the scope of this order and any such question is better directed to competent legal counsel.

[5] *See* letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, dated April 19, 1990.

[Release No. 34–27965; File No. SR–NYSE–90–23]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Nine-month Extension of Rule 805 (Priority of Basket Bids and Offers) and Rule 806 (Taking or Supplying Baskets Named in Order)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 30, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II

below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend the effectiveness of Exchange Rule 805 (Priority of Basket Bids and Offers) and Rule 806 (Taking or Supplying Baskets Named in Order) to January 31, 1991.[1]

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 and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to extend the effectiveness of Rule 805 (Priority of Basket Bids and Offers) and Rule 806 (Taking or Supplying Baskets Named in Order) until January 31, 1991.

Rule 805 sets forth the rules of priority applicable to basket bids and offers. The highest bid or lowest offer has priority in all cases. At the same price, Tier 1 and Tier 2 bids and offers have priority over all other bids and offers, so as to enhance the opportunity for public customers in the component stock markets to participate. Next, priority at a price is determined by the time of entry on the Exchange Stock Portfolio ("ESP") display unit. Finally, a bid or offer from the trading crowd has priority over other bids or offers from the trading crowd at that price (though not over bids or offers on the display unit at that price) based on when the bid or offer was made. Where the sequence of trading crowd bids and offers cannot be determined, or where bids and offers in the trading crowd are made simultaneously, priority will be shared on a pro rata basis. The Rule also make clear that, unlike stock trading, a basket sale does not remove all bids and offers. Paragraph (d) of the Rule allows a member to cross two agency orders without exposing either side, but only at a price that is better than the ESP display unit's best bid and offer for the basket, and the cross price is announced to the trading crowd.

Rule 806 specifies that a Competitive Basket Market-Maker ("CBMM") may only facilitate a customer's order at a price that is better than the best bid or offer on the ESP display unit, and only after announcing the facilitation price to other members in the trading crowd. Rule 806(b) prohibits another Exchange member from interceding in the facilitation if the proposed facilitation price is only one "minimum variation" (*i.e.*, .01 index points) better than the prevailing quote on the customer's side of the market. When a facilitation is more than the minimum variation from the prevailing quote, NYSE Rule 806(b) permits another member to intercede in a CBMM's facilitation trade by taking or supplying all of the baskets that the customer seeks at a price that is better for the customer than the facilitation price.

In response to a request from the Commission staff, the Exchange agreed to provide a six-month "sunset" provision to these rules. The Commission noted in its order granting temporary approval to Rules 805 and 806 that it would be difficult to predict whether the ESP market would expand and be characterized by active basket trading, or whether trading would be sporadic. Accordingly, the Commission determined that it was consistent with the Act for the Exchange to build in necessary incentives to ensure active market-making participation, at least in the initial stages of basket trading, and therefore the Commission gave temporary approval to Rules 805 and 806 for a six-month period.

Volumn in basket trading has been low. In light of this low trading activity in baskets, the Exchange is requesting that the Commission extend the effectiveness of the current rules for nine months so that additional market experience can be gained. The Exchange expects to submit to the Commission by December 1, 1990 a report discussing the NYSE's basket market and experience in trading baskets.

For the first six months of basket trading, the Exchange has not disseminated on a consolidated basis the total trading volumn for each of the component stocks represented by basket transactions either during or after the trading day. The Exchange had, however, committed to submit to the Commission, at the end of the first six months of basket trading, a proposed rule change that would provide for the inclusion of end-of-day transaction volumn in the basket component stocks in the consolidated transaction volume figures. At that time, the Exchange reserved and continues to reserve the right to express its view that the addition of end-of-day transaction volume in the basket component stocks in the consolidated transaction volume figures would not be appropriate. The Exchange is requesting an extension for the submission of this proposed rule change until November 1, 1990.

Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 on the proposed rule change.

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 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be

[1] *See* Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834 (temporarily approving File No. SR-NYSE-89-5).

available for inspection and copying at the NYSE. All submissions should refer to File No. SR–NYSE–90–23 and should be submitted by May 29, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has determined that the proposed rule change to extend the effectiveness of NYSE Rules 805 and 806 until January 31, 1991 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[2] In particular, the Commission believes that the proposed rule change is consistent with the section 6(b)(5) requirement that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed extension of effectiveness of Rule 805 will permit the Exchange to continue allowing baskets to trade under a regime of strict price and time priority, with no distinction between proprietary and customer orders. The Commission believes that in light of the low basket volume to date, the Exchange should be able to continue employing rules of the time and price priority in order to provide an incentive that may attract upstairs capital to the basket market. The Commission believes that strict time and price priority in the current basket market is consistent with the Act. Accordingly, the Commission has determined to approve an extension of the effectiveness of Rule 805 on a temporary nine-month basis.

The proposed extension of effectiveness of Rule 806 will permit the Exchange to continue allowing only CBMMs to effect proprietary cross transactions. While the Commission remains concerned about the anti-competitive limitati- ns on proprietary trading contained in Rule 806, the Commission believes that a nine-month extension of the effectiveness of the rule is consistent with the Act. As with the extension of Rule 805, the low basket volume to date justifies the continuation of Rule 806 as structured in order to attract upstairs market-making participation to the basket market.

Accordingly, the Commission has determined to approve, on a temporary nine-month basis, an extension of the effectiveness of the NYSE's limitations on proprietary trading contained in Rule 806. If during the next nine months, however, baskets become actively traded, no artificial market-making incentives should be necessary and the Commission would expect the NYSE to revise its rules to permit basket trading and facilitation by all member firms.

Because trading volume in the baskets has remained lower than previously anticipated, the Commission believes an extension of NYSE Rules 805 and 806 until January 31, 1991 would provide the Exchange with adequate time to evaluate the effects of basket trading on the market. The Commission, however, expects that during the extended time period of nine months, the Exchange will continue to assess the NYSE's basket market. The Commission also expects that by December 1, 1990 the Exchange will file a report detailing the NYSE's experience regarding the trading of baskets and will file a proposed rule change with the Commission either revising Rules 805 and 806 or extending the effectiveness of the rules for a further pilot period.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order that the Exchange members may continue their current order priority and precedence and proprietary facilitation procedures for basket trading without disruption. In addition, accelerated approval is necessary because the effectiveness of the rules expires on April 30, 1990.

It is therefore ordered, pursuant to section 19(b)(2) [3] of the Act, that the proposed rule change be, and hereby is, approved for a nine-month period ending on January 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: April 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10662 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

[2] In addition, the Commission has issued an order which extends the Exchange's exemption from reporting transactions in reported securities and disseminating on a consolidated basis the total trading volume for each component stock in basket transactions, pursuant to Rule 11Aa3–1 under the Act, through January 31, 1991. *See* Securities Exchange Act Release No. 27962 (April 27, 1990).

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–27962; File No. SR–NYSE–90–23]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Extending Exemption Relating to Basket Trading

I. Introduction

On October 26, 1989, the Securities and Exchange Commission ("Commission" or "SEC"), approved a proposed rule change submitted by the New York Stock Exchange, Inc. ("NYSE" or "Exchange") to trade "Exchange Stock Portfolios" ("ESPs"), standardized baskets of stocks, on the floor of the Exchange ("ESP Service").[1] As part of the proposal, the Exchange requested certain exemptions under Rule 11Aa3–1 of the Exchange Act from the Rule's requirements to report transactions in reported securities and to disseminate on a consolidated basis the total trading volume for each component stock in ESP transactions.[2] The Commission granted the two exemptions, but only gave a six-month exemption for the dissemination on a consolidated basis of the total trading volume for each component stock in ESP transactions.[3] The NYSE requested an extension of the temporary exemption.[4]

II. Discussion

Pursuant to Rule 11Aa3–1 [5] the NYSE is required to collect and disseminate transaction data on securities listed and traded on the Exchange. More specifically, Rule 11Aa3–1 requires that the Exchange disseminate transaction reports for individual reported securities traded on the Exchange,[6] and that the Exchange disseminate on a consolidated basis trading volume for each of the component stocks represented by ESP transactions.[7]

The NYSE provides trading facilities through the ESP Service for reported securities (as components of baskets) but does not disseminate on a

[1] *See* Securities Exchange Act Release No. 27382, (October 26, 1989) 54 FR 45834.

[2] *See* letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Brandon C. Becker, Associate Director, Division of Market Regulation ("Division"), SEC, dated October 4, 1989; and letter from Michael J. Simon, Milbank, Tweed, Hadley & McCloy, counsel for the NYSE, to Kathryn V. Natale, Assistant Director, Division, SEC, dated October 13, 1989.

[3] *See* Securities Exchange Act Release No. 27390, (October 26, 1989), 54 FR 45876.

[4] *See* File No. SR–NYSE–90–23 (filed April 27, 1990).

[5] 17 CFR 240.11Aa3–1 (1989).

[6] Rule 11Aa3–1(c)(1) and (2). "Reported securities" are securities for which there is in effect a transaction reporting plan.

[7] Rule 11Aa3–1(b)(2)(iv).

consolidated basis the total daily trading volume for each component stock. The NYSE believed that its proposal to exclude end-of-day transaction volume in the ESP component stocks from the consolidated transaction volume figures was appropriate to provide the Division and the Exchange with an opportunity to assess whether the absence of individual basket component stocks in the end-of-day consolidated volume figures merited modification in light of actual trading experience.[8]

Due to the low volume in basket trading during the first six months, the NYSE has requested an extension of the exemption for disseminating on a consolidated basis the total trading volume for each component stock. The Commission believes that it is appropriate to extend the conditional relief from Rule 11Aa3–1 through January 31, 1991. The NYSE, however, must file a proposed rule change that will provide for the inclusion of end-of-day transaction volume in the ESP component stocks in the consolidated transaction volume figures, or submit to the Commission the reasons why its exemption should be extended, on or before November 1, 1990.

III. Conclusion

The Commission believes that the ESP market structure balances appropriately the competing concerns of various Exchange constituencies and is consistent with the maintenance of fair and orderly markets and the protection of investors. Accordingly, based on the aforementioned factors, the Commission finds that the requested extension of exemption granted under Rule 11Aa3–1 is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 11A of the Act, and Rule 11Aa3–1(g) thereunder, that the following exemption from Rule 11Aa3–1 be, and hereby is, extended through January 31, 1991: A temporary exemption from the requirement of paragraph (b)(2)(iv) of Rule 11Aa3–1 that the Exchange provide for the consolidation of transaction reports.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

[8] *See* letter from Richard A. Grasso, President and CEO, NYSE, to Brandon C. Becker, Associate Director, Division, SEC, dated October 4, 1989.

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10610 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 2, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Bass Public Limited Company
American Depositary Shares (File No. 7–5900)
Safeway Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–5901)
Geothermal Resources International, Inc.
Common Stock, $.50 Par Value (File No. 7–5902)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 23, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10616 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

Securities and Exchange Commission

[Release No. 34–27969; File No. SR–PSE–90–02]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Formal Seat Market Procedures

On February 8, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a policy and procedure to regulate bids and offers in the membership seat sale market of the PSE. Amendment No. 1, which made minor language changes to the seat market procedures, was submitted to the Commission on March 1, 1990.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 27799 (March 13, 1990), 55 FR 10341 (March 20, 1990). No comments were received on the proposal.

The PSE proposes to establish a written policy and formal Seat Market Procedures to regulate bids and offers in the membership seat sale market of the PSE. The proposal sets forth eight specific procedures which the Exchange will implement in its regulation of the seat sale market.[4]

The proposal regulates the bidding process for the Exchange and seat maraket participants in the following areas: Deposits, notification, verbal authorizations, priority at the opening, and disclosure of the depth of the market. First, the procedures provide that all first time buyers must submit a deposit—in the form of a cashier's, certified check, or a check from a

[1] 5 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] *see* letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Howard L. Kramer, Divison of Market Regulation, Commission, dated February 23, 1990.

[4] The PSE states that the proposed written procedures, in large part, formalize the seat sale process which the PSE has followed over a period of time. New areas covered by the proposal are: (a) Verbal authorizations by members to enter bids, offers, or changes; (b) information disclosure concerning the depth of the market to seat market participants; and (c) procedures for unusual activity which impacts the seat sale market. *See* Securities Exchange Act Release No. 27799 (March 13, 1990), 55 FR 10341 (March 20, 1990). Five of the eight proposed procedures establish formal rules which the Exchange and parties participating in the seat sale market will follow throughout the bid and offer process for Exchange seats. The remaining three proposed procedures formalize the Exchange's authority to respond to certain activities which may occur in the seat sale market.

member firm—at the time the bid is entered in an amount no less than 20 percent of the bid. Second, the procedures provide for a notification process for changes in the best bid or offer. If the best bid or offer changes, the member services staff will notify the party with the previous best bid or offer. The party notified would have the opportunity to change his bid or offer. The notification will continue until a firm bid or offer is established. Third, the procedures provide that although first time buyers must submit initial bids or changes to their bids in writing, current seat holders may negotiate a sale or purchase, enter a bid or offer, or authorize a change in an existing bid or offer by telephone, followed by a written confirmation to the Exchange no later than the opening the following business day. Fourth, the procedures provide that if two or more parties are waiting at the opening to participate in the market, the parties will determine among themselves who is first. Correspondence received by mail will be time stamped and prioritized by time of receipt. Fifth, the procedures provide that the exchange staff may inform parties with the best bid or offer of the depth of the market within 15% of their price. Parties entering bids or offers where there are others at the same price will be told how many are ahead at that price; the identity of the parties in the market, however, will not be disclosed.

The proposal also governs the Exchange's authority to resolve disputes, to address unusual activity in the seat market, and to suspend seat market trading and procedures. First, the proposal provides that the failure to follow through on a verbal authorization that results in a negotiated sale by the opening the following day or the failure to pay the balance due on a negotiated seat purchase may result in a forfeiture of the bidder's deposit in the amount of the difference between the first negotiated price and the seller's final sale price, if it is less. Any dispute or failure to pay a member may result in arbitration proceedings. The dispute procedures also provide that a subcommittee of the membership committee will be estabished, consisting of the Chairman, Vice-Chairman, and staff, which will meet when necessary to solve disputes in the seat market. Next, the proposal establishes procedures to address unusual activity. The procedures provide that in the event of unusual activity or the announcement of major news which may impact the market, the Member Services Staff will contact the Chairman and Vice-Chairman of the Membership Committee, the Exchange's General Counsel, and the Executive Committee, if necessary. These parties will have the authority to interpret the seat market procedures in the best interests of all parties. Finally, the proposal provides that the Executive Committee or the Board of Governors of the Exchange, at all times, will have the authority to suspend trading in, and procedures governing regulation of, the seat market.

The PSE believes that it is necessary to establish the proposed written procedures in order to formalize its regulation of the seat sale market. The PSE also believes that the proposed procedures establish a policy which is fair and orderly and which provides for the prompt dissemination of market information. The PSE states that many of the proposed procedures have been followed by the PSE for a number of years on an informal basis.[5] The PSE also states that the proposal's new provision, which will allow verbal authorizations by existing seat holders who are participating in the seat sale market, is designed to give all members the same time advantage when entering bids, offers, or changes to bids or offers. The PSE believes that its new proposed rule regarding the disclosure of the depth of the market will aid market participants in making their trading decisions. The PSE also believes that the new proposed procedure for unusual activities will allow the Exchange to respond quickly to emergency situations which may occur in the seat market.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[7] The Commission believes that the proposal, which establishes formal seat market procedures, should result in clear and consistent rules governing the Exchange's regulation of bids and offers for Exchange seats. Because the seat market procedures will be available in written form and will be distributed to members and potential members of the Exchange who enter the seat market, the format of the proposed procedures should serve an important role in providing information regarding the bid and offer process, in general, as well as the seat market participant's obligations and the Exchange's role in the process. Moreover, the proposal defines the scope of the Exchange's authority with respect to dispute resolution, interpretation of procedures, and suspension of seat market trading and procedures. For these reasons, the Commission believes that the proposal improves the administration of the Exchange's seat market.

The Commission also believes that the proposal establishes fair and reasonable procedures for the regulation of the seat sale market. The Commission notes that the Exchange has utilized informally five of the eight proposed procedures for several years. The PSE's proposal with respect to deposits, notification, priority at the opening, disputes, and suspension of procedures are measures which have operated successfully, albeit informally, for some time. For the reasons discussed below, the Commission believes that the remaining three new procedures for verbal authorizations, disclosure of the depth of the market, and unusual activities complement the general purposes of the Exchange's current informal procedures. The proposal, therefore, should result in increased effectiveness and consistency in the PSE's regulation of its seat sale market.

First, the Commission believes that the deposit requirement is a reasonable method by which the Exchange can ensure the good faith of first time buyers in the market. Second, the proposed notification procedures represent a fair process of disseminating information with respect to changes in the best bid or offer which should result in a more competitive auction market for Exchange seats. Third, the proposed opening procedure is an acceptable means of determining priority of participation in the seat market. Fourth, the dispute proposal provides a fair means for the resolution of seat market disputes in that the proposal gives notice of when the forfeiture of a deposit may occur, provides for arbitration, and also establishes a subcommittee of the Exchange's membership committee which may meet to resolve disputes. This proposal should result in the utilization of consistent procedures to resolve disputes which may occur in the seat market. Lastly, the proposal for suspension of procedures is an acceptable method for the Exchange, when acting through its Executive Committee or Board of Governors, to preserve its authority to regulate the seat sale market.

The Commission also believes that it is acceptable for the PSE to allow verbal authorizations by existing seat holders to enter bids, offers, or changes to bids or offers. The Commission notes that this proposal parallels the purpose of

[5] *See supra* note 4 and accompanying text.

[6] Telephone conversation between John Katovich, PSE, and Diana Luka, Commission (February 16, 1990).

[7] 15 U.S.C. 78f(b)(5) (1982).

the deposit requirement for first time buyers in the seat market. The Commission notes that the proposed procedures for disclosure of the depth of the market parallels the PSE's notification procedures for changes in the best bid or offer. The Commission believes that the depth of the market disclosure proposal should aid market participants in making their seat market decisions. This, in turn, should result in a more open and competitive market for Exchange seats. Finally, the Commission notes that the unusual activity proposal complements the proposal for suspension of procedures. The unsual activity proposal gives the Exchange additional flexibility to interpret the seat market procedures and may provide an alternative to suspension of trading and procedures, which requires the approval of the Executive Committee or the Board of Governors of the Exchange.

It Therefore is Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: May 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10659 Filed 5-7-90; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 2, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Merry-Go Round Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7-5895)

Nuveen Municipal Market Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5896)

Pacific-European Growth Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5897)

RMI Titanium Compnay
Common Stock, $.01 Par Value (File No. 7-5898)

Sanifill, Inc.
Common Stock, $.01 Par Value (File No. 7-5899)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 23, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10617 Filed 5-7-90; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(c)(12) (1989).

[Release No. IC-17461; File No. 812-7510]

Application for Exemption Under the Investment Company Act of 1940; Golden American Life Insurance Co.

April 27, 1990.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Golden American Life Insurance Company ("Golden American"), The Specialty Managers Separate Account B of Golden American Life Insurance Company (the "Account") and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the Account and the deduction of guaranteed death benefit charges from the accumulation value under certain contracts.

FILING DATE: The application was filed on April 20, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on May 22, 1990. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve the Applicants with the reqeust, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: The Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549. Applicants, c/o Golden American Life Insurance Company, 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, (202) 272-2026 or Heidi Stam, Assistant Chief, Office of Insurance Products, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Golden American Life Insurance Company is a stock life insurance company organized under the laws of the State of Minnesota. From January 2, 1973 through December 31, 1987, the name of the company was St. Paul Life Insurance Company. On December 31, 1987, after the sale of all of St. Paul Life Insurance Company's business, the name was changed to Golden American Life Insurance Company.

2. The Account, registered with the Commission as a unit investment trust, is a separate investment account of Golden American established in 1988 to act as a funding vehicle for Deferred Variable Annuity ("Deferred Annuity") and Immediate Variable Annuity Certain ("Annuity Certain") contracts (referred to collectively as the "Contracts").

3. The Account is divided into seven divisions. Each division invests in shares of a designated series of The Specialty Managers Trust (the "Trust"),

an open-end management investment company registered with the Commission. The Trust is a series-type mutual fund that contains seven series, each of which pursues different investment objectives and policies. A Contract owner is also permitted to allocate up to 100% of the Contract's accumulation value to the Guaranteed Division of the general account.

4. Pursuant to a Distribution Agreement with Golden American, DSI has entered into and will continue to enter into a sales agreement with broker/dealers and Western Capital Financial Group, Inc. to solicit sales of the Contracts through registered representatives who are licensed to sell securities and variable insurance projects including variable annuities. The registered representatives will be appointed by Golden American to sell the Contracts. The offering of the Contracts will be continuous.

5. The Deferred Annuity is an individual flexible premium payment contract which provides for an initial premium payment and for subsequent premium payments if the Contract owner so desires. There is, however, no obligation to make additional payments.

6. The Annuity Certain is an immediate annuity which provides for payment of a single premium payment and allows for variable annuity payments to be made to the Annuitant over a fixed period of time.

7. For the Deferred Annuity, deferred loading at a maximum rate of 7.50 percent is deducted from each premium payment for premium related expenses. For the Annuity Certain, deferred loading at a maximum rate of 7.25 percent is deducted from each single premium payment for premium related expenses. For both the Deferred Annuity and Annuity Certain, in certain applications, the deferred loading may differ based on the size of the initial or single premium. For the Deferred Annuity, once determined, the deferred loading percentage is applicable to all subsequent premium payments. This charge is allocated to cover distribution expenses. All deferred loading applicable to initial, single, or additional premium payments is imposed at the time of payment but is advanced back to the divisions and recovered from the accumulation value in equal installments on the first and subsequent contract processing dates following the receipt and acceptance of the payment over a period specified in the Contracts. If the Contract owner surrenders a Contract, any remaining deferred loading will be deducted at that time. For purposes of the provisions of the 1940 Act applicable to sales load, the deferred loading is a front-end sales load, because the amount of the sales load is deducted from premium payments when they are made. Applicants are not relying on Rule 6c–8 in connection with this charge.

8. In the Deferred Annuity, an administrative charge of $40 annually is deducted in equal installments on each Contract processing date from the accumulation value of a Contract to reimburse Golden American for the anticipated actual cost of administrative expenses relating to the Contract. The amount of the administrative charge may be changed by Golden American but is guaranteed not to exceed $60 annually. Since Golden American expects to realize an administrative cost savings based on volume, the charge may be reduced by Golden American if the premium received at issue exceeds a specified limit.

9. In the Annuity Certain an administrative charge of 0.25 percent of single premiums of less than a specified minimum is deducted in the same manner and over the same time period as the deferred load. Since Golden American expects to realize an administrative cost savings based on volume, the charge may be reduced by Golden American if the premium received at issue exceeds a specified limit. This charge is to cover Golden American's ongoing administrative expenses and will not exceed the cost of services to be provided over the life of the Contract.

10. The Contracts provide that a maximum mortality and expense risk charge equal to 0.002477 percent of the asset values in each division of the Account will be deducted on a daily basis. This is equivalent to an annual charge of 0.90 percent. For the Deferred Annuity, approximately 0.55 percent is for assuming the mortality risk and 0.35 percent is for assuming the expense risk. In the Annuity Certain, approximately 0.45 percent is for assuming the mortality risk and 0.45 percent is for assuming the expense risk. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of the annuity option with a life contingency, annuitants will probably live longer than Golden American's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annuity. In the Annuity Certain, the mortality risk assumed by Golden American relates to the fact that, at all times, Golden American will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by Golden American is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Golden American's actuarial projections indicate, resulting in higher than expected payments during the payment phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In the Deferred Annuity, Golden American also assumes a risk to pay out a guaranteed death benefit if in excess of the accumulation value. In addition, Golden American assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

11. In the Deferred Annuity Contract, Golden American guarantees a death benefit payable to the beneficiary if the Contract owner (or the annuitant) dies prior to the annuity commencement date. The guaranteed death benefit charge is at a rate of $1.20 per $1,000 of guaranteed death benefit per year. In the future, the Account may offer other variable annuity contracts that may make a guaranteed death benefit charge of up to $1.20 per $1,000 of guaranteed death benefit per year. The guaranteed death benefit charge is based on the amount of the guaranteed death benefit and is approximately equal to 0.10 percent of net assets, assuming hypothetical gross return of 5 percent.

12. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk and guaranteed death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge level or annuity rate guarantees and the markets in which the Contracts are offered. Based upon the foregoing, Applicants further represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

13. Applicants do not believe that the deferred load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from the general account assets which will include amounts derived

from risk charges. Golden American has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Account and the Contract owners. Golden American will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

14. Applicants further represent that the Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the funds, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10661 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27957; File No. S7–9–90]

Application for Registration as a Securities Information Processor and Order Granting a Temporary Exemption From Registration to the National Association of Securities Dealers, Inc.

Pursuant to section 11A(b)(3) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 28, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") an application for registration of its subsidiary, Market Services, Inc. ("MSI"), as an "exclusive securities information processor" ("ESIP") [2] for the operation of the PORTAL Market,[3] pursuant to section 11A(b)(2) of the Act and Rule 11Ab2–1 thereunder.[4]

In its filing, the NASD also requested a temporary exemption under section 11A(b)(2) for a period of 90 days from the date of the Commission's approval of the proposed rule change implementing the PORTAL Market to allow the NASD to operate the PORTAL Market in the interim until the Commission has completed its review of the securities information processor application. Rule 11Ab2–1(c) provides the Commission with the authority to conditionally or unconditionally exempt any securities information processor from the registration requirement under the Rule.

The Commission has determined that it is appropriate to grant the NASD a 90-day exemption from the registration requirement in section 11A from the date of this order. The Commission has comprehensively reviewed the NASD's proposed PORTAL system and, as part of its proposal, the NASD has represented that it has considered the implications of the new system on the capacity of the NASD's other systems, the adequacy of the PORTAL system's capacity to process the expected traffic in PORTAL itself, and the adequacy of the PORTAL system's protections against hackers, computer viruses and other internal or external intrusions. The NASD has represented that its capacity and security plans are designed to provide adequate protections that are comparable to those generally in use for similar systems. While the PORTAL proposal is not a substitute for the registration of MSI as an ESIP, the Commission believes that it provides an adequate basis for granting a limited exemption at this time. In addition, the operation of the PORTAL Market while the Commission is reviewing the ESIP registration application will provide the Commission the opportunity to observe how well the PORTAL Market actually functions from a system's perspective.

As a condition to the grant of the exemption, the Commission believes it is appropriate to require the NASD to comply with certain sections of the Act that will apply if the Commission ultimately approves MSI's ESIP registration. MSI would be subject to the requirements of section 17 (a) and (b) of the Act (requirement to make and keep prescribed records, and authorization of inspection of any records kept) and section 11A(b)(5) of the Act (notice of prohibition or limitation of access to services). To implement the statutory purposes of section 11A(b) during the term of this exemption, the grant of this exemption is conditioned on MSI's compliance with the provisions of section 17 (a) and (b) of the Act. In addition, if MSI were to prohibit or limit any person access to services offered, directly or indirectly, MSI would be required to file notice of its action with the Commission within 15 days and to send a copy of the notice to the aggrieved party.[5]

Interested persons are invited to submit written data, views and arguments concerning the foregoing.[6] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the application that are filed with the Commission, and all written communications relating to the application 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 the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 29, 1990.

The Commission finds, for the reasons discussed above, that the requested temporary exemption from registration is consistent with the public interest, the protection of investors and the purposes of section 11A, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system.

It is therefore ordered, pursuant to section 11A(b)(1) of the Act, that the NASD be granted and exemption from registration for 90 days from the date of this order.

By the Commission.

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[1] 15 U.S.C. 78k–1 (1987).

[2] Section 3(a)(22)(B) under the Act defines an exclusive securities information processor as a securities information processor or self-regulatory organization engaged, on an exclusive basis, in collecting, processing, or preparing for distribution or publication information regarding transactions or quotations made by such facility or exchange. 15 U.S.C. 78c(a)(22) (1987).

[3] The PORTAL Market is a screen-based system for primary placements and secondary trading of Rule 144A securities. The Commission, in separate releases, adopted Rule 144A under the Securities Act of 1933 and approved an NASD proposed rule change to implement the PORTAL Market under the Exchange Act. *See* Securities Act Release No. 6862, April 23, 1990; and Securities Exchange Act Release No. 27956, April 27, 1990.

[4] *See* letter to Jonathan G. Katz, Secretary, SEC, from Frank J. Wilson, Executive Vice-President and General Counsel, NASD, dated March 28, 1990.

[5] This requirement should not be read to include any applicant to become a PORTAL broker, dealer or investor that did not meet the qualification standards in the PORTAL Rules.

[6] The NASD stated in its submission that it believes that it may be contrary to the purposes of section 15A(b)(2) and the private nature of the exemption from registration under section 5 of the Securities Act provided by Rule 144A for the NASD to provide quotation or transaction information to any vendor or other person. The Commission specifically requests commentators to address this issue.

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10613 Filed 5–7–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1194]

Advisory Committee on International Intellectual Property (ACIIP), International Copyright Panel; Meeting

The Department of State announces that the International Copyright Panel of the Advisory Committee on Intellectual Property will hold an open meeting on Wednesday, May 23, 1990, from 10 a.m. to 1 p.m. in room 1107, Department of State, 2201 C Street NW., Washington, DC.

The principal topics on the agenda are the following: Model Provisions for Legislation in the Field of Copyright; Protocol to the Berne Convention; and Treaty on the International Registration of Audiovisual Works.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Harvey J. Winter, State Department, Washington, DC, and provide their name, affiliation, address and phone number to Ms. Bobbi Tinsley, telephone (202) 647–1825.

Dated: April 19, 1990.

Harvey J. Winter,

Director, Office of Business Practices, Exeuctive Secretary, Advisory Committee on Intellectual Property.

[FR Doc. 90–10672 Filed 5–7–90; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 27, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46912.

Date filed: April 24, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 22, 1990.

Description: Application of Aerosur, pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to transport general cargo from Miami International Airport to Uruguay.

Docket Number: 45292.

Date filed: April 27, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 25, 1990.

Description: Amendment to the application of Zambia Airways Corporation Limited, pursuant to section 402 of the Act and subpart Q of the regulations, to include the intermediate points Lome, Togo, and Accra, Ghana.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–10599 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 90–030]

Chemical Transportation Advisory Committee (CTAC) Meeting and CTAC Subcommittee on Inert Gas Systems Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: A. The Chemical Transportation Advisory Committee (CTAC) will hold a meeting on Wednesday, June 13, 1990 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. U.S. Coast Guard Remarks.
4. Introduction of new members.
5. Election of Chairman.
6. General Interest topics.
7. Subcommittee reports:
   a. Vapor Control,
   b. Coal Transportation,
   c. Marine Occupational Safety and Health,
   d. Tank Filling Limits,
   e. Inert Gas Systems.
8. Future Subcommittee Tasks.
9. International Activities.
10. Any other business.
11. Closing Remarks.
12. Adjournment.

B. The Subcommittee on Inert Gas Systems of the Chemical Transportation Advisory Committee (CTAC) will hold its second meeting on Thursday, June 14, 1990 in Room 4315, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee was formed to develop guidelines for the safe operation and maintenance of inert gas systems. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m. The Subcommittee will review problems associated with the maintenance of existing inert gas systems in which the manufacturer of the system is either no longer in business or the specific system design is no longer produced and major components are not readily available.

Attendance to both meetings is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander G.D. Marsh or Dr. M.C. Parnarauskis, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593, (202) 267–1217.

Dated: April 27, 1990.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–10607 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway widening project in Orange County, California.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Bednar, District Engineer, Federal Highway Administration, P.O.

Box 1915, Sacramento, California 95812–1915, Telephone (916) 551–1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS) will prepare an environmental impact statement (EIS) on a proposal to widen State Route 55 (the Costa Mesa Freeway) between the Interstate 5 (the Santa Ana Freeway) and State Route 91 (the Riverside Freeway) for a distance of about 5.8 miles. Transportation improvements are considered necessary to relieve current congestion and provide additional capacity for the projected future traffic demand on the existing Route 55 freeway. The limits of the proposed improvements are: 0.1 mile south of the Seventeenth Street overcrossing in Sanata Ana to 0.3 mile south of the Route 91 Freeway.

Alternatives being considered for the Freeway Widening Project are: (1) Taking no action; (2) Develop one additional general purpose travel lane in each direction. Auxiliary lanes will be added between 17th Street and State Route 22, between State Route 22 and Chapman Avenue, and between Lincoln Avenue and State Route 91. The project will also modify the freeway to achieve full design standards for the existing High Occupancy Vehicle (HOV) lane, the general purpose lanes, the median areas and the shoulders.

As an integral component of preparing the Draft EIS, CALTRANS will conduct an Agency Scoping Meeting in spring of 1990. Agency notice will be given of the time and place of the meeting. In addition, Public Information Meetings (open houses) will be held shortly after the Agency Scoping Meeting, in order to get the citizens input. Public notice will be given of the time and place of these open houses. The draft EIS will subsequently be available for public and agency review and comments.

To insure that the full ranges of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and Activities apply to this program.)

Dated: April 30, 1990.

James J. Bednar,

District Engineer, Sacramento, California.

[FR Doc. 90–10673 Filed 5–7–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Organization, Functions; and Authority Delegations; Inspector General

[Number: 114–02]

Date: April 27, 1990.

Subject: Delegation of authority to the Inspector General for Oversight Board Internal Audit and Investigation Activities.

By virtue of the authority vested in me by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as Chairman of the Oversight Board, and pursuant to the delegation of the Oversight Board to me to provide internal audit and internal investigative services for the Board, and pursuant also to my authority as Secretary of the Treasury under 31 U.S.C. 321, I hereby delegate to the Inspector General of the Department of the Treasury authority to act as Inspector General for the Oversight Board and to exercise any and all administrative and other functions attendant upon that authority.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 90–10636 Filed 5–7–90; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 89
Tuesday, May 8, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 23, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–10832 Filed 5–4–90; 1:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, May 30, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–10833 Filed 5–4–90; 1:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, May 30, 1990.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–10847 Filed 5–4–90; 1:39 pm]

BILLING CODE 6351–01–M

FEDERAL COMMUNICATIONS COMMISSION

May 3, 1990

FCC To Hold Open Commission Meeting Thursday, May 10, 1990

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, May 10, 1990, which is scheduled ot commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W.

Item No., Bureau, and Subject

1—Mass Media—Title: Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process. (BC Docket No. 81–742) Summary: The Commission will consider various petitions for reconsideration and/or clarification of the *First Report and Order* which took actions to limit the potential for abuse of the comparative renewal process.

2—Mass Media—Title: Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes. (MM Docket No. 87–314) Summary: The Commission will consider adopting a Report and Order to eliminate abuse of the Commission's processes through the improper use of petitions to deny and threats to file such petitions in the context of license applications proceedings involving construction permits, modifications, transfers, and assignments. The issue of how to eliminate abuse of the counterproposal process in allocations proceedings is also included and will be considered.

3—Mass Media—Title: Amendment of the Commission's Rules Regarding the Selection From Among Competing Applicants for New AM, FM, and Television Stations by Random Selection (Lottery). (MM Docket No. 89–15) Summary: The Commission will consider what action to take in this proceeding.

4—General Counsel—Title: Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases. Summary: The Commission will consider proposals to reform the comparative hearing process for new broadcast hearing process for new broadcast station applicants to expedite the resolution of those cases.

5—Mass Media—Title: Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits. Summary: The Commission will consider whether to initiate a proceeding to reimpose limitations on settlement payments that can be made to competing applicants for construction permits.

6—General Counsel—Title: Policy Statement on Character Qualifications in Broadcast Licensing. Summary: The Commission will consider revisions of its *Character Policy Statement* on broadcast licensing concerning the range of relevant misconduct and misrepresentations to the Commission by all applicants.

7—Common Carrier—Title: Inquiry into the Existence of Discrimination in the Provision of Superstation and Network Station Progamming. (Gen Docket No. 89–88) Summary: The Commission will consider adopting a Further Notice of Inquiry seeking information on whether satellite carriers are unlawfully discriminating against distributors to home earth stations in favor of other entities such as cable system operators in the provision of satellite delivered superstation and network station programming.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Audrey Spivack, Office of Public Affairs, telephone number (202) 632–5050.

Issued: May 3, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–10780 Filed 5–4–90; 11:14 am]

BILLING CODE 6712–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–90–09]

TIME AND DATE: Monday, May 14, 1990, at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Petitions and Complaints: Certain Surgical Excimer Laser Systems and Components Thereof (D/N 1560).

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

May 2, 1990.

[FR Doc. 90–10802 Filed 5–4–90; 1:38 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–90–10]

TIME AND DATE: Tuesday, May 15, 1990, at 10:30 a.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Inv. No. 731–TA–457 (P) (Heavy Forged Handtools from the People's Republic of China)—briefing and vote.
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

May 2, 1990.

[FR Doc. 90–10803 Filed 5–4–90; 1:38 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 7, 14, 21, and 28, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 7

Thursday, May 10

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 14 (Tentative)

Monday, May 14

10:00 a.m.—Briefing on Status of Nine Mile Point 1 Restart (Public Meeting) (Tentative)

Tuesday, May 15

2:30 p.m.—Briefing by Executive Branch (Closed—Ex. 1)

Wednesday, May 16

2:00 p.m.—Briefing on Proposed Rule on License Renewal (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting)

a. License Fees—Final Rule (Tentative)

Week of May 21 (Tentative)

There are no Commission meetings scheduled for the Week of May 21.

Week of May 28 (Tentative)

Thursday, May 31

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 (Chairman Carr was not present) on May 1, the Commisison determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Evolutionary Light Water Reactor Certification Issues and Related Regulatory Requirements (Continuation from 4/27)" (Public Meeting), scheduled for May 3, be held on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

May 3, 1990.

[FR Doc. 90–10857 Filed 5–4–90; 2:27 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 55, No. 89
Tuesday, May 8, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Technical Revisions

Correction

In rule document 90-8180 beginning on page 13265, in the issue of Tuesday, April 10, 1990, make the following correction:

On page 13265, in the second column, under **I. Section 199.4**, in the third line, "birthday " should read "birthing".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Golden-Cheeked Warbler as Endangered

Correction

In rule document 90-10432 beginning on page 18844 in the issue of May 4, 1990, make the following corrections:

1. On page 18844, in the first column, under **DATES**, in the third line, "January 2, 1991" should read "December 31, 1990".

PART 17—[CORRECTED]

2. On page 18845, in the third column, in the third line, "January 2, 1991" should read "December 31, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 88-111]

RIN 2115-AD19

Great Lakes Pilotage

Correction

In rule document 90-9446 beginning on page 17580, in the issue of Wednesday, April 25, 1990, make the following correction:

§ 401.510 [Corrected]

On page 17582, in the first column, under § 401.510(b)(4), in the last sentence, should read "Additionally, the vessel may contact the Director directly to request notification under paragraph (b)(1) of this section if a notice of pilot availability is not received from the appropriate pilotage pool within two hours of providing its pilotage requirements to the pool.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90-027]

National Offshore Safety Advisory Committee; Meeting

Correction

In notice document 90-9778 beginning on page 18213 in the issue of Tuesday, May 1, 1990, make the following corrections:

1. On page 18213, in the third column, under **SUMMARY**, in the 10th line, "8 a.m. to 4 p.m." should read "1 p.m. to 5 p.m.".

2. On page 18214, in the first column, in the file line at the end of the document, "FR Doc. 90-97178" should read "FR Doc. 90-9778".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

RIN 2125-AC55

Truck Size and Weight; National Network

Correction

In rule document 90-9928 beginning on page 17952, in the issue of Monday, April 30, 1990, make the following correction:

Appendix A to Part 658 [Corrected]

On page 17960, in the first column, under **Note 1**, in the second line, "1-66 from 1-495" should read "I-66 from I-495".

BILLING CODE 1505-01-D

federal register

Tuesday
May 8, 1990

Part II

Federal Communications Commission

47 CFR Parts 0, 1, 5, and 61
Fee Collection Program; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 5, and 61

[Gen. Dkt. 86-285; FCC 90-163]

Fee Collection Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's rules relating to the procedures for implementation of a fee collection program under 47 U.S.C. 158 (1989), are amended to implement changes in that program under the Omnibus Budget Reconciliation Act of 1989. The Act increased the amount of fees and created new fees. The rules being adopted implement those new and increased fees. Also, to comply with congressional directives and Department of Treasury regulations regarding handling of monies, the new rules require payment of fees at a lockbox bank, the Mellon Bank in Pittsburgh, Pennsylvania. The new rules will increase the amount of fees collected by the Commission and make the collection process more efficient.

EFFECTIVE DATE: May 21, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Walker Feaster, Office of Managing Director, Federal Communications Commission, (202) 632-0923

Thomas Holleran, Office of Managing Director, Federal Communications Commission, (202) 632-5316

Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: April 19, 1990.

Released: April 20, 1990.

By the Commission:

In the matter of establishment of a fee collection program to implement the provisions of the Omnibus Budget Reconciliation Act of 1989.

I. Introduction

1. By this Order, the Commission amends certain of its rules to implement section 3001 of the Omnibus Budget Reconciliation Act of 1989 (hereinafter referred to as the Budget Act), which was signed into law on December 19, 1989.[1] This legislation amends section 8 of the Communications Act of 1934, as amended, by revising the Schedule of Charges (fees) now collected by the Commission.

2. Section 3001(c) of the Budget Act directs that the amendments to the Schedule of Charges take effect on the date of enactment. The law also provides that the Commission implement the amended Schedule of Charges within 150 days of its enactment.[2] Further, with the 1989 amendment to section 8, Congress directed the Commission to avoid a "full-blown" rulemaking prior to implementing the new charges. Conference Report at 433. Consistent with that guidance and our 150-day deadline, we have determined not to conduct a notice and comment rulemaking to implement the new fee schedule.[3]

3. We recognize that a News Release of December 21, 1989 indicated that the public would have the opportunity to comment on any changes resulting from the 1989 Budget Act.[4] *See News Release,* "President Signs Omnibus Budget Reconciliation Act of 1989 Creating New and Revised FCC Fees," December 21, 1989. That *News Release* also indicated that the public would be given sufficient advance notice of the implementation date for the new fees and any new fee collection procedures. As the new rules must be implemented by May 21, 1990 (150 days from the enactment, as required by Congress), it does not appear that it will be possible for us to both afford an opportunity for public comment and give the public advance notice of the new rules. In these circumstances, and given Congress' preference that we avoid using rulemaking procedures, we believe that the best resolution is to proceed directly to adoption of new rules. However, any party will have the opportunity to seek reconsideration of any particular procedure adopted herein, and we will carefully review any petitions for reconsideration to determine if any matters raised by commenters require an adjustment to these new rules.

Background

4. The Commission began collecting fees under the statutory authority conferred by section 8 on April 1, 1987.[5] As of December 1, 1989, the Commission had collected $107.2 million from approximately 941,000 applicants and other filers. These totals include fees associated with initial filings of low power television and rural cellular authorizations. Excluding the nonrecurring filings, the Commission collected $50.9 million in the first 30 months of the program. That is, an average of $20.4 million per year from 259,000 applicants. During this same period, approximately 60 percent of all revenues collected were filed with and processed through Mellon Bank, a Treasury Department lockbox bank in Pittsburgh, Pennsylvania.

5. The 1989 Budget Act increases the dollar amount of all existing fees and creates new fees for other regulatory services or filing requirements. [6] New fees include those for Ship Stations, Aircraft Stations, Specialized Mobile Radio Systems, Private Carrier Licenses, Restricted Radio Telephone Operator Permits, Experimental Radio Services, FM/TV Boosters, International Broadcast Stations, mobile Satellite Earth Stations, Radio Determination Satellite Earth Stations, Recognized Private Operating Status, Accounting

[1] Public Law No. 101-239, 103 Stat. 2106. *See also* Conference Report to accompany H.R. 3299, H. R. Rep. No. 386, 101st Cong., 1st Sess. 20-28, 433-435 (1989); reprinted in the Congressional Record of Nov. 21, 1989 at page H9333. *See also* separate floor statements by Congressman Dingell (page H9610) and Senator Hollings (page S16648) that appear in this edition of the Congressional Record.

[2] The Conference Report indicates a congressional intent for the public to continue to pay existing fees until the Commission has revised its rules to incorporate these fees and any other changes into its procedures in order to collect these charges. Conference Report at 433.

[3] The new rules adopted herein do not require prior notice and comment under the Administrative Procedure Act. 5 U.S.C. 553. The rule amendments reflecting the new fee amounts are mandated by Congress in the new Schedule of Charges in section 8. Thus, affording an opportunity for public comment on the new fee amounts would serve no purpose and is unnecessary. 5 U.S.C. 553(b)(B). Implementation of the new fees will also require some adjustments in the manner in which the Commission collects fee. Those changes, however, involve rules of "agency organization, procedure, or practice," and a notice and comment rulemaking is not required before they are put into effect. 5 U.S.C. 553(b)(A).

[4] The preliminary indication that we would proceed by notice and comment rulemaking was based in large part on the fact that we proceeded in that manner in Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Fee Program), 2 FCC Rcd 947 (1987).

[5] Fee Program, 2 FCC Rcd. 947 (1987), 52 F.R. 5285 (February 20, 1987); Supplemental Order on the Establishment of a Fee Collection Program, 2 FCC Rcd. 1882 (1987), 52 F.R. 10226 (March 31, 1987); *reconsideration granted in part,* Memorandum Opinion and Order (Fee Reconsideration Order), 3 FCC Rcd. 5987 (1988), 53 F.R. 40884 (October 19, 1988).

[6] Originally, the Commission had planned to increase all fees in 1989 by 12.6 percent, based upon the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U). *See* 47 U.S.C. 158(b). However, as Congress was considering a completely revised Schedule of Charges, including a 12.6 percent fee increase and many entirely new fees, we decided to forego the scheduled 1989 CPI-based increase. Pursuant to section 8(b), as modified in the 1989 Budget Act, the next periodic CPI-based adjustment in the Schedule of Charges will take place on October 1, 1993.

and Audits, International Telecommunications Settlements, Radio Operator Examinations and License Renewals and Ship Inspections. New fees were also created for Commission actions on requests for Special Temporary Authority, Waivers, Call Sign Changes, and Extensions or Reinstatements of Construction Permits.

6. The amended Schedule of Charges will have a dramatic impact on our collection efforts. We expect additional revenues of approximately $20 million per year—effectively doubling the current program. The number of applications subject to fees would increase from approximately 268,000 to 749,000 per year—almost tripling the number of transactions the Commission must process. At the same time, the administrative costs of creating and operating this expanded fee program are not included in the Commission's FY90 budget. [7] Therefore, we must utilize the most cost-efficient method of cash management in collecting fees, in order to minimize adverse effects on other critical Commission responsibilities such as the actual review and processing of applications. In addition, we must be mindful of existing law and Treasury Department regulations that require federal agencies to use prescribed cash management techniques that ensure the rapid deposit of funds.[8]

II. Fee Collection Procedures

7. Section 8(f) of the Communications Act directs the Commission to "prescribe appropriate rules and regulations to carry out the provisions * * *" related to the collection of fees. Our decisions as to how to collect these fees must be based upon a realistic assessment of the funds, personnel, equipment and time available to establish a workable program that conforms to cash management laws. As the resources available to this and other agencies decrease in real terms, we must ensure that we use all possible methods to limit government expenditures that will otherwise be diverted from other areas. This is particularly true when a program almost doubles in size. The collection procedures adopted herein are, again, designed to accommodate the new fee program in the most efficient and practical manner possible, without the need to divert resources from our other regulatory programs.

[7] Proposed legislation that would permit the Commission to defray some of the substantial new cost burdens placed on us, by retaining a small percentage of fees collected, moreover, has not yet been enacted.

[8] *See* 31 U.S.C. 3302, 3303, and 3720; 31 CFR 206.1 *et seq.*

A. Payment/Filing Locations

8. Our current rules require that applications with fees be filed either at the Mellon Bank in Pittsburgh, Pennsylvania or the Commission's headquarters in Washington, DC.[9] Private Radio applications, including those filed by frequency coordinators, are filed in Pittsburgh, while Mass Media, Common Carrier and equipment authorization services are filed in Washington. However, we previously noted that we would consider changing our filing locations if we experienced problems with cash management in Washington.[10]

9. Recently, fee processing in Washington has resulted in significant delays in forwarding applications to the processing offices and bureaus. For example, as of December 1989 it required approximately 15 workdays from the date of filing to complete processing in the Fee Section. Because of chronic difficulties in filling low paying administrative positions in Washington, DC, compounded by recent appropriations that have decreased the ability of the Commission to replace lost employees, we see no end in sight to unacceptable delays in our Washington Fee Section. These delays will be magnified if we continue to receive Mass Media, Common Carrier and equipment authorization fees in Washington.[11] An effort to at least stabilize speeds of service with the new fees would require almost a tripling of current staff and space to continue processing fees in Washington.[12] We are unwilling to accept this deterioration in the Commission's service to the public. We are also unable to support the level of resources needed to continue processing these applications in Washington, especially when a cost-effective alternative exists. Therefore, we have decided to use the Treasury Department Lockbox collection program for all fees. By using the lockbox, we will be able to provide fee processing in three days.

10. We are amending the filing location rules to take full advantage of the lockbox services provided under the auspices of the Department of the Treasury. Under the new rules, with a very few exceptions discussed below, submissions with fees will be filed only with the lockbox bank in Pittsburgh, Pennsylvania. Submissions with fees that are filed elsewhere will be returned to the sender without further processing. However, filings that do not require fees, including those submitted by applicants that claim a fee exemption under 47 U.S.C. 158(d)(1), will continue to be filed at the appropriate Commission office.

11. This action is taken in response to the congressional suggestion that we use "the most cost-effective cash management techniques, as jointly determined by the Department of the Treasury and the FCC, to assure that government revenues are maximized and collection costs minimized." Conference Report at 433; *see also* 31 U.S.C. 3302, 31 CFR 206.2, 206.4, 206.5 (relating to the timing and method of depositing money with the Treasury). In 1987, we consulted with the Treasury in the design of our fee collection proceedures. At that time, the relatively small number of filings expected in Washington did not justify use of the lockbox. Now, with the almost twofold increase in expected feeable applications directed to Washington and the estimated threefold increase in staff and space required to meet this workload, our consultations with the staff at the Department of the Treasury indicate that a lockbox would be the only viable collection method that could ensure timely deposits consistent with law.

12. Before arriving at this conclusion, we considered the disruption it would cause to the normal filing habits of Washington-based entities. In this regard, the Federal Communications Bar Association (FCBA) has, through informal contacts, expressed objections to the requirement that applications be filed with the lockbox bank in Pittsburgh. The FCBA is concerned that the filer may lose full control over the application when it is put in the hands of an express carrier or courier for delivery to the bank, and, even when the application is sent in sufficient time to normally expect timely delivery, unexpected intervening events may result in its loss or late delivery to the bank.

[9] Mellon is one of several banks nationwide under a master lockbox contract with the Treasury. It was originally selected by the FCC, in consultation with the Treasury, because of its closeness to Washington and outstanding reputation in the cash management field. The Commission signed a Memorandum of Understanding with the Treasury Department and Mellon Bank to meet its specific needs. The Treasury Department is responsible for all reimbursements to the lockbox banks.

[10] Fee Program, 2 FCC Rcd at 981, n.25.

[11] The number of mass media, common carrier, and equipment authorization filings subject to a fee will increase from an average of 39,000 per year to almost 80,000 per year. This does not include special "window" filings that could cause this level to be much higher.

[12] Approximately 32 workyears are now devoted to fee processing in Washington and Gettysburg. We estimate that an additional 53 workyears would be required to maintain the current, unacceptable speed of service.

13. We believe that the FCBA's concerns are valid with respect to all time critical broadcast and common carrier applications that previously have been accepted for filing in Washington. By time critical applications, we refer to those requests for FCC authorizations that must be filed by a specific deadline or be dismissed as untimely. That is, applications filed in response to a "window" or a "cut-off" list established by the Commission. Where such time critical applications were previously filed in Washington, the Pittsburgh filing requirement could impose a hardship.[13] We believe that, with respect to those time critical applications whose location of filing has been shifted from Washington to Pittsburgh, we can alleviate the FCBA's concerns, as well as those of its clients, without imposing unreasonable costs on the Government.[14]

14. Accordingly, we are implementing a procedure under which an unofficial copy of such applications, together with evidence of timely shipment to Pittsburgh, may be submitted to the Commission in Washington to be date stamped and retained by the Secretary's office. If submitted, that copy may be used as evidence of timely submission should the official copy be lost or delayed. To establish timely filing, the application must have been submitted to the Secretary's office by close of business on the established deadline date, and it must have been submitted with a copy of a receipt from an express carrier or commercial courier service offering delivery of packages to Pittsburgh. The receipt must indicate that the package was put in the hands of the express carrier or commercial courier in a manner and in sufficient time to normally expect delivery to the lockbox bank before midnight on the next business day of the Commission.[15] The delivery of the application to the lockbox bank on the next business day after the deadline date shall constitute a timely filing of the application in accordance with the deadline established by the Commission.[16] In any case in which the application transmitted to Pittsburgh is lost or delayed, and the filer has availed itself of the date stamp/receipt option, the Secretary's date stamped copy will provide evidence that the filing was made or was made in a timely fashion.[17]

15. Although we realize that some inconvenience may still result from our determination to require all fees to be filed with the lockbox, we also believe that cash management requirements cannot be met in any continuation of our current procedures. The Congress has recognized, as have thousands of private companies with large numbers of receivables, that lockbox banks are invaluable tools in speeding the availability of funds and reducing collection costs.[18] Where, as here, the full utilization of lockbox services will permit the Commission to devote more of its scarce staff resources to substantive processing and eliminate the unacceptable delays, we believe that any inconvenience caused thereby is insignificant when balanced against the advantages.

16. The following description is provided for those filers that may be unfamiliar with lockbox services. A lockbox bank serves as the filing and processing agent for a corporation or government entity. Instead of delivering payments to the entity, accounts receivable and identifying information are sent directly to the lockbox. The bank maintains several post office boxes that act as a pre-sort for the payments. Mail is picked up at frequent intervals beginning in the evening and continuing throughout the day. Processing continues 24 hours a day, including weekends. Additional staff is brought in during peak periods to avoid delays. The lockbox opens the mail, processes the funds, records remittance data and forwards remaining materials to the client entity, usually within 24 hours of its receipt by the bank. Funds are deposited to the client's account several times per day to permit immediate crediting of revenues. The FCC has used the lockbox services of the Mellon Bank in Pittsburgh.

17. Under the lockbox filing rule adopted herein, the public will mail their applications or other filings subject to a fee to one of several designated post office boxes in Pittsburgh, Pennsylvania.[19] Hand or courier deliveries will also be accepted by the bank 24 hours per day, every day. The bank will date stamp all materials on the date of their receipt. Mail picked up by the bank after 5:30 p.m. or on weekends or holidays and hand delivered or couriered materials received after 5:30 p.m. or on weekends or holidays will be stamped with the actual date and time of receipt. As previously noted, materials submitted to the bank before midnight on any Commission business day will be treated as having been filed on that business day.[20] As the bank makes mail pick-ups after 5:30 p.m., this practice will provide some additional time for entities that file by mail as well as those that file by hand.[21] Materials submitted on weekends or holidays will be treated as having been filed on the next business day.

[13] For example, because applications filed in response to FM windows, the nationwide paging window, AM cut-off lists, and TV cut-off lists were filed in Washington, we share the FCBA's concern with the potential disruptions that may result from the requirement that they now be filed in Pittsburgh. On the other hand, other time critical applications like those filed in response to low power television and rural cellular "windows" have been submitted in Pittsburgh, and, as we perceive no problem with continuing that requirement, we do not believe that any special procedures are warranted for such filings.

[14] In addition to the date stamp/receipt procedure outlined in paragraph 14, we have also considered other alternatives, including: transporting Washington receipts to Pittsburgh for fee processing; and permitting split filings with the fees going to Pittsburgh while the application is filed in Washington. However, the former alternative would impose substantial costs on the Government, including the cost of shipping the materials to Pittsburgh, salaries and space for the required staff in Washington, and the maintenance of records on the materials accepted here and shipped to Pittsburgh. Similarly, the latter alternative would require the matching of fee receipts against application receipts, thereby delaying the processing of applications. A detailed analysis of the costs associated with these options, as well as the date stamp/receipt procedure being adopted herein, is set forth in appendix C. In our judgment, the costs of either the shipping or matching alternatives outweigh their benefits, but it appears that the date stamp/receipt alternative can aleviate the FCBA's concerns without similar high costs or long delays.

[15] In submitting the application and receipt to the Secretary's office in Washington, the filer will be representing that the receipt is for a package containing the original and file copies of the same application, and that package is being shipped to the lockbox bank.

[16] The filing procedure being implemented herein for a limited class of mass media and common carrier time critical applications is similar to a "mail box" filing rule that has been used by some courts. In the future, we will consider the extension of this procedure to other time critical application filings.

[17] The applications will be maintained in a chronological file so that the staff or any interested parties can confirm that a particular application was, or was not, submitted in this manner, if the need to do so should arise.

[18] For instance, lockbox services are used by the Securities and Exchange Commission, the Department of Housing and Urban Development, the Internal Revenue Service, the National Oceanic and Atmospheric Administration, the Department of Justice, the Drug Enforcement Administration, United States Attorneys, and the Immigration and Naturalization Service.

[19] The particular box number and Zip code for each type of filing is contained in the rules adopted herein.

[20] Entities submitting "mass" filings should note that the bank's loading dock will not be available after 5:30 p.m., and any such filings would have to be hand carried to the lockbox office.

[21] We realize that this procedure may slightly disadvantage fee exempt applicants like noncommercial educational broadcasters that may file mutually exclusive applications in response to a cut-off date for facilities that are also available to commercial applicants. However, such instances will be rare, and, with a little planning, the fee exempt filers should have no trouble meeting the deadline by 5:30 p.m. in Washington. Materials submitted on weekends or holidays will be treated as having been filed on the next business day.

18. The bank will also date stamp and return a courtesy copy of a filing if requested to do so and provided with a copy of the submission for that purpose. Date stamped courtesy copies are also available by mail to applicants who provide an extra copy of the submission together with a stamped, self-addressed envelope. If the lockbox processer has reason to believe that an incorrect fee has been paid, the application will receive a second review by a Commission employee before it is rejected and returned to the filer. Upon completion of fee processing, the lockbox will express mail applications to the Commission's headquarters or designated locations. We expect that a submission will be in the possession of the bureau or office responsible for its processing within three (3) days of its receipt by the lockbox bank.

19. Many submissions contain competitively sensitive information. The lockbox bank understands the importance of and serious consequences that could result from premature public disclosure of information in these submissions. Although we are unaware of any such disclosure with regard to the more than 800,000 FCC applications processed by the lockbox bank to date, we are in the process of strengthening the disclosure prohibition in the current Memorandum of Understanding. The new language will be in effect upon the effective date of these rules. In addition, each lockbox employee who comes in contact with an FCC document will be bonded and will sign an individual disclosure prohibition. The bank will not be permitted to discuss even the existence of an application without prior approval of the FCC.[22] The lockbox will not process classified materials. These will be filed in accordance with existing procedures. The lockbox bank will *not* return applications or filings to the submitter for any reason.

20. There will be a limited number of exceptions to the requirement that the submission and fee be filed at the lockbox bank. The first such exception involves tariffs where timing and other considerations lead us to modify the procedure. We will require that the tariff submissions be split, and only the official transmittal letter or application for special permission be transmitted with the fee payment and the fee form to the lockbox bank. The attachments will be filed at the Commission through the Secretary's Office under a copy of the transmittal letter. We will not accept the fee payment in Washington. A further exception will be made for that class of fees that are not paid with the actual submission to the FCC, but are billed at a later date. *See* ¶¶ 26–27, *infra*. Here again, the fee payment, appropriately identified, will be submitted to the lockbox, although the underlying request was received elsewhere in the Commission. The billing statement will identify the appropriate payment location. Notices of appearance accompanied by hearing fees will be filed at our lockbox bank, but parties should also file a copy of the notice of appearance with the presiding judge.

B. Form Requirement

21. The current fee collection program does not require the use of any standardized form in addition to the form or filing format for the authorization requested. However, expeditious handling of the new fee program requires the use of a new Fee Form in addition to the service related form or filing format now submitted. A copy of the new form, FCC Form 155, is attached as appendix A. As FCC forms are revised in the future, the informational requirements of the Fee Form will be incorporated into the revised forms, and a separate Fee Form will no longer be required for filing using the revised application forms.

22. This new procedure is necessary to avoid the extremely difficult and time consuming task of examining the myriad of FCC forms or other filings to determine the correct fee. Some fees are required on a per station or per frequency basis, but the information necessary to calculate the fee is not readily available on the first page of the form. Other submissions do not require an application form, and these must be read to determine what fee is due. With the expected threefold increase in feeable applications, it is necessary for us to streamline the system for processing fees. The FCC Form 155 will accomplish this. Moreover, it will make it easier for the lockbox bank to make the initial determination of whether the correct fee has been paid without reading the underlying materials, and it will permit the bank to keystroke the information from the Fee Form to create a fee data base. Without this standard Fee Form, we could not ensure that the Commission received enough information to permit us to retain a complete record of payments.

23. We recognize that the Fee Form will cause an additional paperwork burden to the public. However, the minimal additional burden on each filer is more than offset by the improvements to the fee collection process that should occur through the use of the form. We have sought and received Office of Management and Budget (OMB) approval of this form to ensure that it is ready for distribution well before the new Schedule of Charges takes effect. We expect to have these forms ready for the public approximately two weeks prior to that date. Filers may submit reproductions of the form.

24. In addition to information identifying the applicant, the form will require the entry of a fee code, a unique identifier for each FCC fee. The fee codes will be listed in the FCC-produced guides to paying fees as well as in the rules specifying the appropriate fees (§§ 1.1102–1.1105), and the applicant will be required to enter the appropriate fee code on the Fee Form. The Fee Form provides space for listing up to five different fee codes. A review of our filing procedures indicates that this is the maximum number of different feeable requests that can be filed on any application form. Multiples of each feeable request can also be noted on the form. A separate Fee Form will be required for each distinct application, but, where a single application can be used to request multiple licenses, stations, or frequencies, a single Fee Form, accompanied by a single payment, will suffice.

25. Because the Fee Form is essential to the efficient processing of fees, the failure to submit the form will result in the dismissal of the underlying application. Similarly, if the fee associated with the code(s) entered on the form do not match the fee paid, the submission will be dismissed. Generally, one payment instrument should be submitted with each Fee Form, and the amount of that payment must match the total fee as refected on the form.[23] We will require that the Fee Form be attached firmly to each application or filing.[24] However, for the present, the Fee Form will not be required for filings on FCC Forms 574, 753, 755, 404, and 506. As a condition of OMB's approval of the Fee Form, we agreed to an early revision these applications, and, in cooperation

[22] Thus, the bank will not respond to inquiries on the status of applications. Any such requests, even by the filer itself, should be made to the bureau or office responsible for processing the submission.

[23] *But see* Fee Reconsideration Order, 3 FCC Rcd at 5991–92 (discussing the limited exception to the "one instrument" rule).

[24] Frequency coordinators filing land mobile radio services applications are required to forward applicants' fee payments when the application is filed. At this time, we will not impose any additional duties on frequency coordinators to review the Fee Form. Rather, the primary responsibility for the Fee Form lies with the applicant, and the frequency coordinator need only forward that form, together with the applicant's fee payment and the underlying application, to the appropriate lockbox address.

with OMB, we plan on incorporating the Fee Form data elements in the revised application forms.

C. Billing Procedures

26. As noted above, we have made an exception to the rule that fees must accompany the submission to provide for limited instances in which a billing process will be used. The *Fee Program* generally rejected the notion that fees could be collected efficiently through a billing process. However, the 1989 Budget Act imposes fees on requests for Ship Inspections, the SMRS Waiting List, audits, and International Telecommunications Settlements. In these instances, because of time sensitivity or because the Commission, not the requester, initiates the fee causing action, the general simultaneous filing rule for fee submission is inappropriate. Moreover, although many requests for Special Temporary Authority (STA) can and should be filed in the normal course, through the lockbox bank, there will be instances in which the applicant believes that the STA being requested is of such an urgent or emergency nature that there is not sufficient time to file in with the lockbox bank. In such circumstances, the requests may be filed with the appropriate FCC Bureau or Office as established in the Commission's rules.

27. For these situations (Ship Inspections, the SMRS Waiting List, audits, International Telecommunications Settlements, and STAs), we are now adopting a billing process for collection of fees. Bills will be issued to the affected parties reflecting the amount due and the deadline for payment. Bills that are not paid when due will be subject to a 25 percent penalty and all procedures permitted by our Debt Collection rules.[25] We also retain the authority to dismiss an application or filing or rescind a grant where the applicant has not paid a charge and/or penalty in a timely manner. 47 U.S.C. 158(c)(2).

D. Additional Procedures for Failed Payments

28. Under our current rules, a request dismissed for the failure of the paying bank to honor the payment instrument may be reinstated upon request, "based on a convincing showing, including a statement by the bank, that the failure to honor the check was entirely due to an error on the part of the bank." Fee Reconsideration Order, 3 FCC Rcd at 5992. Our experience under the existing rule indicates that the procedure can be streamlined and delay eliminated if we require the bank's statement to be in the form of an affidavit from an officer of the bank.[26]

29. We are also adopting a new rule permitting the Commission, on its own motion, to require an applicant or group of applicants to make fee payments by cashier's check. This procedure will be useful where, as has happened in the past, certain applicants repeatedly submit payment instruments that failed due to insufficient funds, stop payment orders, or closed accounts. These failed payments impose significant processing costs on the Government, and we can see no reason why the FCC should permit repeated instances of an action that is a violation of most state laws. This rule permits the staff to require a cashier's check for all future submissions from any person that has two or more instances of failed payments. Moreover, the rule could also be invoked where applications are submitted in filing windows. A cashier's check would ensure the Commission of final payment before it expends significant resources in processing an application.[27] In either instance, the applicant would receive prior notice from the Commission that a cashier's check is required.[28]

30. The new fees for Special Temporary Authorities (STAs) and other time sensitive requests require adoption of a new procedure to apply in those instances where it is impractical to condition Commission actions upon final payment and timely payment of bills. For example, an STA may expire by its own terms before the Commission learns of a failed payment or a bill becomes due. In such circumstances, where existing procedures are inadequate, our procedure will be to defer processing and/or grant of any other application or request made by a person or company who has failed to make full payment of a fee due until the matter is resolved.

E. Procedures for Fee Waivers and Requests for Reconsideration and Applications for Review of Fee Decisions

31. The Commission considers requests for fee waivers on a case by case basis when such requests are submitted with the application or filing that otherwise requires a fee and when the applicant demonstrates that waiver would be in the public interest. Our current rules do not require payment of the underlying fee with the waiver request, but, if a fee waiver request submitted without the fee is denied, the underlying application will be dismissed. Thus, the staff has encouraged applicants seeking fee waivers to submit a provisional fee with their request.

32. We believe that this process is unnecessarily time consuming and the ability to request a waiver without submitting the fee may, in some cases, encourage the filing of speculative fee waiver requests. Thus, we are amending the rules to require payment of the underlying fee with any fee waiver request.[29] Fee waiver requests received without the correct fee will be returned without consideration and the underlying filing will be dismissed. If a properly filed waiver request is granted, we will refund the fee to the applicant. If the waiver request is denied, we will retain the fee and continue substantive processing. Requests for fee waivers will be submitted as part of the underlying application, in accordance with the procedures governing the filing of that application. The fee waiver request, the application, and fee will be filed at the lockbox bank in Pittsburgh.

33. Our rules provide that reconsideration or review of fee decisions will only be available where the applicant has made the full and proper payment of the underlying fee. 47 CFR 1.1116(b). In a situation where a fee payment instrument accompanies a Petition for Reconsideration or Application for Review under that provision, it will be filed with the lockbox bank in Pittsburgh.

F. Fee Exemptions

34. The 1989 Budget Act preserves all existing fee exemptions for noncommercial educational broadcast applicants and governmental entities. However, section 8(d)(1) is amended to

[25] 47 CFR 1.1901 *et seq.* The 25 percent penalty provided for in 47 U.S.C. 158(c)(1) will be added to the account of an applicant that qualifies for billing but does not pay in full by the due date of the first notice. The penalty is included in the principal that is then subject to debt collection and statutory interest rates.

[26] In lieu of an affidavit, the bank officer may submit an unsworn statement subscribed to as true under penalty of perjury. *See* 47 CFR 1.16.

[27] Recent rural cellular filings resulted in over 2,000 failed payment instruments.

[28] Applicants with multiple failed payment instruments will be notified by letter, specifying the reason for the requirement and its duration. Where a cashier's check is required from all applicants responding to a particular filing window, the requirement will be specified in the "Public Notice" of the window.

[29] Applicants seeking deferrals will not be required to submit a provisional fee as the very nature of the request is based on an inability to do so. Should a deferral be denied, the application or filing will be dismissed. If a deferral is granted, the applicant will be billed.

include an exemption for "nonprofit entities licensed in the following radio services: Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Public Safety, and Special Emergency Radio, * * *" 47 U.S.C. 158(d)(1).[30] We believe Congress intended "nonprofit entities" to mean entities that receive nonprofit, tax exempt status under the Internal Revenue Code. *See* 26 U.S.C. 501. An entity can request nonprofit, tax exempt status by filing a Form 1023 with the Internal Revenue Service. If the entity qualifies, the Service will send it a "Determination Letter." We will require a copy of the "Determination Letter" as proof of nonprofit status. Moreover, we interpret the exemption granted in 47 U.S.C. 158(d)(1) to include exempt applicants requesting authorizations in the Operational Fixed Microwave Services where those authorizations are to be used in conjunction with a Special Emergency or Public Safety Radio Service.

III. New and Increased Fees

35. We are adopting the Schedule of Charges into our rules exactly as approved by Congress and the President. This includes the language that establishes multiples of a fee based upon the number of frequencies, stations, call signs, waivers, etc. that may be requested by an applicant. Any future changes to these fees will be made through the mechanism created by section 8(b) of the Communications Act (the CPI increase or decrease) or future statutory changes by Congress. As necessary, we will propose new charges or revisions to current charges to Congress for their consideration.

36. The Schedule of Charges results from a determination by the Congress that the fees represent a fair approximation as to how the Commission's costs should be distributed. Conference Report at 433. Members of the affected telecommunications industries have had an opportunity to comment upon and suggest changes to the Schedule of Charges through the legislative process. We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing. We note, however, that Congress did adopt a minimum fee of $35 that may not reflect the actual cost of processing.[31]

37. Those requests for regulatory action or required filings that are not listed in the Schedule of Charges are not subject to a fee. The public should carefully review these fees to acquaint themselves with amounts and multipliers. The fees are described in detail in the Congressional Record for November 21, 1989, H9610–16. For the convenience of the public, the same description, together with rule citations and information on the appropriate filing form is supplied in Appendix B.

IV. Effective Date for New Procedures and Fees

38. As previously noted, the revised section 8 directs the Commission to implement the modified Schedule of Charges not later than 150 days after the date of enactment. Thus, the new procedures and fees will go into effect on May 21, 1990. On that day and thereafter, submissions must be filed at the appropriate location and the new FCC Form 155 must accompany the filings. We do not expect to permit a "grace period" for improperly filed applications. The public has been on notice since November 1989 that these fees have changed, and we expect to provide our filers with additional notification through a public relations campaign.

39. Generally, applications or other filings that are received prior to May 21, 1990 would be subject to the prior Schedule of Charges and fee collection procedures, and members of the public with pending applications or requests will not be required to submit an additional fee. However, if a pending application is dismissed and refiled on or after May 21, 1990, or a change in status requires the payment of an additional fee on or after May 21, 1990, the new Schedule of Charges will apply. Applicants designated for hearing on or after May 21, 1990, will pay the revised fee ($6,760), but an applicant designated for hearing prior to May 21, 1990 will have the opportunity to pay the old fee ($6,000), provided that payment is made before May 21, 1990.

V. Procedural Matters

40. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. The proposal has been submitted to and approved by the OMB as prescribed by the Act.

41. The procedures being implemented herein are intended to accomplish the efficient receipt of filings and collection of fees consistent with applicable laws and regulations and with the minimum of inconvenience to those that make filings with the Commission. Although we believe that we have succeeded in this respect, we also recognize that experience with these procedures may reveal that certain adjustments are warranted, and, where appropriate, we will make those adjustments in future proceedings.

42. Accordingly, *it is ordered*, That, pursuant to authority contained in section 3001 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. Number, 101–239), and in sections 4(i), 4(j), 8(f) and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. 154(i), 154(j), 158(f) and 303(r)), effective on May 21, 1990, parts 0, 1, 5, and 61 of the Commission's rules are amended as set forth below.

43. *It is further ordered*, That FCC Form 155 (attached hereto as appendix A) is adopted, and, with the exception of the applications listed at paragraph 25, above, said form will be required for all fee submissions tendered on or after May 21, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects

47 CFR Part 0

Location of Commission Offices.

47 CFR Part 1

Administrative practice and procedure, Radio.

47 CFR Part 5

Reporting and recordkeeping requirements.

47 CFR Part 61

Communications common carriers.

Appendix

47 CFR parts 0, 1, 5, and 61 are amended as follows:

PART 0—[AMENDED]

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

Authority: 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. Section 0.401 is amended by revising the introductory paragraph and

[30] The specific radio services listed by section 8(d)(1) fall under the general rubric of either Special Emergency Radio or Public Safety Radio. *See* 47 CFR 90.15 and 90.33 for a complete description of these services.

[31] Congress indicated that a minimum fee was necessary to ensure that the costs of collecting a fee do not exceed the potential revenues from the fee. Conference Report at 434.

revising paragraph (b) to read as follows:

§ 0.401 Location of Commission offices.

The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing. When an application or other filing does not involve the payment of a fee, the appropriate filing address or location is established elsewhere in the rules for the various types of submissions made to the Commission. The public should identify the correct filing location by reference to these rules. Applications or submissions requiring fees must be submitted in accordance with § 0.401(b) of the rules irrespective of the addresses that may be set out elsewhere in the rules for other submissions.

* * * * *

(b) Applications or filings requiring the fees set forth at part 1, subpart G of the rules must be delivered to the Commission's lockbox bank in Pittsburgh, Pennsylvania with the correct fee and completed Fee Form attached to the application or filing, unless otherwise directed by the Commission. In the case of any conflict between this rule subpart and other rules establishing filing locations for submissions subject to a fee, this subpart shall govern.

Note: Applicants seeking a waiver or deferral of fees must submit their application or filing in accordance with the addresses set forth below. Applicants claiming a statutory exemption from the fees should file their applications in accordance with paragraph (a) of this section.

(1) Applications and filings submitted by mail shall be addressed to the Mellon Bank in Pittsburgh, Pennsylvania. The bank maintains separate post office boxes for the receipt of different types of applications. It will also establish special post office boxes to receive responses to special filings such as applications filed in response to "filing windows" established by the Commission. The address for the submission of such filings will be established in the Public Notice announcing the filing dates. In all other cases, applications and filings submitted by mail should be sent to the addresses listed in the appropriate fee rules: § 1.1102 for Private Radio Services, § 1.1103 for Equipment Approvals, Experimental Radio Applications, Radio Operator Examinations, and Ship Inspections; § 1.1104 for Mass Media Services; and § 1.1105 for Common Carrier Services.

Note: Private radio applications that require frequency coordination must be submitted to the appropriate certified frequency coordinator before filing with the Commission. After coordination, the applications are filed with the Commission as set for herein. (See §§ 90.127 and 90.175 of the rules)

(2) Applications and other filings may also be hand carried, in person or by courier, to the Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, room 153–2713, Pittsburgh, Pennsylvania. All applications and filings delivered in this manner must be in an envelope clearly marked for the "Federal Communications Commission," addressed to the attention of "Wholesale Lockbox Shift Supervisor," and identified with the appropriate Post Office Box address as set out in the fee schedule (§§ 1.1102–1.1105). Applications should be enclosed in a separate envelope for each Post Office Box. Hand-carried or couriered applications and filings may be delivered at any time on any day. Applications or filings received by the bank before midnight on any Commission business day will be treated as having been filed on that day. Materials received by the bank after midnight, Monday through Friday, or on weekends or holidays, will be treated as having been filed on the next Commission business day.

3. Section 0.482 is revised to read as follows:

§ 0.482 Application for waiver of private radio rules.

All requests for waiver of the rules governing the Private Radio Services that require a fee (see § 1.1102) shall be submitted to the Mellon Bank, Pittsburgh, Pennsylvania at the address set forth in § 1.1102. Waiver requests that do not require a fee shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Waiver requests attached to applications must be submitted in accordance with § 0.401(b) of the rules.

PART 1 —[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

5. Section 1.221 is amended by revising paragraphs (f) and (g) and the following Note to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(f) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. *See* subpart G, part 1 for the amount due. The fee is required for each applicant designated for hearing in the private radio services in a comparative new or modification proceeding; for each applicant designated for hearing in a common carrier service in comparative new, major/minor change or renewal proceeding; or for each applicant designated for hearing in a case involving the comparative review of applicants for a new commercial television, radio, or Direct Broadcasting Satellite construction permit, a major/minor change construction permit for a previously authorized commercial facility or comparative renewal license proceeding for these facilities. The fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of subpart G of the rules.

(g) A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

Note: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the fee.) If a settlement agreement is not effectuated, the Presiding Judge will require immediate payment of the fee.

6. Section 1.931 is amended by revising paragraph (a) to read as follows:

§ 1.931 Requests for waiver of private radio rules.

(a) All requests for waiver of the rules governing the Private Radio Services that require a fee (see § 1.1102) shall be submitted to the Mellon Bank, Pittsburgh, Pennsylvania at the address set forth in § 1.1102. Waiver requests that do not require a fee shall be

addressed to: Federal Communications Commission, Gettysburg, PA 17326. Waiver requests attached to applications must be submitted in accordance with § 0.401(b) of the rules.

* * * * *

7. The authority citation for part 1, subpart G is revised to read as follows:

Authority: Sec. 3001(a), Pub. L. 101–239, 103 Stat. 2106, 47 U.S.C. 158.

8. Section 1.1101 is revised to read as follows:

§ 1.1101 Authority.

Authority to impose and collect these charges is contained in title III, section 3001 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), revising 47 U.S.C. 158, which directs the Commission to prescribe charges for certain of the regulatory services it provides to many of the communications entities within its jurisdiction. This law revises section 8 of the Communications Act of 1934, as amended, which contains a Schedule of Charges as well as procedures for modifying and collecting these charges.

9. Section 1.1102 is revised in its entirety to read as follows:

§ 1.1102 Schedule of charges for private radio service.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Marine Coast Stations:				
a. New, Modification and/or Renewal (per station).	FCC 503, FCC 155	$70	PBM	Federal Communications Commission, Marine Coast Service, P.O. Box 358265, Pittsburgh, PA 15251–5265.
b. Assignments (per station)	FCC 503, FCC 155, FCC 1046	70	PBM	Federal Communications Commission, Marine Coast Service, P.O. Box 358265, Pittsburgh, PA 15251–5265.
c. Renewal of License (per station)	FCC 405A, FCC 155	70	PBM	Federal Communications Commission, 405A Station Renewal, P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Special Temporary Authority (Initial, Modifications, Extensions) Non-emergency.	Corresp. FCC 155	100	PCM	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305.
Emergency (Note: Do not send a remittance. You will be billed at a later date.)	N/A	100	PCM	Federal Communications Commission, STA Request, Consumer Assistance Branch, Gettysburg, PA 17326.
2. Ship Stations:				
a. New, Modification and/or Renewal (per application).	FCC 506	35	PAS	Federal Communications Commission, Marine Ship Service, P.O. Box 358275, Pittsburgh, PA 15251–5275.
b. Renewal of License (per application)	FCC 405B	35	PAS	Federal Communications Commission, 405B Station Renewal, P.O. Box 358290, Pittsburgh, PA 15251–5290.
3. Operational Fixed Microwave Stations:				
a. New, Modification and/or Renewal (per station).	FCC 402, FCC 155	155	PEO	Federal Communications Commission, Microwave Service, P.O. Box 358250, Pittsburgh, PA 15251–5250.
b. Assignments (per station)	FCC 402, FCC 155, FCC 1046	155	PEO	Federal Communications Commission, Microwave Service, P.O. Box 358250, Pittsburgh, PA 15251–5250.
c. Renewal of License (per station)	FCC 402R	155	PEO	Federal Communications Commission, Microwave Service Renewal, P.O. Box 358255, Pittsburgh, PA 15251–5255.
d. Special Temporary Authority (Initial, Modifications, Extensions) Non-emergency.	Corresp. FCC 155	35	PAO	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305.
Emergency (Note: Do not send a remittance. You will be billed at a later date.)	N/A	35	PAO	Federal Communications Commission, STA Request, Consumer Assistance Branch, Gettysburg, PA 17326.
4. Aviation (Ground Stations):				
a. New, Modification and/or Renewal (per station).	FCC 406, FCC 155	70	PBV	Federal Communications Commission, Aviation Ground Service, P.O. Box 358260, Pittsburgh, PA 15251–5260.
b. Assignments (per station)	FCC 406, FCC 155, FCC 1046	70	PBV	Federal Communications Commission, Aviation Ground Service, P.O. Box 358260, Pittsburgh, PA 15251–5260.
c. Renewal of License (per station)	FCC 405A, FCC 155	70	PBV	Federal Communications Commission, 405A Station Renewal, P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Special Temporary Authority (Initial, Modifications, Extensions) Non-emergency.	Corresp. FCC 155	100	PCV	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305.
Emergency (Note: Do not send a remittance. You will be billed at a later date.)	N/A	100	PCV	Federal Communications Commission, STA Request, Consumer Assistance Branch, Gettysburg, PA 17326.
5. Aircraft Stations:				
a. New, Modification and/or Renewal (per application).	FCC 404	35	PAA	Federal Communications Commission, Aviation Aircraft Service, P.O. Box 358280, Pittsburgh, PA 15251–5280.
b. Renewal of License (per application)	FCC 405B	35	PAA	Federal Communications Commission, 405B Station Renewal, P.O. Box 358290, Pittsburgh, PA 15251–5290.

Action	FCC form No.	Fee amount	Fee type code	Address
6. Land Mobile Radio Stations:				
a. New, Reinstatement, Modification and/or Renewal (per call sign):				
(i) Land Transportation	FCC 574	35	PAL	Federal Communications Commission, Land Transportation Services, P.O. Box 358215, Pittsburgh, PA 15251-5215.*
(ii) Business	FCC 574	35	PAL	Federal Communications Commission, Business Radio Service, P.O. Box 358220, Pittsburgh, PA 15251-5220.*
(iii) Other Industrial	FCC 574	35	PAL	Federal Communications Commission, Other Industrial Services, P.O. Box 358225, Pittsburgh, PA 15251-5225.*
(iv) 800 MHz	FCC 574	35	PAL	Federal Communications Commission, 800 Megahertz Services, P.O. Box 358235, Pittsburgh, PA 15251-5235.*
(v) 900 MHz	FCC 574	35	PAL	Federal Communications Commission, 900 Megahertz Services, P.O. Box 358240, Pittsburgh, PA 15251-5240.*
(vi) Public Safety and Special Emergency (For-profit *only*).	FCC 574	35	PAL	Federal Communications Commission, Public Safety/Spec Emerg Services, P.O. Box 358285, Pittsburgh, PA 15251-5285.*
b. Assignments (per station):				
(i) Land Transportation	FCC 574, FCC 1046	35	PAL	Federal Communications Commission, Land Transportation Services, P.O. Box 358215, Pittsburgh, PA 15251-5215.*
(ii) Business	FCC 574, FCC 1046	35	PAL	Federal Communications Commission, Business Radio Service, P.O. Box 358220, Pittsburgh, PA 15251-5220.*
(iii) Other Industrial	FCC 574, FCC 1046	35	PAL	Federal Communications Commission, Other Industrial Services, P.O. Box 358225, Pittsburgh, PA 15251-5225.*
(iv) 800 MHz	FCC 574, FCC 1046	35	PAL	Federal Communications Commission, 800 Megahertz Services, P.O. Box 358235, Pittsburgh, PA 15251-5235.*
(v) 900 MHz	FCC 574, FCC 1046	35	PAL	Federal Communications Commission, 900 Megahertz Services, P.O. Box 358240, Pittsburgh, PA 15251-5240.*
(vi) Public Safety and Special Emergency (For-profit *only*).	FCC 574, FCC 1046	35	PAL	Federal Communications Commission, Public Safety/Spec Emerg Services, P.O. Box 358285, Pittsburgh, PA 15251-5285.*
c. Renewal of License (per call sign)	FCC 574R	35	PAL	Federal Communications Commission, 574R Land Mobile Renewal, P.O. Box 358245, Pittsburgh, PA 15251-5245.
	FCC 405A, FCC 155	35	PAL	Federal Communications Commission, 405A Station Renewal, P.O. Box 358270, Pittsburgh, PA 15251-5270.
d. Special Temporary Authority (Initial, Modifications, Extensions) Non-emergency.	Corresp. FCC 155	35	PAL	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251-5305.
Emergency (Note: Do not send a remittance. You will be billed at a later date.)	N/A	35	PAL	Federal Communications Commission, STA Request, Consumer Assistance Branch, Gettysburg, PA 17326.
e. SMR Waiting List (annual per application)	N/A	35	PAL	Applicants will be billed for the amount due and should remit to the address shown on the bill.
7. General Mobile Radio Service:				
a. New, Modification and/or Renewal (per call sign).	FCC 574	35	PAL	Federal Communications Commission, General Mobile Radio Service, P.O. Box 358230, Pittsburgh, PA 15251-5230.
b. Renewal of License (per call sign)	FCC 574R	35	PAL	Federal Communications Commission, 574R Land Mobile Renewal, P.O. Box 358245, Pittsburgh, PA 15251-5245.
	FCC 405A, FCC 155	35	PAL	Federal Communications Commission, 405A Station Renewal, P.O. Box 358270, Pittsburgh, PA 15251-5270.
c. Special Temporary Authority (Initial, Modifications, Extensions). Non-emergency	Corresp. FCC 155	35	PAL	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251-5305.
Emergency (Note: Do not send a remittance. You will be billed at a later date.)	N/A	35	PAL	Federal Communications Commission, STA Request, Consumer Assistance Branch, Gettysburg, PA 17326.
8. Transfer of Control (all services) (see Note A below) (per call sign).	FCC 703, FCC 155	35	PAT	Federal Communications Commission, Transfer of Control, P.O. Box 358310, Pittsburgh, PA 15251-5310.
9. Comparative Hearing	N/A, FCC 155	6,760	PFH	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251-5305.

Action	FCC form No.	Fee amount	Fee type code	Address
10. Restricted Radiotelephone Operator Permit	FCC 753	35	PAR	Federal Communications Commission, Restricted Permit, P.O. Box 358295, Pittsburgh, PA 15251-5295.
11. Restricted Radiotelephone Operator Permit (Limited Use).	FCC 755	35	PAR	Federal Communications Commission, Restricted Permit, P.O. Box 358295, Pittsburgh, PA 15251-5295.
12. Request for Duplicate Station License (all services).	Corresp. FCC 155	35	PAD	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251-5305.
13. Routine/Non-Routine Rule Waiver (see Note B below).	Corresp. FCC 155	105	PDW	Federal Communications Commission, Waiver Requests, P.O. Box 358300, Pittsburgh, PA 15251-5300.

* For Addresses followed by an asterisk (*): Applications requiring coordination *must* first be submitted to the proper Frequency Coordinator, who will subsequently forward them to the FCC address shown. Reinstatements and Renewals *DO NOT* require coordination.

Notes: A. The Fee due for a Transfer of Control application (FCC Form 703) is calculated by multiplying the number of stations (call signs) being transferred by $35. On FCC Form 155 the number of stations being transferred should be entered in Box B of Section I, and the *total* fee due for the entire transfer should be entered in Box C of Section I.

B. All rule waiver requests, with or without accompanying applications, must be filed at the address shown in (13) above. Waiver requests and the applications to which they relate should *not* be filed at separate addresses. Each waiver request must be accompanied by an FCC Form 155 and the correct waiver fee. The associated application, if any, must be accompanied by a separate remittance for the fee due for that application form, and, if required, an FCC Form 155.

10. Section 1.1103 is revised in its entirety to read as follows:

§ 1.1103 Schedule of charges for equipment authorization, experimental radio services, international telecommunications settlements, radio operator examinations, and ship inspections.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Certification:				
a. Receivers (except TV and FM receivers)	731/155	$285.00	EEC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
b. All Other Devices	731/155	735.00	EGC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
c. Modifications and Class II Permissive Changes.	731/155	35.00	EAC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
d. Request for Confidentiality	731/155	105.00	EBC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
2. Type Acceptance:				
a. All Devices	731/155	370.00	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
b. Modifications and Class II Permissive Changes.	731/155	35.00	EAT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
c. Request for Confidentiality	731/155	105.00	EBT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
3. Type Approval (all devices):				
a. With Testing (including Major Modifications)	731/155	1,465.00	EHA	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
b. Without Testing (including Minor Modifications).	731/155	170.00	EDA	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
c. Request for Confidentiality	731/155	105.00	EBA	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
4. Notifications	731/155	115.00	ECN	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
5. Advance Approval for Subscription TV System	Corresp/155	2,255.00	EIS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
a. Request for Confidentiality	Corresp/155	105.00	EBS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
6. Assignment of Grantee Code for Equipment Identification.	Corresp/155	35.00	EAG	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
7. Experimental Radio Service:				
a. New Construction Permit and Station Authorization (per application).	442/155	35.00	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification to Existing Construction Permit and Station Authorization (per application).	442/155	35.00	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251-5320.
c. Renewal of Station Authorization (per application).	405/155	35.00	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251-5320.
d. Assignment or Transfer of Control (per application).	702/703/155	35.00	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251-5320.
e. Special Temporary Authority (per application)	Corresp/155	35.00	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.
f. Additional Charge for Applications Containing Requests to Withhold Information From Public Inspection (per application).	Corresp/155	35.00	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251-5320.
8. Restricted Radio Operator Permit: a. New, Duplicate or Replacement	FCC 753	35.00	PAR	Federal Communications Commission, P.O. Box 358295, Pittsburgh, PA 15251-3295.
9. Restricted Radio Operator Permit (Alien): a. New, Duplicate or Replacement	FCC 755	35.00	PAR	Federal Communications Commission, P.O. Box 358295, Pittsburgh, PA 15251-3295.
10. Marine Radio Operator Permit: a. Examination Fee	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
b. Duplicate, Renewal or Replacement	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
11. General Radiotelephone Operator License: a. Examination Fee	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
b. Duplicate, Renewal or Replacement	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
12. First, Second or Third Class Radiotelegraph Operator's Certificate a. Examination Fee	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
b. Duplicate, Renewal or Replacement	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
13. Ship Radar Endorsement: a. Examination Fee	FCC 756, FCC 155	35.00	FAR	Federal Communications Commission, P.O. Box 358105, Pittsburgh, PA 15251-5105.
14. Passenger Vessel Inspection: a. Title III, Part III	FCC 801, FCC 155	320.00	FCS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251-5110.
15. Oceangoing Vessel Inspection: a. Title III, Part II	FCC 801, FCC 155	620.00	FFS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251-5110.
16. Great Lakes Agreement: a. Inspection	FCC 801, FCC 155	360.00	FDS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251-5110.
17. SOLAS: a. Inspection	FCC 801, FCC 155	540.00	FES	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251-5110.
18. Temporary Waiver: a. Of Inspection	FCC 155	60.00	FBS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251-5110.
19. International Telecommunications Settlement	FCC 99	2/line item	IAT	Licensees will be billed.

11. Section 1.1104 is revised in its entirety to read as follows:

§ 1.1104 Schedule of charges for mass media services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Commercial Television Stations: a. New or Major Change Construction Permit (per application).	FCC 155, 301	$2,535	MVT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
b. Minor Change (per application)	FCC 155, 301	565	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal) (per application).	FCC 155, Corres.	6,760	MWT	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251-5170.
d. License (per application)	FCC 155, 302	170	MJT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.

Action	FCC form No.	Fee amount	Fee type code	Address
e. License Assignment or Transfer:				
(i) Long Forms (per station license)	FCC 155, 314/315	565	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
(ii) Short Forms (per station license)	FCC 155, 316	80	MDT	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
f. License Renewal (per application)	FCC 155, 303-S	100	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
g. Call Sign (New or Modification) (per application).	FCC 155, Corres.	55	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
h. Special Temporary Authorization (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
i. Extension of Time to Construct or Replacement of Construction Permit (per application).	FCC 155, 307	200	MKT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
j. Permit to Deliver Programs to Foreign Broadcast Stations (per application).	FCC 155, 308	55	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
k. Petition for Rulemaking for New Community of License (per application).	FCC 155, 301/302	1,565	MRT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
l. Ownership Report (per annual report)	FCC 155, 323	35	MAT	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251-5180.
2. Commercial Radio Stations:				
a. New or Major Change Construction Permit:				
(i) AM Station (per application)	FCC 155, 301	2,255	MUR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM Station (per application)	FCC 155, 301	2,030	MTR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
b. Minor Change:				
(i) AM Station (per application)	FCC 155, 301	565	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM Station (per application)	FCC 155, 301	565	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal) (per application).	FCC 155, Corres.	6,760	MWR	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251-5170.
d. License:				
(i) AM (per application)	FCC 155, 302	370	MMR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM (per application)	FCC 155, 302	115	MHR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
(iii) AM Directional Antenna (per application)	FCC 155, 302	425	MOR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(iv) FM Directional Antenna (per application)	FCC 155, 302	355	MLR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
(v) AM Remote Control (per application)	FCC 155, 301/301-A	35	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
e. License Assignment or Transfer:				
(i) AM Stations:				
Long Forms (per station license)	FCC 155, 314/315	565	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
Short Forms (per station license)	FCC 155, 316	80	MDR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
(ii) FM Stations:				
Long Forms (per station license)	FCC 155, 314/315	565	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
Short Forms (per station license)	FCC 155, 316	80	MDR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.

Action	FCC form No.	Fee amount	Fee type code	Address
f. License Renewal:				
(i) AM Stations (per application)	FCC 155, 303-S	100	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM Stations (per application)	FCC 155, 303-S	100	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
g. Call Sign (New or Modification) (per application).	FCC 155, Corres.	55	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
h. Special Temporary Authorization (other than to remain silent or extend an existing STA to remain silent):				
(i) AM Stations (per application)	FCC 155, Corres.	100	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM Stations (per application)	FCC 155, Corres.	100	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
i. Extension of Time to Construct or Replacement of Construction Permit:				
(i) Am Stations (per application)	FCC 155, 307	200	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM Stations (per application)	FCC 155, 307	200	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
j. Permit to Deliver Programs to Foreign Broadcast Stations:				
(i) AM Stations (per application)	FCC 155, 308	55	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
(ii) FM Stations (per application)	FCC 155, 308	55	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
k. Petition for Rulemaking for New Community of License or Higher Class Channel (per petition).	FCC 155, 301/302	1,565	MRR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195.
l. Ownership Report (per annual report)	FCC 155, 323	35	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251-5180.
3. FM Translators:				
a. New and Major Change Construction Permits (per application).	FCC 155, 349	425	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
b. License (per application)	FCC 155, 350	85	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
c. Assignment or Transfer (per station license	FCC 155, 345/316	80	MDF	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
d. License Renewal (per application	FCC 155, 348	35	MAF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200
4. TV Translators and LPTV Stations:				
a. New and Major Change Construction Permits (per application).	FCC 155, 346	425	MOL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
b. License (per application)	FCC 155, 347	85	MEL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
c. Assignment or Transfer (per station license)	FCC 155, 345/316	80	MDL	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
d. License Renewal (per application)	FCC 155, 348	35	MAL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.

Action	FCC form No.	Fee amount	Fee type code	Address
5. Auxiliary Services (includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary):				
a. Major Action (per application)	FCC 155, 313	85	MEA	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
b. License Renewal (per application)	FCC 155, 313-R	35	MAA	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGA	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
6. FM Booster Stations:				
a. New and Major Change Construction Permits (per application).	FCC 155, 349	425	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
b. License (per application)	FCC 155, 350	85	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251-5200.
7. TV Booster Stations:				
a. New and Major Change Construction Permit (per application).	FCC 155, 346	425	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
b. License (per application)	FCC 155, 347	85	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251-5185.
8. International Broadcast Stations:				
a. New Construction Permit and Facilities Changes CP (per application).	FCC 155, 309	1,705	MSN	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
b. License (per application)	FCC 155, 310	385	MNN	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
c. Assignment or Transfer (per station license)	FCC 155, 314/315/316	60	MCN	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
d. License Renewal (per application)	FCC 155, 311	95	MFN	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190.
e. Frequency Assignment and Coordination (per frequency hour).	FCC 155, Corres.	35	MAN	Federal Communications Commission, Mass Media Services, P.O. Box 358175, Pittsburgh, PA 15251-5175.
f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGN	Federal Communications Commission, Mass Media Services, P.O. Box 358175, Pittsburgh, PA 15251-5175.
9. Cable Television Relay Service (CARS):				
a. Cable Television Relay Service:				
(i) Construction Permit (per application)	FCC 155, 327	155	MIC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
(ii) Assignment or Transfer (per station license).	FCC 155, 327	155	MIC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
(iii) License Renewal (per application)	FCC 155, 327	155	MIC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
(iv) Modification (per application)	FCC 155, 327	155	MIC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
b. Cable Special Relief Petitions (per petition)	FCC 155, Corres.	790	MQC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
c. 76.12 Registration Statements (per statement)	FCC 155, Corres.	35	MAC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
d. Aeronautical Frequency Usage Notifications (per notification).	FCC 155, Corres.	35	MAC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.

Action	FCC form No.	Fee amount	Fee type code	Address
e. Aeronautical Frequency Usage Waivers (per waiver).	FCC 155, Corres.	35	MAC	Federal Communications Commission, Mass Media Services, P.O. Box 358205, Pittsburgh, PA 15251-5205.
10. Direct Broadcast Satellites:				
a. New or Major Change Construction Permit: (i) Application for Authorization to Construct a Direct Broadcast Satellite (per request).	FCC 155, Corres.	2,030	MTD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251-5210.
(ii) Issuance of Construction Permit and Launch Authority (per request).	FCC 155, Corres.	19,710	MXD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251-5210.
(iii) License to Operate Satellite (per request)	FCC 155, Corres.	565	MPD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251-5210.
b. Hearing (Comparative New, Major/Minor Modifications, or Comparative Renewal) (per application).	FCC 155, Corres.	6,760	MWD	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251-5170.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application).	FCC 155, Corres.	100	MGD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251-5210.

12. Section 1.1105 is revised in its entirety to read as follows:

§ 1.1105 Schedule of charges for common carrier services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. All Common Carrier Services: a. Hearing (Comparative New or Major/Minor Modifications).	FCC 155	$6,760.00	BHZ	Federal Communications Commission, Common Carrier Hearings, P.O. Box 358125, Pittsburgh, PA 15251-5125.
b. Developmental Authority (Same charge as regular authority in service unless otherwise indicated)				
c. Formal Complaints and Pole Attachment Complaints Filing Fee.	Written Request & FCC 155	120.00	CIZ	Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251-5120.
2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control and Repeater Stations): a. New or Additional Facility (per transmitter)	FCC 401& FCC 155	230.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Major Modifications (per transmitter)	FCC 401 & FCC 155	230.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Fill In Transmitters (per transmitter)	FCC 401 & FCC 155 or FCC 489 & FCC 155.	230.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Major Amendment to a Pending Application (per transmitter).	FCC 401 & FCC 155	230.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Assignment of Transfer: (i) First Call Sign on Application	FCC 490 & FCC 155	230.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each Additional Call Sign	Same as 2e(i)	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Partial Assignment (per call sign)	FCC 401 & FCC 490 & FCC 155	230.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Renewal (per call sign)	FCC 405 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Minor Modifications (per transmitter)	FCC 489 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Special Temporary Authority (per frequency/per location).	Written Request & FCC 155	200.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
j. Extension of Time to Construct (per application).	FCC 489 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Notice of Completion of Construction (per application)	FCC 489 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC form No.	Fee amount	Fee type code	Address
l. Auxiliary Test Station (per transmitter)	FCC 401 & FCC 155	200.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Subsidiary Communications Service (per request).	FCC 401 & FCC 155	100.00	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
n. Reinstatement (per application)	FCC 489 & FCC 155 or FCC 401 & FCC 155.	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
o. Combining Call Signs (per call sign)	FCC 489 & FCC 155	200.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
p. Standby Transmitter (per transmitter/per location).	FCC 401 & FCC155	200.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
q. 900 MHz Nationwide paging:				
(i) Renewal:				
(1) Network Organizer	FCC 405 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(2) Network Operator (Per operator/per city)	Same as 2q(i)(1)	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
r. Air-Ground Individual License (per station):				
(i) Initial License	FCC 409 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Renewal of License	FCC 409 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(iii) Modification of License	FCC 409 & FCC 155	35.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
3. Cellular Systems (per system):				
a. New or Additional Facilities	FCC 401 & FCC 155	230.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
b. Major Modifications	FCC 401 & FCC 155	230.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
c. Minor Modifications	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135 Pittsburgh, PA 15251-5135.
d. Assignment or Transfer (including partial)	FCC 490 & FCC 155	230.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
e. License to Cover Construction:				
(i) Initial License for Wireline Carrier	FCC 489 & FCC 155	595.00	CTC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
(ii) Subsequent License for Wireline Carrier	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
(iii) License for Nonwireline Carrier	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
(iv) Fill in License (all carriers)	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
f. Renewal	FCC 405 & FCC 155	35.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
g. Extension of Time to Complete Construction	FCC 489 & FCC 155	35.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
h. Special Temporary Authority (per system)	Written Request & FCC 155	200.00	CLC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
i Combining Cellular Geographic Service Areas (per system).	Written Request & FCC 155	50.00	CBC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
4 Rural Radio (includes Central Office, Interoffice, or Relay Facilities:				
a. New or Additional Facility (per transmitter)	FCC 401 & FCC 155	105.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Major Modifications (per transmitter)	FCC 401 & FCC 155	105.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC form No.	Fee amount	Fee type code	Address
c. Major Amendment to a Pending Application (per transmitter).	FCC 401 & FCC 155	105.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Minor Modifications (per transmitter)	FCC 489 & FCC 155	35.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application	FCC 490 & FCC 155	105.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each Additional Call Sign	Same as 4e(i)	35.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(iii) Partial Assignment (per call sign)	FCC 401 & FCC 490 & FCC 115	105.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Renewal (per call sign)	FCC 405 & FCC 155	35.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Extension of Time to Construct (per application).	FCC 489 & FCC 155	35.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Notice of Completion of Construction (per application).	FCC 489 & FCC 155	35.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Special Temporary Authority (per frequency/per location).	Written Request & FCC 155	200.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
j. Reinstatement (per application)	FCC 489 & FCC 155 or FCC 401 & FCC 155.	35.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Combining Call Signs (per call sign)	FCC 489 & FCC 155	200.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Auxiliary Test Station (per transmitter)	FCC 401 & FCC 155	200.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Standby Transmitter (per transmitter/per location).	FCC 401 & FCC 155	200.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
5. Offshore Radio Service (Mobile, Subscriber, and Central Stations; fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico):				
a. New or Additional Facility (per transmitter)	FCC 401 & FCC 155	105.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Major Modifications (per transmitter)	FCC 401 & FCC 155	105.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Fill In Transmitter (per transmitter)	FCC 401 & FCC 155 or FCC 489 & FCC 155.	105.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Major Amendment to a Pending Application (per transmitter).	FCC 401 & FCC 155	105.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Minor Modifications (per transmitter)	FCC 489 & FCC 155	35.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Assignment or Transfer:				
(i) First Call Sign on Application	FCC 490 & FCC 155	105.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each Additional Call Sign	Same as 5f(i)	35.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(iii) Partial Assignment (per call sign)	FCC 401 & FCC 490 & FCC 155	105.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Renwal (per call sign)	FCC 405 & FCC 155	35.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Extension of Time to Construct (per application).	FCC 489 & FCC 155	35.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Reinstatement (per application)	FCC 489 & FCC 155 or FCC 401 & FCC 155.	35.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC form No.	Fee amount	Fee type code	Address
j. Notice of Completion of Construction (per application).	FCC 489 & FCC 155	35.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Special Temporary Authority (per frequency/per location).	Written Request & FCC 155	200.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Combining Call Signs (per call sign)	FCC 489 & FCC 155	200.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Auxiliary Test Station (per transmitter)	FCC 401 & FCC 155	200.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
n. Standby Transmitter (per transmitter/per location).	FCC 401 & FCC 155	200.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
6. Point-to-Point Microwave and Local Television Radio Service:				
a. Conditional License (per station)	FCC 494 & FCC 155	155.00	CJP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
b. Major Modification of Conditional License or License Authorization (per station).	FCC 494 & FCC 155	155.00	CJP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
c. Certificate of Completion of Construction (per station).	FCC 494-A & FCC 155	155.00	CJP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
d. Renewal (per licensed station)	FCC 405 & FCC 155	155.00	CJP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
e. Assignment or Transfer:				
(i) First Station on Application	FCC 702 & FCC 155 or FCC 704 & FCC 155.	55.00	CCP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
(ii) Each Additional Station	Same as 6e(i)	35.00	CAP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
f. Extension of Construction Authorization (per station).	FCC 701 & FCC 155	55.00	CCP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	70.00	CEP	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
7. Multipoint Distribution Service (including multichannel MDS):				
a. Conditional License (per station)	FCC 494 & FCC 155	155.00	CJM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
b. Major Modification of Conditional License or License Authorization (per station).	FCC 494 & FCC 155	155.00	CJM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
c. Certificate of Completion of Construction (per channel).	FCC 494-A FCC 155	455.00	CPM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
d. Renewal (per licensed station)	FCC 405 & FCC 155	155.00	CJM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
e. Assignment or Transfer:				
(i) First Station on Application	FCC 702 & FCC 155 or FCC 704 & FCC 155.	55.00	CCM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
(ii) Each Additional Station	Same as 7e(i)	35.00	CAM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
f. Extension of Construction Authorization (per station).	FCC 701 & FCC 155	110.00	CCM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	70.00	CEM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
8. Digital electronic Message Service:				
a. Conditional License (per nodal station)	FCC 494 & FCC 155	155.00	CJL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
b. Major Modification of Conditional License or License Authorization (per nodal station).	FCC 494 & FCC 155	155.00	CJL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
c. Certificate of Completion of Construction (per nodal station).	FCC 494-A & FCC 155	155.00	CJL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.

Action	FCC form No.	Fee amount	Fee type code	Address
d. Renewal (per licensed nodal station)	FCC 405 & FCC 155	155.00	CJL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-51355
e. Assignment or Transfer:				
(i) First Station on Application	FCC 702 & FCC 155 or FCC 704 & FCC 155.	55.00	CCL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
(ii) Each Additional Station	Same as 8e(i)	35.00	CAL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
f. Extension of Construction Authorization (per station).	FCC 701 & FCC 155	55.00	CCL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	70.00	CEL	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
9. International Fixed Public Radio (Public & Control Stations):				
a. Initial Construction Permit (per station)	FCC 407 & FCC 155	510.00	CSN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
b. Assignment or Transfer (per application)	FCC 702 & FCC 155 or FCC 704 & FCC 155.	510.00	CSN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
c. Renewal (per license)	FCC 405 & FCC 155	370.00	CON	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
d. Modification (per station)	FCC 403 & FCC 155	370.00	CON	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
e. Extension of Construction Authorization (per station).	FCC 701 & FCC 155	185.00	CKN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
f. Special Temporary Authority or Request for Waiver (per request).	Written Request & FCC 155	185.00	CKN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
10. Fixed Satellite Transmit/Receive Earth Stations:				
a. Initial Application (per station):				
Domestic	FCC 493 & FCC 155	1,525.00	BAX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 493 & FCC 155	1,525.00	BAX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
b. Modification of License (per station):				
Domestic	FCC 493 & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 493 & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
c. Assignment or Transfer:				
(i) First Station on Application:				
Domestic	FCC 702 & FCC 155 or FCC 704 & FCC 155.	300.00	CNX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 702 & FCC 155 or FCC 704 & FCC 155.	300.00	CNX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
(ii) Each Additional Station:				
Domestic	Same as 10c(i)	100.00	CFX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Same as 10c(i)	100.00	CFX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
d. Developmental Station (per station):				
Domestic	FCC 493 & FCC 155	1,000.00	CWX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 493 & FCC 155	1,000.00	CWX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
e. Renewal of License (per station):				
Domestic	FCC 405 & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.

Action	FCC form No.	Fee amount	Fee type code	Address
International	FCC 405 & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
Domestic	Written Request & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
g. Amendment of Application (per station):				
Domestic	Written Request & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
h. Extension of Construction Permit (per station):				
Domestic	FCC 701 & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 701 & FCC 155	105.00	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
11. Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6GHz frequency ban):				
a. Lead Application	FCC 493 & FCC 155	3,380.00	BDS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
b. Routine Application (per station)	FCC 493 & FCC 155	35.00	CAS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
c. Modification of License (per station)	FCC 493 & FCC 155	105.00	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
d. Assignment or Transfer:				
(i) First Station on Application:	FCC 702 & FCC 155 or FCC 704 & FCC 155.	300.00	CNS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
(ii) Each Additional Station	Same as 11d(i)	35.00	CAS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
e. Developmental Station (per station)	FCC 493 & FCC 155	1,000.00	CWS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
f. Renewal of License (per station)	FCC 405 & FCC 155	105.00	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	105.00	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
h. Amendment of Application (per station)	Written Request & FCC 155	105.00	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
i. Extension of Construction Permit (per station)	FCC 701 & FCC 155	105.00	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
12. Receive Only Earth Stations:				
a. Initial Application for Registration:				
Domestic	FCC 493 & FCC 155	230.00	CMO	Federal Communications Commission, Common Carrier, Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 493 & FCC 155	230.00	CMO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
b. Modification of License or Registration (per station):				
Domestic	FCC 493 & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 493 & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
c. Assignment or Transfer:				
(i) First Station on Application:				
Domestic	FCC 702 & FCC 155 or FCC 704 & FCC 155.	300.00	CNO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.

Action	FCC form No.	Fee amount	Fee type code	Address
International	FCC 702 & FCC 155 or FCC 704 & FCC 155.	300.00	CNO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
(ii) Each Additional Station:				
Domestic	Same as 12c(i)	100.00	CFO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Same as 12c(i)	100.00	CFO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
d. Renewal of License (per station):				
Domestic	FCC 405 & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 405 & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
e. Amendment of Application (per station):				
Domestic	Written Request & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
f. Extension of Construction Permit (per station):				
Domestic	FCC 701 & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 701 & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
g. Waivers (per request):				
Domestic	Written Request & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	105.00	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
13. Very Small Aperture Terminal (VSAT) Systems:				
a. Initial Application (per system)	FCC 493 & FCC 155	5,630.00	BGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
b. Modification of License (per system)	FCC 493 & FCC 155	105.00	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
c. Assignment or Transfer of System	FCC 702 & FCC 155 or FCC 704 & FCC 155.	1,505.00	CZV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
d. Developmental Station	FCC 493 & FCC 155	1,000.00	CWV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
e. Renewal of License (per system)	FCC 405 & FCC 155	105.00	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	105.00	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
g. Amendment of Application (per system)	Written Request & FCC 155	105.00	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
h. Extension of Construction Permit (per system)	FCC 701 & FCC 155	105.00	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
14. Mobile Satellite Earth Stations:				
a. Initial Application of Blanket Authorization	FCC 493 & FCC 155	5,630.00	BGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
b. Initial Application for Individual Earth:				
Station	FCC 493 & FCC 155	1,350.00	CYB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
c. Modification of License (per system)	FCC 493 & FCC 155	105.00	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
d. Assignment or Transfer (per system)	FCC 702 & FCC 155 or FCC 704 & FCC 155.	1,505.00	CZB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
e. Developmental Station	FCC 493 & FCC 155	1,000.00	CWB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.

Action	FCC form No.	Fee amount	Fee type code	Address
f. Renewal of License (per system)	FCC 405 & FCC 155	105.00	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	105.00	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
h. Amendment of Application (per system)	Written Request & FCC 155	105.00	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
i. Extension of Construction Permit (per system)	FCC 701 & FCC 155	105.00	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
15. Radiodetermination Satellite Earth Stations:				
a. Initial Application of Blanket Authorization	FCC 493 & FCC 155	5,630.00	BGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
b. Initial Application for Individual Earth Station	FCC 493 & FCC 155	1,350.00	CYH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
c. Modification of License (per system)	FCC 493 & FCC 155	105.00	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
d. Assignment or Transfer (per system)	FCC 702 & FCC 155 or FCC 704 & FCC 155.	1,505.00	CZH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
e. Developmental Station	FCC 493 & FCC 155	1,000.00	CWH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
f. Renewal of License (per system)	FCC 405 & FCC 155	105.00	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Written Request & FCC 155	105.00	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
h. Amendment of Application (per system)	Written Request & FCC 155	105.00	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
i. Extension of Construction Permit (per system)	FCC 701 & FCC 155	105.00	CGH	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
16. Space Stations:				
a. Application for Authority to Construct:				
Domestic	Written Request & FCC 155	2,030.00	BBY	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	2,030.00	BBY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
b. Application for Authority to Launch & Operate:				
(i) Initial Application:				
Domestic	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	70,000,00	BNY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5160.
(ii) Replacement Satellite:				
Domestic	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
c. Assignment or Transfer (per satellite):				
Domestic	FCC 702 & FCC 155 or FCC 704 & FCC 155.	5,000.00	BFY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	FCC 702 & FCC 155 or FCC 704 & FCC 155.	5,000.00	BFY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
d. Modification:				
Domestic	Written Request & FCC 155	5,000.00	BFY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	5,000.00	BFY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.

Action	FCC form No.	Fee amount	Fee type code	Address
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
Domestic	Written Request & FCC 155	500.00	CRY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	500.00	CRY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
f. Amendment of Application:				
Domestic	Written Request & FCC 155	1,000.00	CWY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	1,000.00	CWY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
Domestic	Written Request & FCC 155	500.00	CRY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251-5160.
International	Written Request & FCC 155	500.00	CRY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
17. Section 214 Applications:				
a. Overseas Cable Construction	Written Request & FCC 155	9,125.00	BIT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
b. Cable Landing License:				
(i) Common Carrier	Written Request & FCC 155	1,025.00	CXT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
(ii) Replacement Satellite	Written Request & FCC 155	10,150.00	BJT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
c. Domestic Cable Construction	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251-5145.
d. All Other 214 Applications:				
Domestic	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251-5145.
International	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
e. Special Temporary Authority (all services):				
Domestic	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251-5145.
International	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
f. Assignments or Transfers (all services):				
Domestic	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251-5145.
International	Written Request & FCC 155	610.00	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251-5115.
18. Recognized Private Operating Status (per application).	Written Request & FCC 155	610.00	CUG	Federal Communication Commission, Common Carrier Interntional, P.O. Box 358115, Pittsburgh, PA 15251-5115.
19. Telephone Equipment Registration	FCC 730 & FCC 155	155.00	CJQ	Federal Communications Commission, Common Carrier Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251-5145.
20. Tariff Filings:				
a. Filing Fee	Written Request & FCC 155	490.00	CQK	Federal Communiations Commission, Tariff Filings, P.O. Box 358150, Pittsburgh, PA 15251-5150.
b. Special Permission Filing (per filing)	Written Request & FCC 155	490.00	CQK	Federal Communications Commission, Tariff Filings, P.O. Box 358150, Pittsburgh, PA 15251-5150.
21. Accounting and Audits:				
a. Field Audit	N/A	62,290.00	N/A	Carriers will be billed.
b. Review of Attest Audit	N/A	34,000.00	N/A	Carriers will be billed.
c. Review of Depreciation Update Study (Single State).	Written Study & FCC 155	20,685.00	BKA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251-5140.
(i) Each Additional State	Same as 21c	680.00	CVA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251-5140.

Action	FCC form No.	Fee amount	Fee type code	Address
d. Interpretation of Accounting Rules (per request).	Written Request & FCC 155	2,885.00	BCA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251-5140.
e. Petition for Waiver (per petition)	Written Request & FCC 155	4,660.00	BEA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251-5140.

13. Section 1.1107 is amended by revising paragraph (a) and (b) to read as follows:

§ 1.1107 Payment of charges.

(a) Each application or other filing submitted to the Commission on or after May 21, 1990, for which a fee is prescribed by §§ 1.1102 through 1.1105 of this subpart must be accompanied by a remittance in the full amount of the fee due and FCC Form 155. Except that a separate Fee Form (FCC Form 155) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

Note: This requirement for the simultaneous submission of fees with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1117 of this subpart.

(1) A single FCC Form 155 may be used when paying multiples of a single type of fee for authorizations that may be requested in one application or request and/or for up to five different authorizations (with different fee codes) that may be requested in the same application or request.

(2) Applications or requests subject to fees that are submitted without the FCC Form 155 will be dismissed. Improperly completed FCC Forms 155 may subject the underlying filing to dismissal under paragraph (b).

(b) Filings subject to a fee under this subpart that are submitted without a fee, with an insufficient fee, with a fee payment in an improper form (see § 1.1108), or with a payment instrument that is uncollectable shall be dismissed and the application returned to the applicant or its designated agent without processing. See also § 1.1114.

* * * * *

14. Section 1.1108 is amended by revising paragraph (b); redesignating existing paragraphs (c) and (d) as (e) and (f); and adding new paragraphs (c) and (d) to read as follows:

§ 1.1108 Form of payment.

* * * * *

(b) Applicants are required to submit one payment instrument (check, bank draft or money order) and FCC Form 155 with each application or filing. Multiple payment instruments for a single application or filing are not permitted. Except that a separate Fee Form (FCC Form 155) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

(c) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below. This method of payment will be required only after an applicant has received a letter from the Commission detailing the terms and conditions of payment or the Commission has released a Public Notice requiring this method of payment for a future filing period.

(1) Payment by cashier's check may be required when

(i) A person or organization has, on two or more occasions made payment with a payment instrument on which the Commission does not receive final payment, as defined by § 1.1110, and such failure is not excused by bank error or;

(ii) The numbers of expected receipts for a particular filing window or time frame justifies the use of a cashier's check to ensure final payment before the Commission expends resources in processing the submissions.

* * * * *

15. Section 1.1109 is revised to read as follows:

§ 1.1109 Filing locations.

(a) Except as noted herein, applications or other filings, with attached fees and FCC Form 155 must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1105 of the Commission's rules.

(1) Tariff filings shall be filed with the Federal Communications Commission, Washington, DC. On the same day, the filer should submit a copy of the cover letter, the FCC Form 155, and the appropriate fee to the Mellon Bank at the address established in § 1.1105.

(2) Fee Bills will be paid at the Mellon Bank at the address for the appropriate service as established in §§ 1.1102 through 1.1105, as set forth on the bill sent by the Commission. Payments must be accompanied by a copy of the bill sent by the Commission.

(3) Fees submitted with petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1116(b) of this subpart will be paid at the Fee Section, Federal Communications Commission, Washington, DC 20554.

(4) Applicants claiming an exemption from otherwise applicable fees under 47 U.S.C. 158(d)(1) or § 1.1112 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying. Such applications should not be filed at the Mellon Bank.

(b) All materials must be submitted as one package. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations. Materials submitted at other than the location and address required by § 0.401(b) and paragraph (a) of this section will be returned to the applicant or filer.

16. Section 1.1110 is amended by revising the introductory text of paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 1.1110 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the

check, bank draft or money order is drawn.

* * * * *

(b) In those instances where the Commission has granted a request for deferred payment of a fee or issued a bill payable at a future date, further processing of the application or filing, or the grant of authority, shall be conditioned upon final payment of the fee, plus other required payments for late payments, by the date prescribed by the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the submission or rescision of the Commission authorization for failure to meet the condition imposed by this subpart. The Commission reserves the right to return payments received after the date established on the bill and exercise the conditions attached to the application. The Commission shall:

* * * * *

(c) Where the procedures outlined in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a fee that is due or would not be a meaningful sanction for failure to pay such a fee, in the alternative to those procedures, the Commission may, in its discretion, withhold processing and/or grant of any other application or filing made by a person or organization who has failed to make full payment of any fee due under this subpart.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay will result in the Commission's withholding action on any other application or request filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, the applicant fails to pay the fee in a timely manner, the staff may terminate the processing and/or withhold a grant of any other application or filing pending or later filed by the applicant, until the matter is resolved.

17. Section 1.1112 is amended by revising paragraph (b) and (d) to read as follows:

§ 1.1112 General exemptions to charges.

* * * * *

(b) Applicants in the Special Emergency Radio and Public Safety Radio Services that are government entities or nonprofit entities. Applicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status.

* * * * * *

(d) Applicants, permittees, or licensees qualifying under § 1.1112(c) requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service) private radio service, or common carrier radio communications service otherwise requiring a fee, if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis.

* * * * * *

18. Section 1.1113 is amended by revising paragraph (a) to read as follows:

§ 1.1113 Adjustments to charges.

(a) The Schedule of Charges established by sections 1.1102 through 1.1105 of this subpart shall be adjusted by the Commission on October 1, 1993 and every two years thereafter.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) from the date of enactment of the authorizing legislation (December 19, 1989) to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI–U in the period between the enactment date and the adjustment date.

(2) Adjustments based upon the percentage change in the CPI–U will be applied against the base fees as enacted or amended by Congress. Adjustments will not be calculated by using the previously adjusted fee as the base.

* * * * *

19. Section 1.1114 is amended by revising paragraph (a)(2) to read as follows:

§ 1.1114 Penalty for late or insufficient payments.

(a) * * *

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

* * * * *

20. Section 1.1115 is amended by removing paragraphs (c)(1) and (c)(2) and adding a new paragraph (d) to read as follows:

§ 1.1115 Waivers and deferrals.

* * * * *

(d) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 155. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1107 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

21. A new section 1.1117 is added to read as follows:

§ 1.1117 Billing procedures.

(a) The fees required for the SMRS waiting list (§ 1.1102(g)(4) of this subpart), International Telecommunications Settlements (§ 1.1103(i) of this subpart), Ship Inspections (§ 1.1103(k)(1–5) of this subpart), and Common Carrier Field Audits (§ 1.1105(u)(1) of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (see generally §§ 1.1102, 1.1104, 1.1105 of this subpart) that the applicant believes is of an urgent or emergency nature and are filed directly with the appropriate Bureau or Office should not be paid with the filing of the request with that Bureau or Office.

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. See also § 1.1110 of this subpart.

22. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply sec: 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

23. Section 5.53 is amended by revising paragraph (b) to read as follows:

§ 5.53 Filing of applications.

* * * * *

(b) Any application for radio station authorization and all correspondence relating thereto shall be submitted to the Commission's office at Washington, DC. (Applications requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.).

* * * * *

24. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

25. Section 61.32 is revised to read as follows:

§ 61.32 Method of filing publications.

(a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which the publication is received by the Secretary of the Commission (or the Mail Room were submitted by mail) is considered the official filing date.

(b) In addition, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a).

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the transmittal letter with two copies of the proposed tariff pages and all attachments, including the supporting information specified in § 61.38, or § 61.49, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send a copy of the publication, supporting information specified in § 61.38 or § 61.49, as appropriate, and transmittal letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The copies of supporting information required here are in addition to those required by § 61.38(c). The issuing carrier must file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a).

26. Section 61.33 is revised to read as follows:

§ 61.33 Letters of transmittal.

(a) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a letter of transmittal, 8½ by 11 inches in size. All letters of transmittal must (1) concisely explain the nature and purpose of the filing; (2) specify whether supporting information under § 61.38 is required; (3) state whether copies have been delivered to the Commercial Contractor and Chief, Tariff Review Branch as required by § 61.32, and (4) contain a statement indicating the date and method of filing of the original of the transmittal letter as required by § 61.32(b), and the date and method of filing the copies as required by § 61.32 (a) and (c).

(b) In addition to the requirements set forth in paragraph (a) of this section, any local exchange carrier choosing to file an Access Tariff under § 61.39 must include in the transmittal:

(1) A summary of the filing's basic rates, terms and conditions;

(2) A statement concerning whether any prior Commission facility authorization necessary to the implementation of the tariff has been obtained; and

(3) A statement that the filing is made pursuant to § 61.39.

(c) In addition to the requirements set forth in paragraph (a) of this section, any carrier filing a price cap tariff must include in the letter of transmittal a statement that the filing is made pursuant to § 61.49.

(d) In addition to the requirements set forth in paragraphs (a), (b), and (c) of this section, the letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication, and may not be requested in the transmittal letter.

(e) The letter of transmittal must be substantially in the following format.

(Exact name of carrier in full)
(Post Office Address)
_____, 19____.
(Date)
Transmittal No._____
Secretary,
Federal Communications Commission
Washington, DC 20554

Attention: Common Carrier Bureau.

The accompanying tariff (or other publication) issued by _____, and bearing FCC No. _____, effective _____, 19____, is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended. (Here give the additional information required.)

(Name of issuing officer or agent)
(Title)

(f) A separate letter of transmittal may accompany each publication, or the above format may be modified to provide for filing as many publications as desired with one transmittal letter.

Note: If a receipt for accompanying publication is desired, the letter of transmittal must be sent in duplicate. One copy showing the date of receipt by the Commission will then be returned to the sender.

27. Section 61.151 is revised to read as follows:

§ 61.151 Scope.

Sections 61.152 and 61.153 set forth the procedures to be followed by a carrier applying for a waiver of any of the rules in this part.

28. Section 61.152 is revised to read as follows:

§ 61.152 Terms of applications and grants.

Applications for special permission must contain:

(a) A detailed description of the tariff publication proposed to be put into effect;

(b) A statement citing the specific rules and the grounds on which waiver is sought;

(c) A showing of good cause; and

(d) A statement as to the date and method of filing the original of the application for special permission as required by § 61.153(b) and the date and method of filing the copies required by § 61.153 (a) and (c).

If approved, the carrier must comply with all terms and use all authority specified in the grant. If a carrier elects to use less than the authority granted, it must apply to the Commission for modification of the original grant. If a carrier elects not to use the authority granted within sixty days of its effective date, the original grant will be automatically cancelled by the Commission.

29. Section 61.153 is revised to read as follows:

§ 61.153 Method of filing applications.

(a) An application for special permission must be addressed to "Secretary, Federal Communication Commission, Washington, DC 20554." The date on which the application is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all special permission applications requiring fees as set forth at part 1, subpart G of this chapter, the issuing carriers must submit the original of the application letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105. The carrier should submit these fee materials on the same date as the submission in paragraph (a).

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the application letter with all attachments to the Secretary, Federal

Communications Commission and a separate copy with all attachments to the Chief, Tariff Review Branch. If a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No. ———————

(Date) ———————

Secretary
Federal Communications Commission
Washington, DC 20554.

Attention: Common Carrier Bureau (here provide the statements required by § 61.152).

(Exact name of carrier) ———————

(Name of officer or agent) ———————

(Title of officer or agent) ———————

April 19, 1990

Concurring Statement of Commissioner Sherrie P. Marshall

Note: This appendix will not appear in the Code of Federal Regulations.

In the Matter of Establishment of a Fee Collection Program To Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989

I write separately to express my concern that one aspect of the fee collection plan may unnecessarily burden many parties who deal with this agency. Specifically, I remain unpersuaded that our mandate to employ the most cost-effective cash management techniques requires that applicants submit not only application fees, but also the applications themselves, to the lockbox bank in Pittsburgh.

Our plan responds to some of the concerns of the communications bar by offering to accept and retain file copies of applications submitted to the Secretary together with evidence of timely mailing to Pittsburgh. However, I believe we could have devised a low-cost approach allowing the continued filing of applications at Commission headquarters, with fees going separately to Pittsburgh. I suspect this could be accomplished without a significantly greater expenditure of Commission resources, while sparing the public (and not merely their attorneys) the expense of filing applications in both Pittsburgh and Washington.

Yet the time left for implementation of this program has now run short, and I shall accept the judgment of the Chairman and his Managing Director on this matter of Commission administration. But if public comment or implementation should prove our double-filing plan less than optimal even within existing fiscal constraints, I, for one, would be prepared to reconsider our decision today.

Appendices A Through C

Note: The following Appendices A through C will not appear in the Code of Federal Regulations.

BILLING CODE 6712-01-M

Approved by OMB
3060-0440
Expires 12/31/90

APPENDIX A

FEDERAL COMMUNICATIONS COMMISSION

FEE PROCESSING FORM

FOR FCC USE ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to instruction (2) on reverse of form)

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

CITY

STATE OR COUNTRY (if foreign address)	ZIP CODE	CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)			$	

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(2)			$	
(3)			$	
(4)			$	
(5)			$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE. →

TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	FOR FCC USE ONLY
$	

This form has been authorized for reproduction.

FCC Form 155
May 1990

BILLING CODE 6712-01-C

Instructions for Completing Fee Processing Form, FCC Form 155, May 1990

(1) "*Applicant Name*"—Enter the name (last, first, middle initial) of the applicant as it appears on the original application or filing being submitted with this Fee Processing Form. If company, enter name which is used commercially.

(2) "*Mailing Address (Line 1)*"—Enter the street address or post office box number to which the applicant wishes correspondence sent.

(3) "*Mailing Address (Line 2)*"—This line may be used for further identification of the address if additional space is required.

(4) "*City*"—Enter the name of the city associated with the given street address.

(5) "*State or Country*"—Enter the appropriate two-digit state abbreviation as prescribed by the U.S. Postal Service. If address is foreign, enter the appropriate country name here.

(6) "*ZIP Code*"—Enter the appropriate five or nine-digit ZIP code prescribed by the U.S. Postal Service.

(7) "*Call Sign or Other FCC Identifier*"—Enter an applicable call sign or unique FCC identifier, if any, as shown on your attached application or filing. If applying for a service affecting more than one call sign, enter one call sign only.

(8) *Column (A), "Fee Type Code"*—Enter correct Fee Type Code(s) from the appropriate Fee Filing Guide. Only one Fee Processing Form may be submitted per application or filing. Inaccurate or erroneous Fee Type Codes may result in your application or filing being returned to you without further processing.

(9) *Column (B), "Fee Multiple"*—Certain applications and filings may request action with respect to more than one station, license, frequency, or party and can be submitted together with one check if they meet specific conditions. This column is used only if a multiple, i.e., two or more, is being applied for. Examples of when this would be used are renewing more than one call sign, frequency, station, or the transfer of control of more than one station. Refer to the appropriate Fee Filing Guide for additional information.

(10) *Column (C), "Fee Due For Fee Type Code in Column (A)"*—Enter in the block the amount of the fee associated with the Fee Type Code shown in Column (A) (times (x) the fee multiple, if required).

(11) *"Total Amount Remitted With This Application or Filing"*—Enter the total of lines (1) through (5) of Column (C). This amount should equal the amount of your check or money order. We will not accept multiple checks.

How To Submit Applications and Filings

• Each application or filing should be assembled with the Fee Processing Form stapled to the top of the application with the check placed on top of the Fee Processing Form. DO NOT STAPLE THE CHECK TO THE APPLICATION OR FEE PROCESSING FORM. Required copies of applications should be clearly identified as "duplicate copy" and placed behind the original package. A copy of an application or filing submitted for receipt purposes only should be placed at the bottom of the submission. Extraneous material and extra copies should be avoided at all times. Failure to abide by these instructions will delay the processing of your submission.

• Completed applications or filings should be mailed to the proper address shown in the Fee Filing Guide for the particular service for which you are applying or making a filing. Applications and filings which are properly addressed to the appropriate P.O. box number may also be hand delivered to the following address. Applications received before midnight on a normal business day will receive that day's date as the receipt date. Deliveries made after midnight on Fridays will not be "officially" receipted until the next Monday. Applications received on weekends and government holidays are dated the next regular business day.

Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Rm. 153–2713, Pittsburgh, Pennsylvania, (Attention: Wholesale Lockbox Shift Supervisor)

• A single check, bank draft or money order made payable to the Federal Communications Commission and denominated in U.S. dollars and drawn upon a U.S. financial institution must be included with each application or filing requiring a fee. No postdated, altered or third-party checks will be accepted. Do not send cash.

• Parties hand delivering applications or filings may receive dated receipt copies by presenting copies of the applications or filings to the acceptance clerk at the time of delivery. Receipts will be provided for mail-in applications or filings if an extra copy of the application or filing is provided along with a self-addressed stamped envelope. Only one piece of paper per application or filing will be stamped for receipt purposes.

Remember

• A separate completed Fee Processing Form is required with each application or filing except in certain circumstances. Please refer to the appropriate Fee Filing Guide for additional information.

• A wrong Fee Type Code or incorrect remittance may result in your application or filing being returned without processing, or result in the dismissal of your application or filing. Please ensure that FEE TYPE CODES are correct and that your check or money order equals the amount shown in the TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING block before submitting your application or filing.

• If you have any questions completing this form, please call the Fees Hotline, 202/632–FEES.

FCC Notice for Individuals Required by the Privacy Act and the Paperwork Reduction Act

Part 1, Subpart G of the Commission's rules authorize the FCC to request the information on this form. The information requested is required in order to obtain a license or authorization from the Commission. The purpose of the information is to provide a means to link a fee payment to a specific invoice, application or filing. The information will be used by the Commission to maintain data concerning fees paid to the Commission, for internal financial control, audit, and reporting purposes. Information requested on this form will be available to the public. Your response is required to obtain a license or other authorization from the Commission.

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching 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 Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0440), Washington, DC 20503.

FCC Form 155—Instructions
May 1990

Appendix B

The following provides a description of the *new* fees in the Schedule of Charges. These descriptions are guided by the legislative history of the 1989 Budget Act. *See* 135 Cong. Rec. H9610 (Statement of Congressman Dingell), S16648 (Statement of Senator Hollings), November 21, 1989. Where the 1989 Budget Act changes nothing more than the amount of a particular charge, we will not repeat the explanation of the fee set out in *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947 (1987).

Private Radio Services

Marine Coast Stations

1. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA, will require a fee of $100. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, operation of a licensed station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. *See* 47 CFR 1.925.

2. *Assignments and Transfers of Control.* Each request for assignment or transfer of control of an authorized station will require a fee of $70 per station (assignment) or $35 per station (transfer of control). The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 503 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 CFR 1.924 (assignment), 1.924(b)(2)(vi) (transfer of control).

3. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it

includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

Ship Stations

4. *New License.* Each request for a new station license, including requests for licenses to operate a portable ship station, require a fee of $35 per station. Requests for a fleet license will be charged according to the number of stations requested. The request is made on FCC Form 506. *See* 47 CFR 80.13, 80.53, 80.55.

5. *Modification of License.* Each request for a modification of an existing license submitted on FCC Form 506 will require a fee of $35 per application. No fee will be required for changes in mailing address, name of the licensee, name of the vessel, or addition or replacement of transmitting equipment on a frequency or frequency band authorized by the present license, when done on FCC Form 405–A or letter. *See* 47 CFR 80.29. A fleet license will be charged based upon the number of stations modified.

6. *Renewal of License.* Each request for the renewal of an existing license will require a fee of $35 per application. The request is submitted on FCC Forms 405–B or 506. *See* 47 CFR 80.25. A fleet license will be charged based upon the number of stations renewed.

7. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931, 80.59(c). In this service, a waiver includes a request for exemption, a modification of an existing exemption or renewal of an exemption from the provisions of law and treaty otherwise requiring the compulsory use of a ship station.

Operational Fixed Microwave Stations

8. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a licensed station beyond the scope of its authorization, or is granted under other extraordinary circumstances. The request is made by letter. 47 CFR 94.43.

9. *Assignments and Transfers of Control.* Each request for assignment or transfer of control of an authorized station will require a fee of $155 per station (assignment) or $35 per station (transfer of control). The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 402 and 1046 (assignment) and FCC Form 703 (transfer of control). *See* 47 CFR 90.153.

10. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

Aviation (Ground Stations)

11. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA, requires a fee of $100. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or is granted under other extraordinary circumstances. The request is made by letter. 47 CFR 94.43.

12. *Assignments and Transfers of Control.* Each request for assignment or transfer of control of an authorized station will require a fee of $155 per station (assignment) or $35 per station (transfer of control). The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 402 and 1046 (assignment) and FCC Form 703 (transfer of control). *See* 47 CFR 90.153.

13. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

Aircraft Stations

14. *New Authorizations.* Each request for a new license to operate an aircraft station or portable station will require a fee of $35 per application. Requests for fleet licenses will be charged according to the number of stations requested. These requests are made on FCC Form 404. *See* 47 CFR 87.25, 87.25(c), 87.47.

15. *Modifications.* Each request for a modification to an existing license will require a fee of $35 per application. This fee will only be required if the modification is submitted on FCC Form 404. No fee will be required when the Commission is informed of a change in licensee name or address, or that the transmitting equipment has been replaced on a frequency or frequency band authorized by the present license. *See* 47 CFR 87.31. A fleet license will be charged based upon the number of stations modified.

16. *Renewal of License.* Each request for a renewal of an existing station license will require a fee of $35 per application. These requests are made on FCC Forms 404 or 405–B. *See* 47 CFR 87.27. A fleet license will be charged based upon the number of stations renewed.

17. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

Land Mobile Stations (Including For-Profit Special Emergency and Public Safety Stations)

18. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. 47 CFR 94.43.

19. *Assignments and Transfers of Control.* Each request for assignment or transfer of control of an authorized station will require a fee of $35 per station. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 574 and 1046 (assignment) and FCC Form 703 (transfer of control). *See* 47 CFR 90.153.

20. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

21. *Reinstatement.* Each request to reinstate a license that has previously expired (within six months of the expiration) will require a fee of $35 per call sign. *See* 47 CFR 90.175.

Specialized Mobile Radio Systems—Base Stations

22. *New License.* Each request for a new license to operate a base station in a conventional or trunked mode consisting of not more than six specific fixed station locations will require a fee of $35 per call sign. The request is made on FCC Form 574. *See* 47 CFR 90.607.

23. *Modification.* Each request for a modification of an existing license will require a fee of $35 per call sign. If an application contains more than six specific fixed station locations, a fee will be assessed for each multiple of six locations, or part thereof. This fee will only be required if the modification is submitted on FCC Form 574. *See* 47 CFR 90.135(a)(1)–(8). No fee will be required for changes in mailing address, name of the licensee, change in the number or location of station control points, change in the number or location of control stations meeting the requirements of § 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or a notice that the station no longer is in service. These notifications are made on FCC Form 405–A or by letter.

24. *Renewal of License.* Each request for the renewal of an existing license will require a fee of $35 per call sign. The request is made on FCC Forms 574R or 405–A. *See* 47 CFR 90.149.

25. *Waiting List.* If, due to the lack of channels in a particular area, an applicant for a new license cannot get frequencies or an existing licensee cannot obtain additional frequencies, the applicant will automatically be placed on a waiting list for that area. The waiting list charge is $35 per application per year. All waiting list applicants will be billed $35 per application on December 31 of each year.

26. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. *See* 47 CFR 90.145.

27. *Assignments and Transfers of Control.* Each request for assignment or transfer of control of an authorized station will require a fee of $35 per call sign. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 574 and 1046 (assignment) and FCC Form 703 (transfer of control). *See* 47 CFR 90.153.

28. *Request for Waiver.* A routine request for waiver is one that involves no more than one call sign and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one call sign or more than one rule section. The fee is determined by multiplying the number of call signs by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

29. *Reinstatement.* Each request to reinstate a license that has previously expired (within six months of the expiration) will require a fee of $35 per call sign. *See* 47 CFR 90.175.

Private Carrier Licenses

30. *New License.* Each request for a new license to operate a Private Carrier base station, consisting of not more than six specific fixed station locations, will require a fee of $35 per call sign. The request is made on FCC Form 574. *See* 47 CFR 90.179.

31. *Modification.* Each request for a modification of an existing license will require a fee of $35 per call sign. If an application contains more than six specific fixed station locations, a fee will be assessed for each multiple of six locations, or part thereof. This fee will only be required if the modification is submitted on FCC Form 574. *See* 47 CFR 90.135(a)(1)–(8). No fee will be required for changes in mailing address, name of the licensee, change in the number or location of station control points, change in the number or location of control stations meeting the requirements of § 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or a notice that the station no longer is in service. These notifications are made on FCC Form 405–A or by letter.

32. *Renewal of License.* Each request for the renewal of an existing license will require a fee of $35 per call sign. The request is made on FCC Forms 574R or 405–A. *See* 47 CFR 90.149.

33. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or is granted under other extraordinary circumstances. The request is made by letter. *See* 47 CFR 90.145.

34. *Assignments and Transfers of Control.* Each request for assignment or transfer of control of an authorized station will require a fee of $35 per call sign. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 574 and 1046 (assignment) and FCC Form 703 (transfer of control). *See* 47 CFR 90.153.

35. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

36. *Reinstatement.* Each request to reinstate a license that has previously expired (within six months of the expiration) will require a fee of $35 per call sign.

General Mobile Radio Service (GMRS)

37. *New License.* Each request for a new license to operate a GMRS system or a station in a GMRS system will require a fee of $35 per call sign. A single fee is required for up to six land stations in a GMRS system, which constitutes one call sign. The request is made on FCC Form 574. *See* 47 CFR 90.607.

38. *Modification.* Each request for a modification of an existing license will require a fee of $35 per call sign. If an application contains more than six specific fixed station locations, a fee will be assessed for each multiple of six locations, or part thereof. This fee will only be required if the modification is submitted on FCC Form 574. *See* 47 CFR 90.135(a)(1)–(8). No fee will be required for changes in mailing address, name of the licensee, change in the number or location of station control points, change in the number or location of control stations meeting the requirements of § 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or a notice that the station no longer is in service. These notifications are made on FCC Form 405–A or by letter.

39. *Renewal of License.* Each renewal request will require a fee of $35 per call sign. The request is made on FCC Forms 574R and 405–A. *See* 47 CFR 90.149.

40. *Request for Waiver.* A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Nonroutine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. *See* 47 CFR 1.931.

41. *Special Temporary Authority (Initial, Modifications, Extensions).* Each STA request, or request to extend an STA requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. *See* 47 CFR 90.145.

42. *Transfers of Control.* Each request for transfer of control of an authorized station will require a fee of $35 per call sign. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Form 703. *See* 47 CFR 90.153.

Restricted Radiotelephone Operator Permit

43. Each request for this license will require a fee of $35. This permit allows the operation of most aircraft and aeronautical ground stations, and marine radiotelephone stations on pleasure vessels when operator licensing is required. This license is also required for transmitter operation, repair and maintenance of all types of AM, FM, TV and international broadcast stations.

Request for Duplicate Station License

44. Each request by an existing licensee to replace an original license that has been lost, mutilated or destroyed will require a fee of $35.

Hearing (Comparative New and Modifications)

45. To participate in a comparative hearing among mutually exclusive private radio applications, an applicant must pay a fee of $6,760, unless the requirements of § 1.1108 are met. The fee is due upon the filing of a Notice of Appearance with the Commission.

Equipmental Approval Services/ Experimental Radio

Certification

46. *Modifications and Class II Permissive Changes.* Each request for a modification or a class II permissive changes will require a fee of $35. The request is made on FCC Form 731.

47. *Request for Confidentiality.* Each request for confidentiality included with any application for certification or a modification thereto will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

Type Acceptance

48. *Modifications and Class II Permissive Changes.* Each request for a modification or a class II permissive changes will require a fee of $35. The request is made on FCC Form 731.

49. *Request for Confidentiality.* Each request for confidentiality included with any application for type acceptance or a modification thereto will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

Type Approval

50. *Request for Confidentiality.* Each request for confidentiality included with any application for type approval or a modification thereto will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

Advance Approval for Subscription TV Systems

51. Licensees and permittees of TV broadcast and low power TV stations may conduct subscription operations only by using an encoding system approved in advance by the Commission. Each request will require a fee of $2,250 and is made on FCC Form 731.

52. *Request for Confidentiality.* Each request for confidentiality included with any application for advance approval of subscription TV systems will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

Assignment of Grantee Code for Equipment Identification

53. Each request for assignment of grantee code for equipment identification will require a fee of $35, in addition to any fee for the equipment authorization request. The request is made by letter and need only be filed once.

Experimental Radio Service

54. *New Construction Permit and Station Authorization.* Each request for a combined construction permit and radio station license for base stations, fixed stations or mobile stations will require a fee of $35 per application. The request is made on FCC Form 442.

55. *Modification to Existing Construction Permit and Station Authorization.* Each request to modify a combined construction permit and station license will require a fee of $35 per application. The request is made on FCC Form 442.

56. *Renewal of Station Authorization.* Each request for the renewal of an existing station authorization in accordance with the terms of the existing authorization will require a fee of $35 per application. The request is made on FCC Form 405.

57. *Assignment or Transfer of Control.* Each request for a voluntary or involuntary assignment of the legal right to construct or control the use or operation of a station or voluntary or involuntary transfer of a corporation holding a station authorization will require a fee of $35. The request is made on FCC Form 702 or 703.

58. *Special Temporary Authority.* Each STA request, or request to extend and STA, will require a fee of $35 per application. The request is made by letter.

59. *Additional Charge for Applications Containing Requests to Withhold Information from Public Inspection.* Each such request included with any application for experimental radio authorizations will require an additional fee of $35 per application. The request is made by letter accompanying the application.

Mass Media Services

Commercial TV Stations

60. *Call Sign (New or Modification).* Each request for a new call sign or the modification of an existing call sign will require a fee of $55 per application. However, no fee required to modify an existing call sign by only adding or deleting the –FM or –TV suffix. *See* 47 CFR 73.3550. The call sign fee is in addition to any fee that may be due for any concurrently filed application. The call sign request is done by letter.

61. *Special Temporary Authority.* Each request for an STA, or an extension of an existing STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

62. *Extension of Time to Construct or to Replace an Expired Construction Permit.* Each request of extension of time to construct a TV station or to replace an expired construction permit for such a station will require a fee of $200 per application. This request is done on FCC Form 307. *See* 47 CFR 73.3534.

63. *Permit to Deliver Programs to Foreign Broadcasting Stations.* Each such request will require a fee of $55 per application. This formal or informal application is mandated under section 325(b) of the Communications Act. This request is generally made on FCC Form 308, but, if the applicant holds a valid broadcast station permit or license, a letter request may be used in lieu of Form 308. *See* 47 CFR 73.3534. The fee is also required with letter requests.

64. *Petition for Rulemaking for New Community of License.* Each petition for rulemaking filed by an existing TV licensee or permittee to amend the TV Table of Allotments to re-allot the requestor's channel from one community to another is subject to $1,565 fee, payable after approval of the petition, when the licensee or permittee files the appropriate application to reflect the change (on FCC Form 301 or 302, as directed by the Mass Media Bureau). The fee is in addition to the fee required for the Form 301 or 302 application.

65. *Ownership Report.* A fee of $35 per report is due when the licensee files its annual ownership report (FCC Form 323) as required by 47 CFR 73.3615. The same fee is due if the licensee files a letter in lieu of the Form 323, reporting that there has been no change since the last filing of FCC Form 323.

Commercial Radio Stations

66. *Call Sign (New or Modification).* Each request for a new call sign or the modification of an existing call sign will require a fee of $55 per application. However, no fee is charged where the requestor seeks only to modify an existing call sign by adding or deleting the –FM or –TV suffix. The call sign fee is in addition to any other fee due for any other concurrently filed application. The call sign request is made by letter.

67. *Special Temporary Authority.* Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee applies to applicants requesting special field test authority. STAs are requested by letter.

68. *Extension of Time to Construct or to Replace an Expired Construction Permit.* Each request of extension of time to construct an AM or FM station or to replace an expired construction permit for such a station will require a fee of $200 per application. This request is done on FCC Form 307.

69. *Permit to Deliver Programs to Foreign Broadcasting Stations.* Each request for permission to deliver programs to foreign broadcasting stations will require a fee of $55 per application. This request is generally made on FCC Form 308, but, if the applicant holds a valid broadcast station permit or license, an informal letter request may be used in lieu of Form 308. This fee is also required with letter submissions.

70. *Petition for Rulemaking for New Community of License or Higher Class of Channel.* Each petition for rulemaking for a new community of license or a higher class channel filed by an existing FM permittee or licensee will require a fee of $1,565, payable upon approval of a petition, when the licensee or permittee files an application to reflect the change (on FCC Form 301 or 302, as directed by the Mass Media Bureau). The fee is in addition to the fee for the Form 301 or 302 application.

71. *Ownership Report.* A fee of $35 per report is due when the licensee files its annual ownership report (FCC Form 323) as required by 47 CFR 73.3615. The same fee is due if the licensee files a letter in lieu of the Form 323, reporting that there has been no change since the last filing of FCC Form 323.

72. *AM Remote Control.* Each request for an AM remote control authorization will require a fee of $35 per application. The request is made on FCC Form 301–A. It can also be made on FCC Form 301 when applying for remote control authorization in connection with an application for a CP for a new AM directional antenna or to make modifications to an existing AM subject to the sampling requirements of 47 CFR 73.68. When remote control authorization is requested on FCC Form 301, the $35 fee is in addition to the fee required for the CP application.

73. *FM Directional Antenna.* Each request for a license for a new FM directional antenna system or for changes to an existing FM directional antenna system will require a fee of $355. The request is made on FCC Form 302. A directional antenna is one that is designed or altered for the purpose of obtaining a noncircular radiation pattern. The fee is required in addition to the fee for the FM license application.

FM Translators

74. *Special Temporary Authority.* Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special yield test authority. STAs are requested by letter.

TV Translators and LPTV Stations

75. *Special Temporary Authority.* Each STA request, or request to extend an exitsting STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

Auxiliary Services

76. *Special Temporary Authority.* Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per request. The request for a special temporary authority is done by letter.

FM Boosters

77. *New or Major Change Construction Permits.* Each request for a new or major change construction permit will require a fee of $425 per application. This request is made on FCC Form 349.

78. *License.* Each request for a license to cover a construction permit will require a fee of $85 per application. This request is made on FCC Form 350.

79. *Special Temporary Authority:* Each STA request or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

TV Boosters

80. *New or Major Change Construction Permits.* Each request for a new or major change construction permit will require a fee of $425 per application. This request is made on FCC Form 346.

81. *License.* Each request for a license to cover a construction permit will require a fee of $85 per application. This request is made on FCC Form 347.

82. *Special Temporary Authority.* Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

International Broadcast Station

Note: Although many international broadcasters are noncommercial, Congress did not specifically exempt such licensees from these fees, and the rationale in the *Fee Reconsideration Order* for exempting noncommercial educational LPTV and translators would not apply to these stations. 3 FCC Rcd at 5988. Thus, we do not believe that Congress intended the Commission to exempt noncommercial educational international broadcasters from these fees.

83. *New Construction Permit and Facilities Change CP.* Each request for permission to construct a new international station or to make changes to an existing station will require a fee of $1.05 per application. The request is made on FCC Form 309.

84. *License.* Each request for a license to cover a construction permit will require a fee of $385 per application. License fees are not applicable to any license modification that may be made without prior authorization from the FCC. The request is made on FCC Form 310.

85. *Assignment or Transfer of Control.* Each request for assignment or transfer of control will require a fee of $60 per station. The request is made on FCC Form 314, 315, or 316.

86. *Renewal.* Each request for the renewal of an existing license will require a fee of $95. The request is done on the FCC Form 311.

87. *Frequency Assignment and Coordination.* Frequencies are assigned based on frequency-hour requests submitted by applicants. A frequency-hour is a specific hour (or fraction thereof) of the day during which a station may broadcast on a specific frequency during a particular season. There are four seasons of varying lengths during the year. Applicants make tentative and final frequency hour requests for each season, and these requests are coordinated with foreign governments in order to avoid mutual interference. The fee of $35 will be charged for each final frequency-hour requested for each season. The total fee will be determined by adding all of the frequency-hours requested for one season, rounding that total off to the next higher whole number of hours, and then multiplying the number of whole frequency hours by $35. The following is an example of this calculation for a hypothetical station requesting frequency-hours for a particular season.

Frequency (kHz)	Time (UTC)	Number of Hours
6185	0230 to 1200	9.5
9715	1200 to 1400	2
11965	1400 to 1630	2.5
15420	1630 to 2115	4.75
15440	2115 to 2145	0.5
	Total Frequency-Hours	19.25

The 19.25 is rounded up to 20 frequency-hours and multiplied by the $35 fee, resulting in a total fee of $700 for the season. If the request is for a six month period (two seasons), the total fee would be twice that amount ($1400). Moreover, an additional $35 per frequency-hour will be charged for additional or changed frequency-hour requests submitted by applicants after the final request has been submitted or after the season has started. However, if such additions or changes are requested by the Commission, no fee will be charged for them.

88. *Special Temporarary Authority.* Each STA request, or request for to extend an STA other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

Cable Television Service

89. *Special Temporary Authority (CARS).* Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The request is generally made by letter.

90. *Section 76.12 Registration Statement.* Each § 76.12 registration statement will require a fee of $35 per statement.

91. *Aeronautical Frequency Usage Notifications.* Each such notification will require a fee of $35 per notice. *See* 47 CFR 76.615.

92. *Aeronautical Frequency Usage Waivers.* Each request will require a fee of $35 per waiver. Such requests seek a waiver of the distance and/or frequency separation requirements in 47 CFR 76.619. The request is made by letter.

Direct Broadcast Satellite

93. *Special Temporary Authority.* Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. In addition, the STA fee will apply to applicants requesting test authority. STAs are requested by letter.

Common Carrier Services

Fees Applicable to all Common Carrier Services

94. *Hearings.* A fee of $6,760 is required for each applicant designated for hearing in a case involving comparative review of applicants for a new service, major or minor modifications of existing common carrier services, or renewal of an existing common carrier authorization. The hearing fee must accompany the Notice of Appearance unless payment is exempted in accordance with 47 CFR 1.1111(c).

95. *Developmental Authority.* Each such request will require the same fee as for regular authority in the radio service in which developmental authority is requested, unless otherwise indicated. The fee is in addition to any later request for regular authority. These requests are made by letter.

96. *Formal Complaints and Pole Attachment Complaints Filing Fee.* Each formal complaint and each pole attachment complaint will require a fee of $120. The complaint must conform to specific requirements of 47 CFR 1.720–23, 1.733–34 (formal complaints); 47 CFR 1.1404 and 1.1408 (pole attachment complaints). Informal complaints filed against communications common carriers pursuant to 47 CFR 1.716 do *not* require filing fees. Except in unusual circumstances, formal complaints against multiple common carriers and pole attachment complaints against multiple carriers, cable television systems, or utilities would be considered to be separate complaints (even if jointly captioned) for which separate fees are required.

Domestic Public Land Mobile Stations (Includes Base, Dispatch, Control and Repeater Stations)

97. *Fill In Transmitter.* Each request for a fill in transmitter will require a fee of $230 per transmitter. The request is done on FCC Form 401 or 489.

98. *Major Amendment to a Pending Application.* A major amendment to a pending application will require a fee of $230 per transmitter. The request is made on FCC Form 401. Major amendments include changes in technical proposals, amendments to proposed base station facilities, amendments that increase a CGSA or changes in ownership and control.

99. *Assignment or Transfer of Control.* Each request for an assignment or transfer of control of a common carrier authorization will require a fee of $230 for the first call sign on the application and an additional $35 for each additional call sign. The request is made on FCC Form 490.

100. *Partial Assignment.* Each request for a partial assignment of a common carrier authorization will require a fee of $230 per call sign. A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily. The request is made on FCC Forms 401 and 490.

101. *Minor Modification.* A minor modification to existing stations will require a fee of $35 per transmitter. Minor modifications are requested on FCC Form 489.

102. *Special Temporary Authority.* Each STA request, or request to extend an STA, will require a fee of $200 per frequency/per location.

103. *Extension of Time to Construct.* Each request for an extension of time to construct will require a fee of $35 per application. These requests are made on FCC Form 489.

104. *Notice of Completion of Construction.* Each notice of completion of construction will require a fee of $35 per application. The notification is made on FCC Form 489.

105. *Auxiliary Test Station.* Each request for an auxiliary test station will require a fee of $200 per transmitter. The request is made on FCC Form 401.

106. *Subsidiary Communications Service.* Each request for a subsidiary communications service will require a fee of $100 per request. Subsidiary communications service is a one-way service using a broadcast station subcarrier frequency. The request is made on FCC Form 401.

107. *Reinstatement.* A request for a new authorization after the expiration of a construction authorization or license to operate will require a fee of $35 per application. The request is made on FCC Form 489.

108. *Combining Call Signs.* Each request to consolidate the facilities of one or more call signs under a single call sign will require a fee of $200 per call sign. The request is made on FCC Form 489.

109. *Standby Transmitter.* Each request for a license to operate a standby transmitter will require a fee of $200 per transmitter/per location. The request is made on FCC Form 401.

110. *900 MHz Nationwide Paging-Renewal.* Each request for renewal of a license for 900 MHz nationwide paging will require a fee of $35 for network organizers and a $35 fee per operator/per city for a network operator. The request is made on FCC Form 405. The network organizer and network operator are subject to these renewal fees in addition to any other fee imposed on domestic public land mobile licensees or permittees.

Cellular Systems

111. *Extension of Time to Complete Construction.* Each request for the extension of time to complete construction will require a fee of $35. The request is made on FCC Form 489.

112. *Special Temporary Authority.* Each STA request will require a fee of $200 per system. The request is made by letter.

113. *Combining Cellular Geographic Service Areas.* Each request by licensees of two different geographic areas to combine their service areas under one call sign for administrative efficiency will require a fee of $50 per area. The request is made by letter.

Rural Radio (Includes Central Office, Interoffice, or Relay Facilities)

114. *Major Modifications.* Each request for major modification to a rural radio service facility will require a fee of $105 per transmitter. The request is made on FCC Form 401.

115. *Major Amendment to a Pending Application.* A major amendment to a pending application will require a fee of $105 per transmitter.

116. *Assignment or Transfer of Control.* Each request for an assignment of a rural radio authorization or a transfer of control will require a fee of $105 for the first call sign on the application and an additional $35 for each additional call sign. The request is made on FCC Form 490. Each request for a partial assignment of a rural radio authorization will require a fee of $105 per call sign. A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily. The request is made on FCC Forms 401 and 490.

117. *Extension of Time to Complete Construction.* Each request for an extension of time to complete construction will require a fee of $35 per application. The request is made on FCC Form 489.

118. *Notice of Completion of Construction.* Each notice of completion of construction will require a fee of $35 per application. The notice of completion of construction certifies that the facilities have been constructed as authorized or with minor modifications. The notification is made on FCC Form 489.

119. *Special Temporary Authority.* Each STA request, or request to extend an STA, will require a fee of $200 per frequency/per location. The request is done by letter.

120. *Reinstatement.* A request for new authorization after the expiration of an authorization will require a fee of $35 per application. The request is made on FCC Form 489.

121. *Combining Call Signs.* Each request to consolidate the facilities of one or more call signs under a single call sign will require a fee of $200 per call sign. The request is made on FCC Form 489.

122. *Auxiliary Test Station.* Each request for an auxiliary test station will require a fee of $200 per transmitter. The request is made on FCC Form 401.

123. *Standby Transmitter.* Each request for a license to operate a standby transmitter will require a fee of $200 per transmitter/per location. The request is made on FCC Form 401.

Offshore Radio Service

124. *Major Modifications.* Each request for a major modification will require a fee of $105 per transmitter. The request is made on FCC Form 401.

125. *Fill in Transmitter.* Each request for a fill in transmitter will require a fee of $105 per transmitter. The request is made on FCC Form 401 or 489.

126. *Major Amendment to a Pending Application.* A major amendment to a pending application will require a fee of $105 per transmitter. The request is made on FCC Form 401.

127. *Minor Modification.* Each request for a minor modification of an existing license will require a fee of $35 per transmitter. The request is made on FCC Form 401.

128. *Assignment or Transfer of Control.* Each request for an assignment of an offshore radio service authorization or a transfer of control will require a fee of $105 for the first call sign on the application and additional $35 for each additional call sign. The request is made on FCC Form 490. Each request for a partial assignment of a rural radio service authorization will require a fee of $105 per call sign. A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily. The request is made on FCC Forms 401 and 490.

129. *Extension of Time to Complete Construction.* Each request for an extension of time to complete construction will require a fee of $35 per application. The request is made on FCC Form 489.

130. *Reinstatement.* A request for a new authorization after the expiration of an authorization will require a fee of $35 per

application. The request is made on FCC Form 489.

131. *Notice of Completion of Construction.* Each notice of completion of construction will require a fee of $35 per application. The notification is made on FCC Form 489.

132. *Special Temporary Authority.* Each STA request, or request to extend an STA, will require a fee of $200 per frequency/per location. STAs are requested by letter.

133. *Combining Call Signs.* Each request to consolidate the facilities of one or more call signs under a single call sign will require a fee of $200 per call sign. The request is made on FCC Form 489.

134. *Auxiliary Test Station.* Each request for an auxiliary test station will require a fee of $200 per transmitter. The request is made on FCC Form 401.

135. *Standby Transmitter.* Each request for a license to operate a standby transmitter will require a fee of $200 per transmitter/per location. The request is made on FCC Form 401.

Point-to-Point Microwave and Local Television Radio Service

136. *Conditional License.* Each request for a conditional license (formerly called a construction permit) will require a fee of $155 per station. The request is made on FCC Form 494.

137. *Major Modification of Conditional License or License Authorization.* Each request for a major modification of a conditional license or license authorization will require a fee of $155 per station. The request is made on FCC Form 494.

138. *Certification of Completion of Construction.* Each certification of completion of construction filed to notify the Commission that construction of a specified station has been completed as authorized will require a fee of $155 per station. This notification is made on FCC Form 494–A.

139. *Renewal.* Each request for renewal of a previously-granted license authorization will require a fee of $155 per station. The request is made on FCC Form 405.

140. *Assignment or Transfer of Control.* Each request for the assignment or transfer of control of a licensed station will require a fee of $55 for the first station on the application and $35 for each additional station on the application. The request is made on FCC Form 702 for assignment of a transmitting station and 704 for transfer of control of a corporation holding a station authorization. The fee applies to both voluntary and involuntary assignments or transfers.

141. *Extension of Construction Authorization.* Each request for the extension of time to construct a station will require a fee of $55 per station. The request is made on FCC Form 701.

142. *Special Temporary Authority/Request for Waiver of Prior Construction Authorization.* Each STA request for permission to construct and/or operate a radio station when circumstances require immediate or temporary operation of a station will require a fee of $70 per request. This request is made by letter. A request for waiver of prior construction authorization permitting construction before a conditional license is granted will require a fee of $70 per request. This request is also made by letter.

Multipoint Distribution Service (Including Multichannel MDS)

143. *Conditional License.* Each request for a conditional license (formerly called a construction permit) will require a fee of $155 per station. The request is made on FCC Form 494.

144. *Major Modification of Conditional License or License Authorization.* Each request for a major modification to a previously-issued conditional license or license authorization will require a fee of $155 per station. The request is made on FCC Form 494.

145. *Certification of Completion of Construction.* Each certification will require a fee of $455 per channel. This request is made on FCC Form 494–A.

146. *Renewal.* Each request for the renewal of an existing license authorization will require a fee of $155 per station. The request is made on FCC Form 405.

147. *Assignment or Transfer of Control.* Each request for the assignment or transfer of control of a licensed station will require a fee of $55 for the first station on the application and $35 for each additional station on the application. The request is made on FCC Form 702 for assignment of a station authorization and 704 for transfer of control of a corporation holding a station authorization. The fee applies to both voluntary and involuntary assignments or transfers.

148. *Extension of Construction Authorization.* Each request for the extension of time to construct a station will require a fee of $110 per station. The request is made on FCC Form 701.

149. *Special Temporary Authority/Request for Waiver of Prior Construction Authorization.* Each STA request, or request to extend an STA, granting permission to construct and/or operate a radio station when circumstances require immediate or temporary operation of a station will require a fee of $70 per request. This request is made by letter. A request for waiver of prior construction authorization permitting construction before a conditional license is granted will require a fee of $70 per request. This request is also made by letter.

Digital Electronic Message Service

150. *Conditional License.* Each request for a conditional license (formerly called a construction permit) will require a fee of $155 per nodal station. The request is made on FCC Form 494.

151. *Major Modification of Conditional License or License Authorization.* Each request for a major modification to a previously-issued conditional license or license authorization will require a fee of $155 per nodal station. The request is made on FCC Form 494.

152. *Certification of Completion of Construction.* Each certification of completion will require a fee of $155 per nodal station. This request is made on FCC Form 494–A.

153. *Assignment or Transfer of Control.* Each request for the assignment or transfer of control of a licensed station will require a fee of $55 for the first station on the application and $35 for each additional station on the application. The request is made on FCC Form 702 for assignment of a station authorization and 704 for transfer of control of a corporation holding a station authorization. The fee applies to both voluntary and involuntary assignments or transfers.

154. *Extenson of Time to Complete Construction Authorization.* Each request for extension of time to construct a station will require a fee of $55 per station. The request is made on FCC Form 701.

155. *Special Temporary Authority/Request for Waiver of Prior Construction Authorization.* Each STA request, or request to extend an STA, granting permission to construct and/or operate a radio station when circumstances require immediate or temporary operation of a station will require a fee of $70 per request. This request is made by letter. A request for waiver of prior construction authorization permitting construction before a conditional license is granted will require a fee of $70 per request. This request is also made by letter.

International Fixed Public Radio (Public and Control Stations)

156. *Extension of Construction Authorization.* Each request for the extension of the time to construct a station will require a fee of $185 per station. The request is made on FCC Form 701.

157. *Special Temporary Authority or Request for Waiver.* Each STA request, or request to extend an STA, granting permission to operate a station when circumstances require immediate operation of a station will require a fee of $185 per request. The request is made by letter. A waiver request includes a request to suspend or modify a Commission rule.

Fixed Satellite Transmit/Receive Earth Stations

158. *Modification of License.* Each request for the modification of an existing license will require a fee of $105 per earth station. The request is made on FCC Form 493.

159. *Assignment or Transfer of Control.* Each request for authorization for an assignment or transfer of control of a station will require a fee of $300 for the first earth station on the application and an additional $100 for each additional earth station on the application. The request is made on FCC Form 702 or 704.

160. *Developmental Station.* Each request for a license to operate a developmental station will require a fee of $1,000 per station. Application is made on FCC Form 493.

161. *Renewal of License.* Each request for the renewal of an existing earth station license at the expiration of the term of authorization will require a fee of $105 per earth station. The request is made on FCC Form 405.

162. *Special Temporary Authority/Waiver of Prior Construction Authorization.* Each request for authority to commence construction and/or operation, or major modifications to an earth station when circumstances call for immediate action prior to grant of a construction permit or license requires a fee of $105. The request is made by letter. A copy of the underlying application or

technical exhibits specified by Public Notice DA 87–732 (released June 18, 1987) is required to be submitted with the request.

163. *Amendment of Application.* Each amendment to an application pending before the Commission will require a fee of $105 per station. This includes modification, deletion or addition of information. The amendment is submitted by letter and should include a revised copy of the initial application.

164. *Extension of Construction Permit.* Each request to extend the time for construction will require a fee of $105 per station. The request is made on FCC Form 701.

Small Transmit/Receive Earth Stations

165. *Modification of License.* Each request for the modification of the license for a small earth station will require a fee of $105 per station. The request is made on FCC Form 493.

166. *Assignment or Transfer of Control.* Each request for the authorization and assignment or transfer of control of an earth station will require a fee of $300 for the first station on the application and an additional $35 for each additional station on the application. The request is made on FCC Form 702 or 704.

167. *Developmental Station.* Each request for a license to operate a developmental station will require a fee of $1,000 per station. Application is made on FCC Form 493.

168. *Renewal of License.* Each request for the renewal of a station license at the expiration of the term of authorization will require a fee of $105 per station. The request is made on FCC Form 405.

169. *Special Temporary Authority/Waiver of Prior Construction Authorization.* Each request for authority to commence construction and/or operation, or major modifications to an earth station when circumstances call for immediate action prior to grant of a construction permit or license will require a fee of $105 per request. The request is made by letter. A copy of the underlying application or technical exhibits specified by Public Notice DA 87–732 (released June 18, 1987) is required to be submitted with the request.

170. *Amendment of Application.* Each amendment to an earth station application pending before the Commission will require a fee of $105 per station. This includes modification, deletion or addition of information. The amendment is submitted by letter and should include a revised copy of the initial application.

171. *Extension of Construction Permit.* Each request to extend the time for completion of construction will require a fee of $105 per station. The request is made on FCC Form 701.

Receive Only Earth Stations

172. *Modification of License or Registration.* Each request for the modification of an earth station license will require a fee of $105 per station. Application is made on FCC Form 493.

173. *Assignment or Transfer.* Each request for the assignment or transfer of control of a station requires a fee of $300 for the first station on the application and an additional $100 for each additional station on the application. The request is made on FCC Form 702 or 704.

174. *Renewal of License.* Each request for the renewal of an existing license at the expiration of the term of authorization will require a fee of $105 per station. The request is made on FCC Form 405.

175. *Amendment of Application.* Each amendment to an application pending before the Commission will require a fee of $105 per station. This includes modification, deletion or addition of information. The amendment is submitted by letter and should include a revised copy of the initial application.

176. *Extension of Construction Permit.* Each request to extend the time for completion of construction will require a fee of $105 per station. The request is made on FCC Form 701.

177. *Waivers.* Each request for a waiver will require a fee of $105 per request. The request is made by letter.

Very Small Aperture Terminal (VSAT) Systems

178. *Modification of License.* Each request for modification of a VSAT system license will require a fee of $105 per system. The request is made on FCC Form 493.

179. *Developmental Station.* Each request for a license to operate a developmental station will require a fee of $1,000 per station. The request is made on FCC Form 493.

180. *Renewal of License.* Each request for the renewal of an existing system license at the expiration of the term of authorization will require a fee of $105 per system. The request is made on FCC Form 405.

181. *Special Temporary Authority or Waiver of Prior Construction Authorization.* Each request for authority to commence construction and/or operation, or make major modifications to a VSAT system when circumstances call for immediate action will require a fee of $105 per request. These requests are made by letter.

182. *Amendment of Application.* Each amendment to a VSAT system application pending before the Commission will require a fee of $105 per system. Amendments are submitted by letter and should include a revised copy of the initial application.

183. *Extension of Construction Permit.* Each request to extend the time for completion of construction will require a fee of $105 per system. The request is made on FCC Form 701.

Mobile Satellite Earth Stations

184. *Initial Application of Blanket Authorization.* Each request for initial application of blanket authorization to operate numerous portable mobile units will require a fee of $5,630. This application for a license is made on FCC Form 493.

185. *Initial Application for Individual Earth Station.* Each initial application for an individual earth station to operate within an existing system will require a fee of $1,350. This application for a license is made on FCC Form 493.

186. *Modification of License.* Each request for modification of a system license will require a fee of $105 per system. The request is made on FCC Form 493.

187. *Assignment or Transfer of Control.* Each request for an assignment or transfer of control will require a fee of $1,505 per system. The request is made on FCC Form 702 or 704.

188. *Developmental Station.* Each request for the license of a developmental station will require a fee of $1,000 per station.

189. *Renewal of License.* Each request for the renewal of a mobile satellite system license at the expiration of the term of authorization will require a fee of $105 per system. The request is made on FCC Form 405.

190. *Special Temporary Authority/Waiver of Prior Construction Authorization.* Each STA request to commence construction and/or operation, or make major modifications to a mobile system when circumstances call for immediate action will require a fee of $105 per request. These requests are made by letter.

191. *Amendment of Application.* Each amendment to a system application pending before the Commission will require a fee of $105 per system. The amendment is submitted by letter.

192. *Extension of Construction Permit.* Each request to extend the time for completion of construction will require a fee of $105 per system. The request is made on FCC Form 701.

Radio Determination Satellite Earth Stations

193. *Initial Application for Blanket Authorization.* Each request for blanket authorization to operate one or more earth stations in conjunction with a hub station will require a fee of $5,630. This request is made on FCC Form 493.

194. *Initial Application for Individual Earth Station.* Each initial application for a license to operate an individual earth station within an existing system will require a fee of $1,350. This application is made on FCC Form 403.

195. *Modification of License.* Each request for the modification of an existing system license will require a fee of $105 per system. The request is made on FCC Form 493.

196. *Assignment or Transfer of Control.* Each request for assignment or transfer of control of a system license will require a fee of $1,505 per system. The request is made on FCC Form 702 or 704.

197. *Developmental Station.* Each request for license of a developmental station will require a fee of $1,000.

198. *Renewal of License.* Each request for the renewal of a system license at the expiration of the term of authorization will require a fee of $105 per system. The request is made on FCC Form 405.

199. *Special Temporary Authority/Waiver of Prior Construction Authorization.* Each request for special temporary authority granting permission to begin construction, begin operation or make major changes to a RDSS when circumstances call for immediate action will require a fee of $105 per request. The request is made by letter.

200. *Amendment of Application.* Each amendment to a pending system application for Commission authorization will require a fee of $105 per system. The amendment is submitted by letter.

201. *Extension of Construction Permit.* Each request to extend the time for completion of construction will require a fee

of $105 per system. The request is made on FCC Form 701.

Space Stations

202. *Assignment or Transfer of Control.* Each request for an assignment or transfer of control of a space station will require a fee of $5,000 per satellite. The request is made on FCC Form 702 or 704.

203. *Modification.* Each request for modification of an authorized space station will require a fee of $5,000 per station. The request is made by a detailed narrative application.

204. *Special Temporary Authority/Waiver of Prior Construction Authorization.* Each request for an STA to operate a station when circumstances require immediate operation of a station will require a fee of $500 per request. The request is made by letter. The STA may allow for the provision of space segment services to various points. Each request for a waiver of prior construction authorization permitting construction before construction authorization is granted will require a fee of $500 per request. The request is made by letter.

205. *Amendment of Application.* Each amendment to a space station application pending before the Commission will require a fee of $1000 per space station. The amendment is submitted by letter.

206. *Extension of Construction Permit/ Launch Authorization.* Each request to extend a required implementation milestone (e.g., beginning or completion of construction, launch date) will require a fee of $500 per request. The request is made by letter.

Section 214 Applications

207. *Cable Landing License.* Each request for an authorization required to land or operate a submarine cable will require a fee of $1,025 when requested by a communications common carrier and $10,150 for non-common carrier.

208. *Special Temporary Authority.* Each STA request to install and/or operate lines of communication when circumstances so warrant will require a fee of $610 per request. The request is made by letter.

209. *Assignment or Transfer of Control.* Each request for authority to assign or transfer control of any entity holding a 214 authorization will require a fee of $610. The request is made by letter.

Recognized Private Operating Status

210. Each request for recognized private operating status will require a fee of $610 per application. The request is made by letter.

Accounting and Audits

211. *Field Audit.* Each field audit conducted by the Commission's staff will require a fee of $62,290. The Commission's staff will notify the carrier whenever a field audit is to be conducted and make arrangement for payment of the auditing fee.

212. *Review of Attest Audit.* Each review by the Commission's staff of an audit conducted by an independent accounting firm attesting to the methods used by a Tier 1 carrier to allocate its costs between regulated and nonregulated activities as set forth in the carrier's cost allocation manual filed with the Commission will require a fee of $34,000. The Commission's staff will notify the carrier by letter whenever a review of an attest audit is to be conducted and make arrangement for payment of the fee.

213. *Review of Depreciation Update Study.* Each request for staff review of a full study prepared by a common carrier in support of its requests to change the parameters underlying the rates at which it depreciates its plant will require a fee of $20,685 for a single state. Additional states included in the same study will require a fee of $680 per additional state. If a carrier requests full study treatment for one or more accounts, the fee required will be that for a full study.

214. *Interpretation of Accounting Rules.* Each request for a written interpretation of accounting rules will require a fee of $2,885 per request. The fee is required at the time the request is filed. The request is made by letter.

215. *Petition for Waiver.* Each request for a waiver of any of the Commission's accounting or audit rules including the prescribed accounting rules (part 32), separation rules (part 36) or access charge rules (part 69) will require a fee of $4,660 per petition. The request is made by letter.

Miscellaneous Charges

International Telecommunications Settlements Administrative Fee for Collections

216. The FCC acts as a clearinghouse in processing international telecommunications settlements in the maritime mobile and maritime mobile satellite services. The administrative fee is $2 per line item charged to the FCC and subsequently billed to its licensees (except governmental licensees). A line item represents the total charge billed to the Commission by a foreign country for a single radiocommunication or transmission by an FCC licensee. The administrative fee will be billed to licensees of record on FCC Form 99.

Radio Operator Examinations

217. *Commercial Radio Operator Examination.* Applicants for the Marine Radio Operator Permit, General Radiotelephone Operator License, Third Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate and First Class Radiotelegraph Operator's Certificate (and ship radar endorsement) must pass an examination before being issued a license, permit or certificate. A fee of $35 is required with the application for any of these examinations. The request for examination is made on FCC Form 756. The fee would be retained if the applicant fails to take the examination or does not pass the examination. In those instances where the ship radar endorsement test is taken in conjunction with another examination, there would be no additional charge for the endorsement examination. If the ship radar endorsement examination is taken alone, there would be a charge of $35.

218. *Renewal of Commercial Radio Operator License, Permit, or Certificate.* Each request for the renewal of a commercial radio operator's license, permit or certificate will require a fee of $35. These requests are made on FCC Form 756. At the current time only the Marine Radio Operator Permit and the three classes of Radiotelegraph Operator's Certificates must be renewed.

219. *Duplicate or Replacement Radio Operator License, Permit or Certificate.* Each request for a duplicate license, permit or certificate, or replacement thereof will require a fee of $35. These are necessary where the license, permit or certificate which has been lost, destroyed, mutilated or the holder's name has been legally changed or physical description significantly altered. *See* 47 CFR 13.71. The request is made on FCC Form 756.

Ship Inspections

220. *Inspection of Oceangoing Vessels.* Each request for the inspection of a oceangoing vessel under title III, part II of the Communications Act will require a fee of $620 per inspection. An additional $620 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

221. *Inspection of Passenger Vessels.* Each request for the inspection of a passenger vessel under title III, part III of the Communications Act will require a fee of $320 per inspection. An additional $320 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

222. *Inspection of Vessels under the Great Lakes Agreement.* Each request for the inspection of a U.S. flag vessel subject to the Great Lakes Radio Agreement will require a fee of $360 per inspection. An additional $360 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

223. *Inspection of Foreign Vessels.* Foreign flag vessels engaged in international voyages must meet the terms of the Safety of Life at Sea (SOLAS) Convention. These vessels are subject to periodic inspection at a charge of $540 per inspection. An additional $540 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

224. *Temporary Waiver for Compulsorily Equipped Vessel.* The Commission may grant a temporary waiver of the annual inspection for a compulsorily equipped vessel for a period not to exceed 30 days from the time of first arrival of a ship at a U.S. port. Each such

request will require a fee of $60. The request is made on FCC Form 801.

Appendix C

Alternative 1 (FCBA): Fee form and check to Mellon. Application and fee form filed through Secretary's Office to Bureau's branches. Applications reassociated with fee paid data at the branch.

1. Intake in Secretary's Office (includes stamping of original and copies and determining appropriate branch to send it to): 82,000 applications ×4 minutes = 2.9 work years.

2. Branch Reassociation with Fee Data (includes checking computer printout, locating application, and indicating amount paid on application): 73,800 applications ×10 minutes = 6.6 work years.

3. Returns (includes locating application in branch that must be returned to fee section because of fee problems identified by Mellon Bank): 8200 × 10 minutes = .74 work years.

Total Work Years = 10.22 rounded to 10 ($250K).

Alternative 1A & 2: Same as alternative 1 but reassociation to be done at a central location in the bureau or fee section.

1. Intake (includes stamping of original and copies and determining appropriate branch to send it to): 82,000 applications ×2 minutes = 1.4 work years. Time to process reduced by two minutes because of "grosser" sort.

2. Reassociate with Fee Data (includes checking computer printout, locating application and indicating amount paid on application) 73,800 applications ×10 minutes = 6.6 work years.

3. Returns (includes locating application in bureau or fee section that must be returned because of fee problems identified by Mellon Bank) 8200 × 5 minutes = .37 work years. Time to locate reduced by 5 minutes because applications are in central location.

Total Work Years = 8.37 rounded to 8 ($200K).

Alternative 3: Fee form, check, and application to Mellon. Copy of application filed with Secretary's Office in case of dispute.

1. Intake (includes stamping of copy): 77,900×.25 minutes = .17 work years.

2. Review (includes determination if item is feeable): 82,000 ×1 minute = .74 work years.

3. Filing (includes filing of feeable applications in some order to be recalled if needed): 82,000 ×1 minute = .74 work years.

4. Recalled Applications: 78×one hour = .04 work years.

Total Work Years = 1.69 rounded to 2 work years ($50K).

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Part III

United States Sentencing Commission

Amendments to the Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission of amendments to the sentencing guidelines to the Congress.

SUMMARY: Pursuant to its authority under section 994(p) of Title 28, United States Code, the Commission on April 26, 1990, submitted to the Congress for review a report containing a number of amendments to the sentencing guidelines, policy statements, and official commentary, together with reasons for the amendments. The Commission's report also incorporated by reference two temporary amendments previously adopted by the Commission pursuant to section 21 of the Sentencing Act of 1987 and a policy statement concerning amendment retroactivity. These temporary amendments and policy statement, which took effect November 1, 1989, are set out in the **Federal Register** of October 31, 1989 (54 FR 46032).

DATES: Pursuant to 28 U.S.C. 994(p), as amended by section 7109 of the Anti-Drug Abuse Act of 1988, (Pub. L. 100–690, Nov. 18, 1988), the Commission has specified an effective date of November 1, 1990, for these amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attn: Communications Director.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director, Telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission 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 periodically 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). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1990) by operation of law.

Notice of the amendments submitted to the Congress on April 26, 1990, was published in the **Federal Register** of February 16, 1990, (55 FR 5718) and a public hearing on the proposed amendments was held in Washington, DC on March 15, 1990. After review of the hearing testimony and additional public comment, the Commission promulgated the following amendments at meetings on April 3, 4, 10, 11, 17, and 24, 1990, each amendment having been approved by four voting Commissioners. In connection with its ongoing process of guideline review, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Specifically, the Commission solicits comment on which, if any, of the amendments submitted to the Congress should be made retroactive to previously sentenced defendants under Policy Statement 1B1.10.

Authority: 28 U.S.C. § 994(a), (o), (p); sec. 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

William W. Wilkins,

Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988), the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor. As authorized by this section, the Commission specifies an effective date of November 1, 1990, for these amendments.

Conversion of Temporary Amendments Effective November 1, 1989 to Permanent Amendments

Pursuant to section 21 of the Sentencing Act of 1987, the Commission exercised its authority to promulgate, effective November 1, 1989, two temporary amendments to the sentencing guidelines. The temporary amendments were published in the **Federal Register** of October 31, 1989 (54 FR 46032), as was a policy statement concerning the reduction of a term of imprisonment under 18 U.S.C. 3582(c)(2) where the guideline range applicable to a defendant has subsequently been lowered as a result of an amendment to the guidelines. The Commission hereby incorporates those amendments and the accompanying reasons by reference and now submits them to the Congress as permanent amendments pursuant to 28 U.S.C. 994(p).

Additional Permanent Amendments

Pursuant to section 994(p) of title 28, United States Code, the United States Sentencing Commission reports to the Congress the following additional permanent amendments to the sentencing guidelines, policy statements, and official commentary, and the reasons therefor:

Additional Permanent Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

Chapter One, Part A (Introduction)

1. Amendment: Chapter One, part A, is amended by deleting subparts 2–5 in their entirety and inserting in lieu thereof:

"2. The Statutory Mission

The Sentencing Reform Act of 1984 (title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: Deterrence, incapacitation, just punishment, and rehabilitation. The Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/$2500 taken.' An offender characteristic category might be 'offender with one prior conviction not resulting in imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1987, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular Congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

3. The Basic Approach (Policy Statement)

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

Honesty is easy to achieve: The abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: A bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover, complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the simple, broad-category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of "just deserts." Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical "crime control" considerations. This theory calls for

sentences that most effectively lessen the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions. Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have in fact made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just deserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, proportional, and therefore effective sentencing system.

4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-drafting process required the Commission to resolve a host of important policy questions typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction briefly discusses several of those issues; commentary in the guidelines explains others.

(a) *Real Offense vs. Charge Offense Sentencing.* One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense for which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during his escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a pure real offense system. After all, the pre-guidelines sentencing system was, in a sense, this type of system. The sentencing court and the parole commission took account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive, mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process given the potential existence of hosts of adjudicated 'real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable. In the Commission's view, such a system risked return to wide disparity in sentencing practice.

In its initial set of guidelines submitted to Congress in April 1987, the Commission moved closer to a 'charge offense' system. This system, however, does contain a significant number of real offense elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law forced the Commission to write guidelines that are descriptive of generic conduct rather than guidelines that track purely statutory language. For another, the guidelines take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the

amount of money actually taken, through alternative base offense levels, specific offense characteristics, cross references, and adjustments.

The Commission recognized that a charge offense system has drawbacks of its own. One of the most important is the potential it affords prosecutors to influence sentences by increasing or decreasing the number of counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Furthermore, a sentencing court may control any inappropriate manipulation of the indictment through use of its departure power. Finally, the Commission will closely monitor charging and plea agreement practices and will make appropriate adjustments should they become necessary.

(b) *Departures.* The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." 18 U.S.C. 3553(b). The Commission intends the sentencing courts to treat each guideline as carving out a "heartland," a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. section 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), the third sentence of section 5H1.4 (Physical Condition, Including Drug Dependence and Alcohol Abuse), and the last sentence of section 5K2.12 (Coercion and Duress), list several factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two reasons. First, it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that the initial set of guidelines need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so and court decisions with references thereto, the Commission, over time, will be able to refine the guidelines to specify more precisely when departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's data indicate made a significant difference in pre-guidelines sentencing practice. Thus, for example, where the presence of physical injury made an important difference in pre-guidelines sentencing practice (as in the case of robbery, assault, or arson), the guidelines specifically include this factor to enhance the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data did not permit the Commission to conclude that the factor was empirically important in relation to the particular offense. Of course, an important factor (*e.g.*, physical injury) may infrequently occur in connection with a particular crime (*e.g.*, fraud). Such rare occurrences are precisely the type of events that the courts' departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed.

It is important to note that the guidelines refer to two different kinds of departure. The first involves instances in which the guidelines provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions. For example, the Commentary to section 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) recommends a downward departure of eight levels where a commercial purpose was not involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A second type of departure will remain unguided. It may rest upon grounds referred to in chapter Five, part K (Departures), or on grounds not mentioned in the guidelines. While chapter Five, part K lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly infrequent.

(c) *Plea Agreements.* Nearly ninety percent of all federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts urged the Commission not to attempt any major reforms of the plea agreement process on the grounds that any set of guidelines that threatened to change pre-guidelines practice radically also threatened to make the federal system unmanageable. Others argued that guidelines that failed to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines would bring.

The Commission decided not to make major changes in plea agreement practices in the initial guidelines, but rather to provide guidance by issuing general policy statements concerning the acceptance of plea agreements in chapter Six, part B (Plea Agreements). The rules set forth in Fed. R. Crim. P. 11(e) govern the acceptance or rejection of such agreements. The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements and whether plea agreement practices are undermining the intent of the Sentencing Reform Act. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate. Importantly, if the policy statements relating to plea agreements are followed, circumvention of the Sentencing Reform Act and the guidelines should not occur.

The Commission expects the guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes

place. In the event a prosecutor and defense attorney explore the possibility of a negotiated plea, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which courts will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation.

(d) *Probation and Split Sentences.* The statute provides that the guidelines are to "reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense * * *." 28 U.S.C. 994(j). Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.'

The Commission's solution to this problem has been to write guidelines that classify as serious many offenses for which probation previously was frequently given and provide for at least a short period of imprisonment in such cases. The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent, particularly when compared with pre-guidelines practice where probation, not prison, was the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent confinement, or home detention). For offense levels eleven and twelve, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

(e) *Multi-Count Convictions.* The Commission, like several state sentencing commissions, has found it particularly difficult to develop guidelines for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The difficulty is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to sentences of life imprisonment—sentences that neither "just deserts" nor "crime control" theories of punishment would justify.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment for multiple offenses that are the subjects of separate counts.

These rules are set out in Chapter Three, Part D (Multiple Counts). They essentially provide: (1) When the conduct involves fungible items (e.g., separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount; (2) when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction. The guidelines have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures.

(f) *Regulatory Offenses.* Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These statutes pose two problems: First, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it could not comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses were particularly important in light of the need for enforcement of the general regulatory scheme. The Commission addressed these offenses in the initial guidelines.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses that divides them into four categories. First, in the simplest of cases, the offender may have failed to fill out a form intentionally; but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper handling of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense provides a low base offense level (e.g., 6) aimed at the first type of recordkeeping or reporting offense. Specific offense characteristics designed to reflect substantive harms that do occur in respect to some regulatory offenses, or that are likely to occur, increase the offense level. A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will have the same offense level as the substantive offense.

(g) *Sentencing Ranges.* In determining the appropriate sentencing ranges for each offense, the Commission estimated the average sentences served within each category under the pre-guidelines sentencing system. It also examined the sentences specified in federal statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's Supplementary Report on the Initial Sentencing Guidelines (1987) contains a comparison between

estimates of pre-guidelines sentencing practice and sentences under the guidelines.

While the Commission has not considered itself bound by pre-guidelines sentencing practice, it has not attempted to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences, in many instances, will approximate average pre-guidelines practice and adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons received probation under pre-guidelines practice, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who received probation from those who received more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a pre-guidelines sentencing practice of very wide variability in which some defendants received probation while others received several years in prison for the same offense. Moreover, inasmuch as those who pleaded guilty under pre-guidelines practice often received lesser sentences, the guidelines permit the court to impose lesser sentences on those defendants who accept responsibility for their misconduct. For defendants who provide substantial assistance to the government in the investigation or prosecution of others, a downward departure may be warranted.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the Anti-Drug Abuse Act of 1986 and the career offender provisions of the Sentencing Reform Act of 1984 (28 U.S.C. 994(h)), required the Commission to promulgate guidelines that will lead to substantial prison population increases. These increases will occur irrespective of the guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum or career offender sentences), are projected to lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons in 1987, estimated at approximately 10 percent over a period of ten years.

(h) *The Sentencing Table.* The Commission has established a sentencing table that for technical and practical reasons contains 43 levels. Each level in the table prescribes ranges that overlap with the ranges in the preceding and succeeding levels. By overlapping the ranges, the table should discourage unnecessary litigation. Both prosecution and defense will realize that the difference between one level and another will not necessarily make a difference in the sentence that the court imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether $10,000 or $11,000 was obtained as a result of a fraud. At the same time, the levels work to increase a sentence proportionately. A change of six levels roughly doubles the sentence irrespective of the level at which one starts. The guidelines, in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months (28 U.S.C. 994(b)(2)), permit courts to exercise the greatest permissible range of sentencing discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the court within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation over which category an offender fell within would become more likely. Where a table has many small monetary distinctions, it minimizes the likelihood of litigation because the precise amount of money involved is of considerably less importance.

5. A Concluding Note

The Commission emphasizes that it drafted the initial guidelines with considerable caution. It examined the many hundreds of criminal statutes in the United States Code. It began with those that were the basis for a significant number of prosecutions and sought to place them in a rational order. It developed additional distinctions relevant to the application of these provisions and it applied sentencing ranges to each resulting category. In doing so, it relied upon pre-guidelines sentencing practice as revealed by its own statistical analyses based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines, and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from pre-guidelines sentencing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with the guidelines will lead to additional information and provide a firm empirical basis for consideration of revisions.

Finally, the guidelines will apply to more than 90 percent of all felony and Class A misdemeanor cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in the guidelines. Their exclusion does not reflect any judgment regarding their seriousness and they will be addressed as the Commission refines the guidelines over time.".

Reason for Amendment: This amendment updates this part to reflect the implementation of guideline sentencing on November 1, 1987, and makes various clarifying and editorial changes to enhance the usefulness of this part both as a historical overview and as an introduction to the structure and operation of the guidelines. For example, in the discussion of departures in subpart 4(b), language concerning what the Commission, in principle, might have done is deleted as unnecessary, but no substantive change is made.

Chapter One, Part B (General Application Principles)

2. Amendment: Section 1B1.8(a) is amended by inserting "as part of that cooperation agreement" immediately following "unlawful activities of others, and", and by deleting "so provided" and inserting in lieu thereof "provided pursuant to the agreement".

Section 1B1.8(b)(3) is amended by inserting "by the defendant" immediately before the period at the end of the sentence.

Section 1B1.8(b) is amended by renumbering subdivisions (2) and (3) as (3) and (4) respectively, and by inserting the following as subdivision (2):

"(2) concerning the existence of prior convictions and sentences in determining § 4A1.1 (Criminal History Category) and § 4B1.1 (Career Offender);".

The Commentary to § 1B1.8 captioned "Application Notes" is amended in Note 2 by deleting "The Commission does not intend this guideline to interfere with determining adjustments under chapter Four, part A (Criminal History) or § 4B1.1 (Career Offender) (e.g., information concerning the defendant's prior convictions)." and inserting in lieu thereof "Subsection (b)(2) prohibits any cooperation agreement from restricting

the use of information as to the existence of prior convictions and sentences in determining adjustments under § 4A1.1 (Criminal History Category) and § 4B1.1 (Career Offender).", and in Note 3 by deleting "408" and inserting in lieu thereof "410".

Reason for Amendment: This amendment clarifies the Commission's intention that the use of information concerning the defendant's prior criminal convictions and sentences not be restricted by a cooperation agreement, makes several additional clarifying changes, and corrects a clerical error.

3. Amendment: The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 2 by deleting the last sentence and inserting in lieu thereof:

" 'Offenses of a character for which section 3D1.2(d) would require grouping of multiple counts,' as used in subsection (a)(2), applies to offenses for which grouping of counts would be required under section 3D1.2(d) had the defendant been convicted of multiple counts. Application of this provision does not require the defendant, in fact, to have been convicted of multiple counts. For example, where the defendant engaged in three drug sales of 10, 15, and 20 grams of cocaine, as part of the same course of conduct or common scheme or plan, subsection (a)(2) provides that the total quantity of cocaine involved (45 grams) is to be used to determine the offense level even if the defendant is convicted of a single count charging only one of the sales. If the defendant is convicted of multiple counts for the above noted sales, the grouping rules of chapter three, part D (Multiple Counts) provide that the counts are grouped together. Although chapter three, part D (Multiple Counts) applies to multiple counts of conviction, it does not limit the scope of subsection (a)(2). Subsection (a)(2) merely incorporates by reference the types of offenses set forth in section 3D1.2(d); thus, as discussed above, multiple counts of conviction are not required for subsection (a)(2) to apply.".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 4 by renumbering example (4) as (5), and by inserting the following immediately before "But:":

"(4) The defendant is convicted of two counts of distributing a controlled substance, each count involving a separate sale of 10 grams of cocaine that is part of a common scheme or plan. In addition, a finding is made that there are two other sales, also part of the common scheme or plan, each involving 10 grams of cocaine. The total amount of all four sales (40 grams of cocaine) will be used to determine the offense level for each count under section 1B1.3(a)(2). The two counts will then be grouped together under this subsection to avoid double counting.".

Reason for Amendment: This amendment clarifies the intended scope of section 1B1.3(a)(2) in conjunction with chapter three, part D (Multiple Counts) to ensure that the latter is not read to limit the former only to conduct of which the defendant was convicted.

Chapter Two, part A (Offenses Against the Person)

4. Amendment: The Commentary to section 2A1.1 captioned "Statutory Provisions" is amended by deleting "§" and inserting in lieu thereof "§§", and by inserting ", 2113(e), 2118(c)(2)" immediately following "18 U.S.C. 1111".

The Commentary to section 2A1.1 is amended in Application Note 1 by deleting "the 'willful, deliberate, malicious and premeditated killing' to which 18 U.S.C. 1111 applies" and inserting in lieu thereof: "premeditated killing", and by deleting the second sentence in its entirety and inserting in lieu thereof: "However, this guideline also applies when death results from the commission of certain felonies.".

The Commentary to section 2A1.1 captioned "Background" is amended in the first paragraph by deleting all after the first sentence and inserting in lieu thereof the following:

"Whether a mandatory minimum term of life imprisonment is applicable to every defendant convicted of first degree murder under 18 U.S.C. 1111 is a matter of statutory interpretation for the courts. The discussion in Application Note 1, supra, regarding circumstances in which a downward departure may be warranted is relevant in the event the penalty provisions of 18 U.S.C. 1111 are construed to permit a sentence less than life imprisonment, or in the event the defendant is convicted under a statute that expressly authorizes a sentence of less than life imprisonment (e.g., 18 U.S.C. 2113(e), 2118(c)(2), 21 U.S.C. 848(e)).".

Reason for Amendment: This amendment clarifies the commentary with respect to circumstances that may warrant a departure below the guideline range for offenses to which this guideline applies. This amendment also reserves for the courts the issue of whether life imprisonment is the mandatory minimum sentence for first degree murder under 18 U.S.C. 1111.

5. Amendment: Section 2A2.1 is amended in the title by deleting "Conspiracy or Solicitation to Commit Murder;"; and by deleting subsections (a) and (b) in their entirety, and inserting the following in lieu thereof:

"(a) Base Offense Level:

"(1) 28, if the object of the offense would have constituted first degree murder; or

"(2) 22, otherwise.

"(b) Specific Offense Characteristics

"(1)(A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

"(2) If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder, increase by 4 levels.".

The Commentary to section 2A2.1 captioned "Statutory Provisions" is amended by deleting "(d), 373,"; by deleting "1117,"; and by deleting "(d)," immediately following "1751(c)".

The Commentary to section 2A2.1 captioned "Application Note" is amended in Note 1 by deleting " 'more than minimal planning,' 'firearm,' 'dangerous weapon,' 'brandished,' 'otherwise used,' 'bodily injury,' ", and by deleting the comma immediately following "serious bodily injury".

The Commentary to section 2A2.1 captioned "Application Note" is amended by inserting the following additional note:

"2. 'First degree murder,' as used in subsection (a)(1), means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. 1111.",

and by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to section 2A2.1 captioned "Background" is amended in the first paragraph by deleting ", conspiracy to commit murder, solicitation to commit murder," and by inserting the following sentence at the end:

"An attempted manslaughter, or assault with intent to commit manslaughter, is covered under § 2A2.2 (Aggravated Assault).".

The Commentary to section 2A2.1 captioned "Background" is amended by deleting the second and third paragraphs.

The Commentary to section 2A2.2 captioned "Application Notes" is amended in Note 3 by inserting the following additional sentence as the first sentence: "This guideline also covers attempted manslaughter and assault with intent to commit manslaughter.".

The Commentary to section 2A2.2 captioned "Background" is amended in the first sentence of the first paragraph by deleting "where there is no intent to kill".

Chapter two, part A, subpart 1, is amended by inserting the following additional guideline:

"§ 2A1.5. Conspiracy or Solicitation to Commit Murder

(a) Base Offense Level: 28

(b) Specific Offense Characteristic

(1) If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder, increase by 4 levels.
(c) Cross References
(1) If the offense resulted in the death of a victim, apply § 2A1.1 (First Degree Murder).
(2) If the offense resulted in an attempted murder or assault with intent to commit murder, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder).

Commentary

Statutory Provisions: 18 U.S.C. 351(d), 371, 373, 1117, 1751(d).".

Section 2E1.4(a)(1) is amended by deleting "23" and inserting in lieu thereof "32".

The Commentary to section 2E1.4(a)(1) captioned "Application Notes" is amended by deleting Note 2, and in the caption by deleting "Notes" and inserting in lieu thereof "Note".

The Commentary to section 2X1.1 captioned "Application Notes" is amended in Note 1 in the paragraph beginning "Offense guidelines that expressly cover attempts" by deleting "Conspiracy or Solicitation to Commit Murder;"; in the paragraph beginning "Offense guidelines that expressly cover conspiracies" by deleting "Section 2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder)" and inserting in lieu thereof "Section 2A1.5 (Conspiracy or Solicitation to Commit Murder)"; and in the paragraph beginning "Offense guidelines that expressly cover solicitations" by deleting "Section 2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder)" and inserting in lieu thereof "Section 2A1.5 (Conspiracy or Solicitation to Commit Murder)".

Reason for Amendment: This amendment restructures section 2A2.1, and increases the offense level for attempted murder and assault with intent to commit murder where the intended offense, if successful, would have constituted first degree murder to better reflect the seriousness of this conduct. For the same reason, the enhancement for an offense involving the offer or receipt of anything of pecuniary value for undertaking the murder is increased. For greater clarity, an additional guideline (section 2A1.5) is inserted to cover conspiracy or solicitation to commit murder. Section 2E1.4 is amended to conform the offense level to that of section 2A1.5.

Chapter Two, part B (Offenses Involving Property)

6. Amendment: Section 2B1.1 is amended by renumbering subsection (b)(5) as (b)(4), and by renumbering the current subsection (b)(4) as (b)(5).

Section 2B1. 2 is amended by renumbering subsection (b)(4) as (b)(3), and by renumbering the current subsection (b)(3) as (b)(4).

Section 2B1.3 is amended by renumbering subsection (b)(3) as (b)(2), and by renumbering the current subsection (b)(2) as (b)(3).

Reason for Amendment: In cases involving the theft or destruction of U.S. mail, the theft guideline (section 2B1.1), stolen property guideline (section 2B1.2), property destruction guideline (section 2B1.3), and forgery guideline (section 2B5.2) produce identical results if the amount involved more than $1,000, or if the offense did not involve more than minimal planning. However, because of the ordering of the specific offense characteristics, there is a 1 or 2-level difference between sections 2B1.l, 2B1.2 and 2B1.3 on the one hand, and section 2B5.2 on the other, in cases of stolen or destroyed mail involving more than minimal planning and a loss of $1,000 or less. In these cases, sections 2B1.1, 2B1.2 and 2B1.3 produce a result that is 1 or 2-levels lower than section 2B5.2. This amendment corrects this anomaly by conforming the offense levels in sections 2B1.1, 2B1.2, and 2B1.3 to that of section 2B5.2 in such cases.

7. Amendment: Section 2B1.3 is amended in the title by deleting "(Other than by Arson or Explosives)"; and by inserting the following:

"(c) Cross Reference
(1) If the offense involved arson, or property damage by use of explosives, apply § 2K1.4 (Arson; Property Damage by Use of Explosives).".

The Commentary to section 2B1.3 captioned "Statutory Provisions" is amended by deleting the last sentence.

The Commentary to section 2H1.1 captioned "Application Notes" is amended in Note 1 by deleting "(Other than by Arson or Explosives)".

Section 2H3.3(a)(3) is amended by deleting "(Other than by Arson or Explosives)".

The Commentary to section 2H3.3 captioned "Background" is amended by deleting "(Other than by Arson or Explosives)".

Section 2Q1.6(a)(2) is amended by deleting "(Other Than by Arson or Explosives)".

Reason for Amendment: This amendment inserts a cross reference providing that offense conduct constituting arson or property destruction by explosives is to be treated under section 2K1.4 (Arson, Property Destruction by Explosives). Because arson or property damage by use of explosives is an aggravated form of property destruction, just as armed robbery is an aggravated form of robbery, the use of the same "relevant conduct" standard to determine the offense level is appropriate.

8. Amendment: Section 2B3.1(b)(1) is amended by deleting "offense involved robbery or attempted robbery of the"; and by inserting "was taken, or if the taking of such property was an object of the offense" immediately before "increase".

The Commentary to section 2B3.1 captioned "Application Notes" is amended in Note 6 by deleting "actually", and by inserting "; Attempted Murder" immediately following "Assault With Intent to Commit Murder".

Reason for Amendment: This amendment clarifies the guideline and Commentary.

9. Amendment: Section 2B3.1(b)(5) is amended by deleting "obtaining", and by deleting "the object" and inserting in lieu thereof "taken, or if the taking of such item was an object".

The Commentary to section 2B3.1 captioned "Application Notes" is amended by deleting Note 5, and by renumbering Notes 6, 7, and 8 as 5, 6, and 7 respectively.

The Commentary to section 2B3.1 captioned "Background" is amended by deleting the second paragraph in its entirety.

Section 2B2.1(b)(3) is amended by deleting "obtaining", and by deleting "an object" and inserting in lieu thereof "taken, or if the taking of such item was an object".

The Commentary to section 2B2.1 captioned "Application Notes" is amended by deleting Note 2, and by renumbering Notes 3 and 4 as 2 and 3, respectively.

Section 2B2.2 (b)(3) is amended by deleting "obtaining", and by deleting "an object" and inserting in lieu thereof "taken, or if the taking of such item was an object".

The Commentary to section 2B2.2 captioned "Application Notes" is amended by deleting Note 2, and by renumbering Notes 3 and 4 as 2 and 3, respectively.

Reason for Amendment: This amendment provides that the specific offense characteristic related to the taking of a firearm or controlled substance applies whenever such item is taken or is an object of the offense.

10. Amendment: Section 2B3.2(b)(1) is amended by deleting "§ 2B3.1" and inserting in lieu thereof "section 2B2.1(b)(2)".

Reason for Amendment: The amendment to section 2B3.1 effective

November 1, 1989 inadvertently reduced the offense level for certain cases under this guideline by one level. This amendment restores the offense levels in this guideline to those existing prior to November 1, 1989.

Chapter Two, Part B (Offenses Involving Property) and Part F (Offenses Involving Fraud or Deceit)

11. Amendment: Section 2B1.1(b) is amended by inserting the following additional specific offense characteristic:

"(7) If the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"9. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the Federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

10. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if as a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.".

The Commentary to section 2B1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(7) implements, in a broader form, the statutory directive to the Commission in section 961(m) of Public Law 101–73.".

Section 2B4.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

"(2) If the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.".

The Commentary to section 2B4.1 captioned "Application Notes" is amended by inserting the following additional notes:

"3. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the commodity Futures Trading Commission; and any similar entity, whether or not insured by the Federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

4. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if as a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.".

The Commentary to section 2B4.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(2) implements, in a broader form, the statutory directive to the Commission in section 961(m) of Public Law 101–73.".

Section 2F1.1(b) is amended by inserting the following additional specific offense characteristic:

"(6) If the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.".

The Commentary to section 2F1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"14. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

15. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if as a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.".

The Commentary to section 2F1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(6) implements, in a broader form, the statutory directive to the Commission in section 961(m) of Public Law 101–73.".

Reason for Amendment: This amendment implements, in a broader form, the following statutory directive in section 961(m) of Public Law 101–73: "Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide for a substantial period of incarceration for a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, that substantially jeopardizes the safety and soundness of a federally insured financial institution."

Chapter Two, Part D (Offenses Involving Drugs)

12. Amendment: The Commentary to section 2D1.1 captioned "Application Notes" is amended in Note 11 by inserting "in the table below" immediately before "to estimate", by deleting "Bufotenine at 1 mg per dose=100 mg of Bufotenine" and inserting in lieu thereof "Mescaline at 500 mg per dose=50 gms of mescaline", and by deleting "common controlled substances" and inserting in lieu thereof "certain controlled substances. Do not use this table if any more reliable estimate of the total weight is available from case specific information".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 11 by deleting the following from the table captioned "Typical Weight Per Unit (Dose, Pill, or Capsule) Table":

"Bufotenine	1 mg
Diethyltryptamine	60 mg
Dimethyltryptamine	50 mg",
"Barbiturates	100 mg
Glutethimide (Doriden)	500 mg",
"Thiobarbital	50 mg",

by inserting an asterisk immediately after each of the following:

"LSD (Lysergic acid diethylamide)", "MDA", "PCP", "Psilocin", "Psilocybin", "2,5-Dimethoxy-4-methylamphetamine (STP, DOM)", "Methaqualone", "Amphetamine", "Methamphetamine", "Phenmetrazine (Preludin)",

and by inserting the following at the end:

"'*For controlled substances marked with an asterisk, the weight per unit shown is the weight of the actual controlled substance, and not generally the weight of the mixture or substance containing the controlled substance. Therefore, use of this table provides a very conservative estimate of the total weight.".

Reason for Amendment: This amendment clarifies that the "Typical Weight Per Unit Table" in Note 11 of the Commentary to § 2D1.1 is not to be used where a more reliable estimate of the weight of the mixture or substance containing the controlled substance is available from case-specific information. This amendment also makes clear that for certain controlled substances this table provides an estimate of the weight of the actual controlled substance, not necessarily the weight of the mixture or substance containing the controlled substance, and therefore use of this table in such cases will provide a very conservative estimate. Finally, this amendment deletes listings for several controlled substances that are generally legitimately manufactured and then unlawfully diverted; in such cases, more accurate weight estimates can be obtained from other sources (e.g., from the Drug Enforcement Administration or the manufacturer).

13. Amendment: Section 2D1.2(a)(1) is amended by inserting "applicable to the quantity of controlled substances directly involving a protected location or an underage or pregnant individual" immediately following "section 2D1.1".

Subsections (a) (2) and (3) of section 2D1.2 are redesignated as subsections (3) and (4) respectively, and the following is inserted as a new subsection (a)(2):

"(2) 1 plus the offense level from section 2D1.1 applicable to the total quantity of controlled substances involved in the offense; or".

The Commentary to section 2D1.2 is amended by inserting immediately before "Background" the following:

"Application Note:

1. Where only part of the relevant offense conduct directly involved a protected location or an underage or pregnant individual, subsections (a)(1) and (a)(2) may result in different offense levels. For example, if the defendant, as part of the same course of conduct or common scheme or plan, sold 5 grams of heroin near a protected location and 10 grams of heroin elsewhere, the offense level from subsection (a)(1) would be level 16 (2 plus the offense level for the sale of 5 grams of heroin, the amount sold near the protected location); the offense level from subsection (a)(2) would be level 17 (1 plus the offense level for the sale of 15 grams of heroin, the total amount of heroin involved in the offense).".

Reason for Amendment: This amendment provides for the determination of the offense level in cases in which only part of the relevant offense conduct involves a protected location or an underage or pregnant individual.

14. Amendment: Section 2D1.6 is amended by deleting "12" and inserting in lieu thereof: "the offense level applicable to the underlying offense.".

The Commentary to section 2D1.6 is amended by inserting immediately before "Background" the following:

"Application Note:

1. Where the offense level for the underlying offense is to be determined by reference to § 2D1.1, see Application Note 12 of the Commentary to § 2D1.1, and Application Notes 1 and 2 of the Commentary to § 2D1.4, for guidance in determining the scale of the offense. Note that the Drug Quantity Table in § 2D1.1 provides a minimum offense level of 12 where the offense involves heroin (or other Schedule I or II Opiates) cocaine (or other Schedule I or II Stimulants), cocaine base, PCP, Methamphetamine, LSD (or other Schedule I or II Hallucinogens), Fentanyl, or Fentanyl Analogue (section 2D1.1(c)(16)); and a minimum offense level of 6 otherwise (section 2D1.1(c)(19)).".

Reason for Amendment: This amendment is designed to reduce unwarranted disparity by requiring consideration in the guideline of the amount of the controlled substance involved in the offense, thus conforming this guideline section to the structure of section 2D1.1, 2D1.2, 2D1.4, and 2D1.5. The statute to which this guideline applies (21 U.S.C. 843(b)) prohibits the use of a communications facility to commit, cause, or facilitate a felony controlled substance offense. Frequently, a conviction under this statute is the result of a plea bargain because the statute has a low maximum (four years with no prior felony drug conviction; eight years with a prior felony drug conviction) and no mandatory minimum. The current guideline has a base offense level of 12 and no specific offense characteristics. Therefore, the scale of the underlying drug offense is not reflected in the guideline. This results in a departure from the guideline range frequently being warranted. Without guidance as to whether or how far to depart, the potential for unwarranted disparity is substantial. Under this amendment, the guideline itself will take into account the scale of the underlying offense.

15. Amendment: Section 2D2.1(a)(1) is amended by deleting "or an analogue of these" and inserting in lieu thereof "an analogue of these, or cocaine base".

Reason for Amendment: This amendment specifies the appropriate offense level for possession of cocaine base ("crack") in cases not covered by the enhanced penalties created by section 6371 of the Anti-Drug Abuse Act of 1988.

Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

16. Amendment: Section 2G1.1(c)(1) is amended by deleting "involves" and inserting in lieu thereof "involved".

The Commentary to section 2G1.1 captioned "Application Notes" is amended in Note 3 by inserting the following at the end thereof:

"This factor would apply, for example, where the ability of the person being transported to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of transportation involving an adult, rather than a minor, this characteristic generally will not apply where the alcohol or drug was voluntarily taken.".

The Commentary to section 2G1.1 captioned "Application Notes" is amended in Note 5 by deleting ", distinct offense, even if several persons are transported in a single act" and inserting the following in lieu thereof:

"victim. Consequently, multiple counts involving the transportation of different persons are not to be grouped together under section 3D1.2 (Groups of Closely-Related Counts). Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes more than one person being transported, whether specifically cited in the count of conviction or not, each such person shall be treated as if contained in a separate count of conviction".

Reason for Amendment: This amendment clarifies the application of this guideline and corrects a clerical error.

17. Amendment: Section 2G1.2(c)(1) is amended by deleting "involves" and inserting in lieu thereof "involved".

Section 2G1.2 is amended by inserting the following at the end thereof:

"(d) Cross Reference

(1) If the offense involved the defendant causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply section 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).".

The Commentary to § 2G1.2 captioned "Statutory Provisions" is amended by deleting "section 2423" and inserting in lieu thereof sections 2421, 2422, 2423".

The Commentary to section 2G1.2 captioned "Application Notes" is amended in Note 1 by deleting ", distinct offense, even if several persons are transported in a single act" and inserting the following in lieu thereof:

"victim. Consequently, multiple counts involving the transportation of different persons are not to be grouped together under section 3D1.2 (Groups of Closely-Related Counts). Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes more than one person being transported, whether specifically cited in the count of conviction or not, each such person shall be treated as if contained in a separate count of conviction".

The Commentary to section 2G1.2 captioned "Application Notes" is amended in Note 3 by inserting the following at the end thereof:

"This factor would apply, for example, where the ability of the person being transported to appraise or control conduct was substantially impaired by drugs or alcohol."

The Commentary to § 2G1.2 captioned "Application Notes" is amended by inserting the following at the end thereof:

"4. 'Sexually explicit conduct,' as used in this guideline, has the meaning set forth in 18 U.S.C. 2256.

5. The cross reference in (d)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.".

Reason for Amendment: This amendment clarifies the application of this guideline and corrects a clerical error. In addition, a cross reference to section 2G2.1 is inserted where the offense involves conduct that is more appropriately covered by that guideline to provide an offense level that more appropriately reflects the seriousness of such conduct.

18. Amendment: Section 2G2.1 is amended in the title by inserting "; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production" immediately following "Printed Material".

Section 2G2.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by deleting subdivision (1) in its entirety and inserting the following:

"(1) If the offense involved a minor under the age of twelve years, increase by 4 levels; otherwise, if the offense involved a minor under the age of sixteen years, increase by 2 levels.

(2) If the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(c) Special Instruction

(1) If the offense involved the exploitation of more than one minor, Chapter Three, Part D (Multiple Counts) shall be applied as if the exploitation of each minor had been contained in a separate count of conviction.".

The Commentary to section 2G2.1 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "8 U.S.C. 1328;", and by inserting "(a), (b), (c)(1)(8)" immediately following "18 U.S.C. 2251".

The Commentary to section 2G2.1 captioned "Application Notes" is amended in Note 1 by inserting at the end:

"Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes more than one minor being exploited, whether specifically cited in the count of conviction or not, each such minor shall be treated as if contained in a separate count of conviction.".

The Commentary to section 2G2.1 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional notes:

"2. Specific offense characteristic (b)(2) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

3. If specific offense characteristic (b)(2) applies, no adjustment is to be made under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to section 2G2.1 captioned "Background" is deleted in its entirety.

Reason for Amendment: This amendment revises subsection (b)(1) to provide distinctions for the age of the victim consistent with section 2G1.2, and adds subsection (b)(2) to provide an increase for defendants who abuse a position of trust in exploiting minor children. A special instruction is added to conform the operation of the multiple count rule in this guideline with sections 2G1.1 and 2G1.2. A revision to the statutory provisions removes 8 U.S.C. 1328; such offenses are now brought under this guideline by the cross reference appearing in section 2G1.2. In addition, the reference in the statutory provisions to 18 U.S.C. 2251 is made specific to the appropriate subsections.

19. Amendment: Section 2G2.2 is amended by inserting the following additional subsections:

"(3) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) if the resulting offense level is greater than that determined above.".

The Commentary to section 2G2.2 captioned "Statutory Provisions" is

amended by inserting "section 1460, 2251(c)(1)(A),", immediately before "2252".

The Commentary to section 2G2.2 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional notes:

"2. 'Sexually explicit conduct,' as used in this guideline, has the meaning set forth in 18 U.S.C. 2256.

3. The cross reference in (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

4. If the defendant sexually abused a minor at any time, whether or not such sexual abuse occurred during the course of the offense, an upward departure is warranted. In determining the extent of such a departure, the court should take into consideration the offense levels provided in sections 2A3.1, 2A3.2, and 2A3.4 most commensurate with the defendant's conduct.".

Reason for Amendment: This amendment provides a specific offense characteristic for materials involving depictions of sadistic or masochistic conduct or other violence, and a cross reference for offenses more appropriately treated under section 2G2.1. It also provides Commentary recommending consideration of an upward departure in cases in which the defendant has sexually abused a minor at any time, whether or not such sexual abuse occurred during the course of the instant offense.

20. Amendment: Section 2G3.1(b)(2) is amended by deleting "sadomasochistic" and inserting in lieu thereof "sadistic or masochistic".

Section 2G3.1 is amended by deleting subsection (c)(1) and inserting in lieu thereof:

"(1) If the offense involved transporting, distributing, receiving, possessing, or advertising to receive material involving the sexual exploitation of a minor, apply § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor).".

Reason for Amendment: This amendment inserts a cross reference to § 2G2.2 for offenses involving materials which, in fact, depict children to ensure that the penalties for such offenses adequately reflect their seriousness. The current cross reference at subsection (c)(1) is deleted. In addition, the amendment conforms the terminology of specific offense characteristic (b)(2) to that used in other offense guidelines.

Chapter Two, part H (Offenses Involving Individual Rights)

21. Amendment: Section 2H1.1 is amended in the title by inserting "Conspiracy to Interfere with Civil Rights;" immediately before "Going".

Section 2H1.2 is amended by deleting the guideline and accompanying commentary.

The Commentary to section 2X1.1 captioned "Application Notes" is amended in Note 1 in the paragraph beginning "Offense guidelines that expressly cover conspiracies" by deleting "section 2H1.2 (Conspiracy to Interfere with Civil Rights)" and inserting in lieu thereof "section 2H1.1 (Conspiracy to Interfere With Civil Rights; Going in Disguise to Deprive of Rights)".

Reason for Amendment: This amendment consolidates two guidelines and raises the minimum base offense level from level 13 to level 15 for cases currently covered under section 2H1.2 to better reflect the seriousness of this offense.

22. Amendment: The Commentary to section 2H1.5 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "; 42 U.S.C. 3631".

The Commentary to section 2H1.5 captioned "Application Notes" is amended by deleting Note 3 in its entirety.

Reason for Amendment: This amendment deletes references to a statute to which this guideline does not apply.

Chapter Two, part J (Offenses Involving the Administration of Justice)

23. Amendment: Section 2J1.6 is amended by deleting subsections (a) and (b) in their entirety and inserting in lieu thereof:

"(a) Base Offense Level:

(1) 11, if the offense constituted a failure to report for service of sentence; or

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the base offense level is determined under subsection (a)(1), and the defendant—

(A) Voluntarily surrendered within 96 hours of the time he was originally scheduled to report, decrease by 5 levels; or

(B) Was ordered to report to a community corrections center, community treatment center, "halfway house," or similar facility, and subdivision (A) above does not apply, decrease by 2 levels;

Provided, however, that this reduction shall not apply if the defendant, while away from the facility, committed any federal, state, or local offense punishable by a term of imprisonment of one year or more.

(2) If the base offense level is determined under subsection (a)(2), and the underlying offense is—

(A) Punishable by death or imprisonment for a term of fifteen years or more, increase by 9 levels; or

(B) Punishable by a term of imprisonment of five years or more, but less than fifteen years, increase by 6 levels; or

(C) A felony punishable by a term of imprisonment of less than five years, increase by 3 levels.".

The Commentary to section 2J1.6 captioned "Background" is amended by deleting "The offense level for this offense" and inserting in lieu thereof "Where the base offense level is determined under subsection (a)(2), the offense level".

Reason for Amendment: This amendment provides greater differentiation in the guideline offense levels for the various types of conduct covered by this guideline.

Chapter Two, part K (Offenses Involving Public Safety)

24. Amendment: section 2K1.4 is deleted in its entirety, including title and accompanying commentary, and the following inserted in lieu thereof:

"Section 2K1.4. Arson; Property Damage by Use of Explosives

(a) Base Offense Level (Apply the Greatest):

(1) 24, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense, and that risk was created knowingly; or (B) involved the destruction or attempted destruction of a dwelling;

(2) 20, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense; (B) involved the destruction or attempted destruction of a structure other than a dwelling; or (C) endangered a dwelling, or a structure other than a dwelling;

(3) 2 plus the offense level from section 2F1.1 (Fraud and Deceit) if the offense was committed in connection with a scheme to defraud; or

(4) 2 plus the offense level from section 2B1.3 (Property Damage or Destruction).

(b) Specific Offense Characteristic

(1) If the offense was committed to conceal another offense, increase by 2 levels.

(c) Cross Reference

(1) If death resulted, or the offense was intended to cause death or serious bodily injury, apply the most analogous guideline from chapter Two, part A (Offenses Against the Person), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 32 (a), (b), 33, 81, 844 (f), (h) (only in the case of an offense committed prior to November 18, 1988), (i), 1153, 1855, 2275.

Application Notes

1. If bodily injury resulted, an upward departure may be warranted. See Chapter Five, part K (Departures).

2. Creating a substantial risk of death or serious bodily injury includes creating that risk to fire fighters and other emergency and law enforcement personnel who respond to or investigate an offense.".

Reason for Amendment: This amendment restructures this guideline to provide more appropriate offense levels for the conduct covered. The Commission has determined that the offense levels provided in the current guideline do not adequately reflect the seriousness of the offenses that are covered under this section.

25. Amendment: Section 2K1.6(a) is amended by deleting "greater" and inserting in lieu thereof "greatest" and by inserting the following additional subdivision:

"(3) If death resulted, apply the most analogous guideline from chapter two, part A, subpart 1 (Homicide).".

Section 2K1.6(a)(2) is amended by deleting the period at the end and inserting in lieu thereof "; or".

Reason for Amendment: This amendment adds an additional alternative base offense level to cover the situation in which the commission of this offense results in death.

26. Amendment: Section 2K1.7 is amended by inserting "(a)" immediately before "If", and by inserting the following additional subsection:

"(b) Special Instruction for Fines

(1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.".

The Commentary to section 2K1.7 captioned "Application Notes" is amended by inserting the following additional notes:

"3. Where a sentence under this section is imposed in conjunction with a sentence for an underlying offense, any specific offense characteristic for the use of fire or explosives is not to be applied in respect to the guideline for the underlying offense.

4. Subsection (b) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. 844(h). This is because, in such cases, the offense level for the underlying offense may be reduced in that any specific offense characteristic for use of fire or explosives would not be applied (see Application Note 3). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense, although a fine is authorized under 18 U.S.C. 3571.".

The Commentary to section 2K2.4 captioned "Application Notes" is amended in Note 4 by inserting ", although a fine is authorized under 18 U.S.C. 3571" immediately before the period at the end of the last sentence.

Reason for Amendment: This amendment conforms section 2K1.7 to section 2K2.4, which includes specific instructions concerning treatment of fines and double counting. Both sections are based upon similarly written statutes that provide for a fixed mandatory, consecutive sentence of imprisonment. In addition, the last sentence of Application Note 4 of the Commentary to section 2K2.4 is expanded for greater clarity.

27. Amendment: Section 2K2.1(a)(1) is amended by deleting "16" and inserting in lieu thereof "18".

Section 2K2.1(b)(1) is amended by inserting ", other than a firearm covered in 26 U.S.C. 5845(a)," immediately following "ammunition".

Section 2K2.2(a)(1) is amended by deleting "16" and inserting in lieu thereof "18".

Reason for Amendment: This amendment provides that the reduction in offense level under subsection (b)(1) for possession of a weapon for sporting purposes or collection may not be applied in the case of any weapon described in 26 U.S.C. 5845(a). In addition, the amendment increases the base offense level in subsection (a)(1) of sections 2K2.1 and 2K2.2 from 16 to 18 to better reflect the seriousness of the conduct covered.

28. Amendment: Chapter two, part K, subpart 3 is amended by inserting the following additional guideline:

"Section 2K3.2. Feloniously Mailing Injurious Articles

(a) Base Offense Level (Apply the greater):

(1) If the offense was committed with intent (A) to kill or injure any person, or (B) to injure the mails or other property, apply section 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the intended offense; or

(2) If death resulted, apply the most analogous offense guideline from chapter two, part A, subpart 1 (Homicide).

Commentary

Statutory Provision: 18 U.S.C. 1716 (felony provisions only).

Background: This guideline applies only to the felony provisions of 18 U.S.C. 1716. The Commission has not promulgated a guideline for the misdemeanor provisions of this statute.".

Reason for Amendment: This amendment adds an additional guideline covering the felony provisions of 18 U.S.C. 1716.

Chapter Two, Part L (Offenses Involving Immigration, Naturalization, and Passports)

29. Amendment: Section 2L1.1(b)(1) is amended by deleting "and without knowledge that the alien was excludable under 8 U.S.C. 1182(a) (27), (28), (29),".

The Commentary to section 2L1.1 captioned "Application Notes" is amended by deleting Application Note 7 and inserting in lieu thereof:

"7. Where the defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in subversive activity, an upward departure may be warranted.".

Reason for Amendment: This amendment deletes a portion of specific offense characteristic (b)(1) that is unclear in application, and in any event rarely occurs, and replaces it with an application note indicating that an upward departure may be warranted in the circumstances specified.

Chapter Two, Part M (Offenses Involving National Defense)

30. Amendment: Section 2M4.1(b)(1) is amended by deleting "while" and inserting in lieu thereof "at a time when", and by deleting "into the armed services, other than in time of war or armed conflict" and inserting in lieu thereof "for compulsory military service".

The Commentary to section 2M4.1 captioned "Application Notes" is amended in the caption by deleting "Notes" and inserting in lieu thereof "Note", and by deleting Notes 1 and 2 in their entirety and inserting in lieu thereof:

"1. Subsection (b)(1) does not distinguish between whether the offense was committed in peacetime or during time of war or armed conflict. If the offense was committed when persons were being inducted for compulsory military service during time of war or armed conflict, an upward departure may be warranted.".

Reason for Amendment: This amendment clarifies this guideline and deletes language that produced the anomalous result of a lower offense level for failure to register and evasion of military service in time of war or armed conflict than during a peacetime draft. In addition, the amendment makes a technical correction to the language of the guideline that enables the elimination of current Application Note 1.

31. Amendment: Section 2M5.2 is amended by deleting subsection (a) and inserting in lieu thereof:

"(a) Base Offense Level:
(1) 22, except as provided in subdivision (2) below;
(2) 14, if the offense involved only non-fully-automatic small arms (rifles, handguns, or shotguns), and the number of weapons did not exceed ten.".

The Commentary to section 2M5.2 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", and by deleting "section 2778" and inserting in lieu thereof "sections 2778, 2780".

The Commentary to section 2M5.2 captioned "Application Notes" is amended in Note 1 by inserting the following immediately before "In the case of a violation":

"Under 22 U.S.C. 2778, the President is authorized, through a licensing system administered by the Department of State, to control exports of defense articles and defense services that he deems critical to a security or foreign policy interest of the United States. The items subject to control constitute the United States Munitions List, which is set out in 22 CFR 121.1. Included in this list are such things as military aircraft, helicopters, artillery, shells, missiles, rockets, bombs, vessels of war, explosives, military and space electronics, and certain firearms.

The base offense level assumes that the offense conduct was harmful or had the potential to be harmful to a security or foreign policy interest of the United States. In the unusual case where the offense conduct posed no such risk, a downward departure may be warranted.".

The Commentary to section 2M5.2 captioned "Application Notes" is amended in the first sentence of Note 2 by inserting "or foreign policy" immediately before "interest".

Reason for Amendment: This amendment revises this guideline to better distinguish the more and less serious forms of offense conduct covered.

chapter two, part N (Offenses Involving Food, Drugs, Agricultural Products, and Odometer Laws)

32. Amendment: Section 2N1.1 is amended by inserting the following additional subsection:

"(b) Cross Reference
(1) If the offense involved extortion, apply section 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.".

Reason for Amendment: This amendment adds a cross reference to ensure that in the case of an offense involving extortion, the offense level will not be lower than that under section 2B3.2.

33. Amendment: Section 2N1.2 is amended by deleting subsection (a) in its entirety and inserting in lieu thereof:

"(a) Base Offense Level: 16
(b) Cross Reference
(1) If the offense involved extortion, apply section 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).".

The Commentary to section 2N1.2 captioned "Application Notes" is amended by deleting "Notes" and inserting in lieu thereof "Note", by deleting Note 1 in its entirety, and by redesignating Note 2 as Note 1.

Reason for Amendment: This amendment conforms the structure of this guideline to that used in other guidelines. No substantive change results.

34. Amendment: The Commentary to section 2N2.1 captioned "Statutory Provisions" is amended by inserting "(a)(1), (a)(2), (b)" immediately after "333".

The Commentary to section 2N2.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. The Commission has not promulgated a guideline for violations of 21 U.S.C. 333(e) (offenses involving anabolic steroids).".

Reason for Amendment: This amendment provides that section 2N2.1 does not apply to convictions under 21 U.S.C. 333(e).

Chapter Two, Part P (Offenses Involving Prisons and Correctional Facilities)

35. Amendment: Section 2P1.1(b)(2) is amended by inserting the following at the end:

"Provided, however, that this reduction shall not apply if the defendant, while away from the facility, committed any federal, state, or local offense punishable by a term of imprisonment of one year or more.".

Section 2P1.1(b) is amended by renumbering subdivision (3) as (4), and by inserting the following as subdivision (3):

"(3) If the defendant escaped from the non-secure custody of a community corrections center, community treatment center, 'halfway house,' or similar facility, and subsection (b)(2) is not applicable, decrease the offense level under subsection (a)(1) by 4 levels or the offense level under subsection (a)(2) by 2 levels. Provided, however, that this reduction shall not apply if the defendant, while away from the facility, committed any federal, state, or local offense punishable by a term of imprisonment of one year or more.".

The Commentary to section 2P1.1 captioned "Application Notes" is amended in Note 3 by deleting "section 2P1.1(b)(3)" and inserting in lieu thereof "subsection (b)(4)".

The Commentary to section 2P1.1 captioned "Application Notes" is amended by the insertion of the following additional note:

"5. Criminal history points under chapter four, part A (Criminal History) are to be determined independently of the application of this guideline. For example, in the case of a defendant serving a one-year sentence of imprisonment at the time of the escape, criminal history points from section 4A1.1(b) (for the sentence being served at the time of the escape), section 4A1.1(d) (custody status), and section 4A1.1(e) (recency) would be applicable.".

Reason for Amendment: This amendment provides greater differentiation in the guideline offense levels for the various types of conduct covered by this guideline. In addition, it clarifies that, where the instant offense is escape, criminal history points from section 4A1.1 (d) or (e), or both, may be applicable and that the addition of such points does not constitute unintended double counting.

Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting)

36. Amendment: The Introductory Commentary to chapter two, part S, is deleted in its entirety.

Reason for Amendment: This amendment deletes the introductory commentary to this part as outdated, inconsistent with the commentaries to other sections, and better covered in the individual commentaries to the offenses contained in the part.

Chapter Two, Part T (Offenses Involving Taxation)

37. Amendment: The Commentary to section 2T1.1 captioned "Application Notes" is amended in Note 5 by deleting:

" 'racketeering activity' as defined in 18 U.S.C. 1961. If section 2T1.1(b)(1) applies, do not apply section 4B1.3 (Criminal Livelihood), which is substantially duplicative",

and inserting in lieu thereof:

"conduct constituting a criminal offense under federal, state, or local law".

The Commentary to section 2T1.2 captioned "Application Notes" is amended in Note 1 by deleting:

" 'racketeering activity' as defined in 18 U.S.C. 1961. If section 2T1.2(b)(1) applies, do not apply section 4B1.3 (Criminal Livelihood), which is substantially duplicative",

and inserting in lieu thereof:

"conduct constituting a criminal offense under federal, state, or local law".

The Commentary to section 2T1.3 captioned "Application Notes" is amended in Note 1 by deleting:

" 'racketeering activity' as defined in 18 U.S.C. 1961. If section 2T1.3(b)(1) applies, do not apply section 4B1.3 (Criminal Livelihood), which is substantially duplicative",

and inserting in lieu thereof:

"conduct constituting a criminal offense under federal, state, or local law".

The Commentary to section 2T1.4 captioned "Application Notes" is amended in Note 1 by deleting "If this subsection applies, do not apply section 4B1.3 (Criminal Livelihood) which is substantially duplicative.".

Reason for Amendment: This amendment deletes the portion of these application notes concerning application of section 4B1.3 (Criminal Livelihood) because this commentary conflicts with the principle expressed in Application Note 5 of the Commentary to section 1B1.1 (when two guideline provisions are equally applicable, the one producing the greater offense level controls). In addition, this amendment broadens the definition of "criminal activity" to cover any criminal violation of federal, state, or local law.

Chapter three, part A (Victim-Related Adjustments)

38. Amendment: The Introductory Commentary to chapter three, part A is amended by deleting the second sentence as follows: "They are to be treated as specific offense characteristics.".

The commentary to section 3A1.1 (Vulnerable Victim) captioned "Application Notes" is amended in Note 2 by inserting the following at the end:

"For example, where the offense guideline provides an enhancement for the age of the victim, this guideline should not be applied unless the victim was unusually vulnerable for reasons unrelated to age.".

Reason for Amendment: This amendment clarifies the application of this guideline and eliminates an unnecessary and confusing sentence.

Chapter three, part B (Role in the Offense)

39. Amendment: The Introductory commentary to chapter three, part B, is amended by beginning a new paragraph with the second sentence, and by inserting the following immediately after the first sentence:

"The determination of a defendant's role in the offense is to be made on the basis of all conduct within the scope of section 1B1.3 (Relevant Conduct), i.e., all conduct included under section 1B1.3(a) (1)–(4), and not solely on the basis of elements and acts cited in the count of conviction. However, where the defendant has received mitigation by virtue of being convicted of an offense significantly less serious than his actual criminal conduct, e.g., the defendant is convicted of unlawful possession of a controlled substance but his actual conduct involved drug trafficking, a further reduction in the offense level under section 3B1.2 (Mitigating Role) ordinarily is not warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense.".

Reason for Amendment: This amendment clarifies the conduct that is relevant to the determination of chapter three, part B, and clarifies the operation of section 3B1.2 in certain cases.

40. Amendment: Section 381.3 is amended by deleting "in addition to that provided for in section 3B1.1, nor may it be employed", and by inserting the following additional sentence at the end:

"If this adjustment is based upon an abuse of a position of trust, it may be employed in addition to an adjustment under section 3B1.1 (Aggravating Role); if this adjustment is based solely on the use of a special skill, it may not be employed in addition to an adjustment under section 3B1.1 (Aggravating Role).".

Reason for Amendment: This amendment provides that the enhancement for abuse of a position of trust may apply in addition to an enhancement for an aggravating role under section 3B1.1.

Chapter three, part C (Obstruction)

41. Amendment: Section 3C1.1 is amended in the title by deleting "Willfully Obstructing or Impeding Proceedings" and inserting in lieu thereof "Obstructing or Impeding the Administration of Justice".

Section 3C1.1 is amended by deleting "impeded or obstructed, or attempted to impede or obstruct" and inserting in lieu thereof "obstructed or impeded, or attempted to obstruct or impede,", and by deleting "or prosecution" and inserting in lieu thereof ", prosecution, or sentencing".

The Commentary to section 3C1.1 is amended by deleting the introductory paragraph immediately before "Application Notes".

The Commentary to section 3C1.1 captioned "Application Notes" is amended by deleting Notes 1–4 and inserting in lieu thereof:

"1. This provision is not intended to punish a defendant for the exercise of a constitutional right. A defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury), refusal to admit guilt or provide information to a probation officer, or refusal to enter a plea of guilty is not a basis for application of this provision. In applying this provision, the defendant's testimony and statements should be evaluated in a light most favorable to the defendant.

2. Obstructive conduct can vary widely in nature, degree of planning, and seriousness. In addition to conduct prohibited by 18 U.S.C. 1501–1516, Application Note 3 sets forth examples of the types of conduct to which this enhancement is intended to apply. Application Note 4 sets forth examples of less serious forms of conduct to which this enhancement is not intended to apply, but that ordinarily can appropriately be sanctioned by the determination of the particular sentence within the otherwise applicable guideline range. Although the conduct to which this enhancement applies is not subject to precise definition, comparison of the examples set forth in Application Notes 3 and 4 should assist the court in determining whether application of this enhancement is warranted in a particular case.

3. The following is a non-exhaustive list of examples of the types of conduct to which this enhancement applies:

(a) Threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so;

(b) Committing, suborning, or attempting to suborn perjury;

(c) Producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding;

(d) Destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to an official investigation or judicial proceeding (e.g., shredding a document or destroying ledgers upon learning that an official investigation has commenced or is about to commence), or attempting to do so; however, if such conduct occurs contemporaneously with arrest (e.g., attempting to swallow or throw away a controlled substance), it shall not, standing alone, be sufficient to warrant an adjustment for obstruction unless it results in a material hindrance to the official investigation or prosecution of the instant offense or the sentencing of the offender;

(e) Escaping or attempting to escape from custody before trial or sentencing; or willfully failing to appear, as ordered, for a judicial proceeding;

(f) Providing materially false information to a judge or magistrate;

(g) Providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense;

(h) Providing materially false information to a probation officer in respect to a presentence or other investigation for the court.

This adjustment also applies to any other obstructive conduct in respect to the official investigation, prosecution, or sentencing of the instant offense where there is a separate count of conviction for such conduct

4. The following is a non-exhaustive list of examples of the types of conduct that, absent a separate count of conviction for such conduct, do not warrant application of this

enhancement, but ordinarily can appropriately be sanctioned by the determination of the particular sentence within the otherwise applicable guideline range:

(a) Providing a false name or identification document at arrest, except where such conduct actually resulted in a significant hindrance to the investigation or prosecution of the instant offense;

(b) Making false statements, not under oath, to law enforcement officers, unless Application Note 3(g) above applies;

(c) Providing incomplete or misleading information, not amounting to a material falsehood, in respect to a presentence investigation;

(d) Avoiding or fleeing from arrest (see, however, section 3C1.2) (Reckless Endangerment During Flight).

5. 'Material' evidence, fact, statement, or information, as used in this section, means evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination.

6. Where the defendant is convicted for an offense covered by section 2J1.1 (contempt), section 2J1.2 (Obstruction of Justice), section 2J1.3 (Perjury or Subornation of Perjury), section 2J1.5 (Failure to Appear by Material Witness), section 2J1.6 (Failure to Appear by Defendant), section 2J1.8 (Bribery of Witness), or section 2J1.9 (Payment to Witness), this adjustment is not to be applied to the offense level for that offense except where a significant further obstruction occurred during the investigation or prosecution of the obstruction offense itself (e.g., where the defendant threatened a witness during the course of the prosecution for the obstruction offense). Where the defendant is convicted both of the obstruction offense and the underlying offense, the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of section 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.".

Chapter three, part C, is amended by inserting the following additional guideline:

"Section 3C1.2. Reckless Endangerment During Flight

If the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer, increase by 2 levels.

Commentary

Application Notes:

1. 'Reckless' is defined in the commentary to section 2A1.4 (Involuntary Manslaughter). For the purposes of this guideline, 'reckless' means that the conduct was at least reckless and includes any higher level of culpability. However, where a higher degree of culpability was involved (e.g., a fleeing defendant discharged a weapon at a pursuing officer), an upward departure above the 2-level increase provided in this section may be warranted.

2. 'Another person' includes any person, except a participant in the offense who willingly participated in the flight.".

Reason for Amendment: This amendment clarifies the operation of section 3C1.1 and inserts an additional guideline to address reckless endangerment during flight. The Commission believes that reckless endangerment during flight is sufficiently different from other forms of obstructive conduct to warrant a separate enhancement.

Chapter three, part D (Multiple Counts)

42. Amendment: Section 3D1.l is amended by inserting "(a)" immediately before "When"; by deleting "(a)", "(b)", and "(c)", and inserting in lieu thereof "(1)", "(2)", and "(3)" respectively; and by inserting the following additional subsection:

"(b) Any count for which the statute mandates imposition of a consecutive sentence is excluded from the operation of sections 3D1.2–3D1.5. Sentences for such counts are governed by the provisions of section 5G1.2(a).".

The Commentary to section 3D1.1 captioned "Application Notes" is amended in Note 1 by deleting:

"Certain offenses, e.g., 18 U.S.C. 924(c) (use of a deadly or dangerous weapon in relation to a crime of violence or drug trafficking) by law carry mandatory consecutive sentences. Such offenses are exempted from the operation of these rules. See section 3D1.2.",

and inserting in lieu thereof:

"Counts for which a statute mandates imposition of a consecutive sentence are excepted from application of the multiple count rules. Convictions on such counts are not used in the determination of a combined offense level under this part, but may affect the offense level for other counts. A conviction for 18 U.S.C. 924(c) (use of firearm in commission of a crime of violence) provides a common example. In the case of a conviction under 18 U.S.C. 924(c), the specific offense characteristic for weapon use in the primary offense is to be disregarded to avoid double counting. See Commentary to section 2K2.4. Example: The defendant is convicted of one count of bank robbery (18 U.S.C. 2113), and one count of use of a firearm in the commission of a crime of violence (18 U.S.C. 924(c)). The two counts are not grouped together, and the offense level for the bank robbery count is computed without application of an enhancement for weapon possession or use. The mandatory five-year sentence on the weapon-use count runs consecutively, as required by law. See section 5G1.2(a).".

Section 3D1.2 is amended by deleting:

"A count for which the statute mandates imposition of a consecutive sentence is excluded from such Groups for purposes of sections 3D1.2–3D1.5.".

The Commentary to section 3D1.2 captioned "Application Notes" is amended by deleting Note 1 in its entirety.

Reason for Amendment: This amendment consolidates the provisions dealing with statutorily required consecutive sentences in section 3D1.1 for greater clarity.

43. Amendment: Section 3D1.2(b) is amended by deleting:

" , including, but not limited to:

(1) A count charging conspiracy or solicitation and a count charging any substantive offense that was the sole object of the conspiracy or solicitation. 28 U.S.C. 994(l)(2).

(2) A count charging an attempt to commit an offense and a count charging the commission of the offense. 18 U.S.C. 3584(a).

(3) A count charging an offense based on a general prohibition and a count charging violation of a specific prohibition encompassed in the general prohibition. 28 U.S.C. 994(v)".

Section 3D1.2(d) is amended by deleting "Counts are grouped together if" and inserting in lieu thereof "When".

Section 3D1.2(d) is amended by deleting "specifically included" and inserting in lieu thereof "to be grouped".

Section 3D1.2(d) is amended in the second paragraph by inserting in the appropriate place: "section 2K2.2;".

Section 3D1.2(d) is amended in the third paragraph by inserting "Chapter Two," immediately before "Part A".

The Commentary to section 3D1.2 captioned "Application Notes" is amended by inserting the following as Note 1:

"1. Subsections (a)–(d) set forth circumstances in which counts are to be grouped together into a single Group. Counts are to be grouped together into a single Group if any one or more of the subsections provide for such grouping. Counts for which the statute mandates imposition of a consecutive sentence are excepted from application of the multiple count rules. See section 3D1.1(b).".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 3 by inserting the following as the second paragraph:

"When one count charges an attempt to commit an offense and the other charges the commission of that offense, or when one count charges an offense based on a general prohibition and the other charges violation of a specific prohibition encompassed in the general prohibition, the counts will be grouped together under subsection (a).".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 4 in the first sentence

by deleting "states the principle" and inserting in lieu thereof "provides".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 4 by inserting the following as the second sentence:

"This provision does not authorize the grouping of offenses that cannot be considered to represent essentially one composite harm (e.g., robbery of the same victim on different occasions involves multiple, separate instances of fear and risk of harm, not one composite harm).".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 4 by inserting the following as the second paragraph:

"When one count charges a conspiracy or solicitation and the other charges a substantive offense that was the sole object of the conspiracy or solicitation, the counts will be grouped together under subsection (b).".

Reason for Amendment: This amendment clarifies the operation of section 3D1.2(b), makes editorial improvements in section 3D1.2(d), makes the listing of offenses in section 3D1.2(d) more comprehensive, corrects a clerical error, and clarifies the Commentary of section 3D1.2 by making explicit that offenses such as multiple robberies do not fit within the parameters of section 3D1.2(b).

44. Amendment: Section 3D1.4 is amended in the fourth line of the Unit table by inserting "2½-" immediately before "3" the first time "3" appears, and in the fifth line of the Unit table by deleting "4 or" and inserting in lieu thereof "3½-".

Section 3D1.4 is amended by deleting:

"(d) Except when the total number of Units is 1½, round up to the next large whole number.".

The Commentary to section 3Dl.4 captioned "Background" is amended in the first paragraph by deleting "When this approach produces a fraction in the total Units, other than 1½, it is rounded up to the nearest whole number.".

The "Illustrations of the Operation of the Multiple-Count Rules" following section 3D1.5 are amended in example 1 by deleting "(rounded up to 3)", and by deleting "18" and "4-" and inserting in lieu thereof "20" and "2-" respectively.

The "Illustrations of the Operation of the Multiple-Count Rules" following section 3D1.5 are amended in example 3 by deleting "Obstruction" and inserting in lieu thereof "Obstructing or Impeding the Administration of Justice".

Reason for Amendment: This amendment simplifies the operation of section 3D1.4. In addition, the amendment conforms the illustrations of the operation of the multiple-count rules.

Chapter three part E (Acceptance of Responsibility)

45. Amendment: The Commentary to section 3El.1 captioned "Application Notes" is amended by deleting Notes 2 and 3 and inserting in lieu thereof:

"2. This adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct.

3. Entry of a plea of guilty prior to the commencement of trial combined with truthful admission of involvement in the offense and related conduct will constitute significant evidence of acceptance of responsibility for the purposes of this section. However, this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility.".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 4 by deleting "Willfully Obstructing or Impeding Proceedings" and inserting in lieu thereof "Obstructing or Impeding the Administration of Justice".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 5 by deleting "and should not be distributed unless it is without foundation".

The Commentary to section 3E1.1 captioned "Background" is amended in the first paragraph by inserting "and related conduct" immediately before "by taking", by deleting "lesser sentence" and inserting in lieu thereof "lower offense level", and by deleting "sincere remorse" and inserting in lieu thereof "acceptance of responsibility".

The Commentary to section 3E1.1 captioned "Background" is amended by deleting the second paragraph in its entirety.

Reason for Amendment: This amendment clarifies the operation of this guideline and conforms the title of a reference to another guideline.

Chapter four, part A (Criminal History)

46. Amendment: Section 4A1.2(a)(3) is amended by inserting "or execution" immediately following "imposition".

Section 4A1.2(c)(1) is amended by inserting in the appropriate place by alphabetical order:

"Careless or reckless driving", "Insufficient funds check".

Section 4A1.2(c)(1) is amended by inserting "(excluding local ordinance violations that are also criminal offenses under state law)" immediately following "Local ordinance violations".

Section 4A1.2(c)(2) is amended by inserting "(e.g., speeding)" immediately following "minor traffic infractions".

The Commentary to section 4A1.2 captioned "Application Notes" is amended by inserting the following additional notes:

"12. Local ordinance violations. A number of local jurisdictions have enacted ordinances covering certain offenses (e.g., larceny and assault misdemeanors) that are also violations of state criminal law. This enables a local court (e.g., a municipal court) to exercise jurisdiction over such offenses. Such offenses are excluded from the definition of local ordinance violations in section 4A1.2(c)(1) and, therefore, sentences for such offenses are to be treated as if the defendant had been convicted under state law.

13. 'Insufficient funds check,' as used in section 4A1.2(c)(1), does not include any conviction establishing that the defendant used a false name or non-existent account.".

Reason for Amendment: This amendment clarifies that, for the purpose of computing criminal history points, there is no difference between the suspension of the "imposition" and "execution" of a prior sentence. This amendment also makes the provisions of section 4A1.2(c)(1) more comprehensive in respect to certain vehicular offenses and clarifies the application of section 4A1.2(c)(1) in respect to certain offenses prosecuted in municipal courts. In addition, this amendment expands the coverage of section 4A1.2(c)(1) to include a misdemeanor or petty offense conviction for an insufficient funds check.

47. Amendment: The Commentary to section 4A1.2 captioned "Application Notes" is amended in Note 6 by deleting all after the first sentence and inserting in lieu thereof:

"Also, sentences resulting from convictions that a defendant shows to have been previously ruled constitutionally invalid are not to be counted. Nonetheless, the criminal conduct underlying any conviction that is not counted in the criminal history score may be considered pursuant to section 4A1.3 (Adequacy of Criminal History Category).".

The Commentary to section 4A1.2 captioned "Application Notes" is amended in the caption of Note 6 by deleting "Invalid" and inserting in lieu thereof "Reversed, Vacated, or Invalidated".

The Commentary to section 4A1.2 is amended by inserting at the end:

"*Background:* Prior sentences, not otherwise excluded, are to be counted in the criminal history score, including uncounseled misdemeanor sentences where imprisonment was not imposed.

The Commission leaves for court determination the issue of whether a defendant may collaterally attack at sentencing a prior conviction.".

Reason for Amendment: This amendment clarifies the circumstances under which prior sentences are excluded from the criminal history score. In particular, the amendment clarifies the Commission's intent regarding the counting of uncounseled misdemeanor convictions for which counsel constitutionally is not required because the defendant was not imprisoned. Lack of clarity regarding whether these prior sentences are to be counted may result not only in considerable disparity in guideline application, but also in the criminal history score not adequately reflecting the defendant's failure to learn from the application of previous sanctions and his potential for recidivism. This amendment expressly states the Commission's position that such convictions are to be counted for the purposes of criminal history under chapter four, part A.

Chapter four, part B (Career Offenders and Criminal Livelihood)

48. Amendment: The Commentary to section 4B1.3 captioned "Application Notes" is amended in Note 2 by deleting "(currently 2000x the hourly minimum wage under Federal law is $6,700)".

Reason for Amendment: This amendment deletes a reference to the federal minimum wage that is now outdated.

49. Amendment: Chapter four, part B, is amended by inserting the following additional section:

"Section 4B1.4. Armed Career Criminal

(a) A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. 924(e) is an armed career criminal.

(b) The offense level for an armed career criminal is the greatest of:

(1) The offense level applicable from Chapters two and three; or

(2) The offense level from section 4B1.1 (Career Offender) if applicable; or

(3) (A) 34, if the defendant used or possessed the firearm or ammunition in connection with a crime of violence or controlled substance offense, as defined in section 4B1.2(1), or if the firearm possessed by the defendant was of a type described in 26 U.S.C. 5845(a) *; or

(B) 33, otherwise.*

* If section 3E1.1 (Acceptance of Responsibility) applies, reduce by 2 levels.

(c) The criminal history category for an armed career criminal is the greatest of:

(1) The criminal history category from chapter four, part A (Criminal History), or section 4B1.1 (Career Offender) if applicable; or

(2) Category VI, if the defendant used or possessed the firearm or ammunition in connection with a crime of violence or controlled substance offense, as defined in section 4B1.2(1), or if the firearm possessed by the defendant was of a type described in 26 U.S.C. 5845(a); or

(3) Category IV.

Commentary

Background: This section implements 18 U.S.C. 924(e), which requires a minimum sentence of imprisonment of fifteen years for a defendant who violates 18 U.S.C. 922(g) and has three previous convictions for a violent felony or a serious drug offense. If the offense level determined under this section is greater than the offense level otherwise applicable, the offense level determined under this section shall be applied. A minimum criminal history category (Category IV) is provided, reflecting that each defendant to whom this section applies will have at least three prior convictions for serious offenses. In some cases, the criminal history category may not adequately reflect the defendant's criminal history; see section 4A1.3 (Adequacy of Criminal History Category).".

Reason for Amendment: This amendment adds a new section to address cases subject to a sentence enhancement under 18 U.S.C. 924(e).

Chapter Five, Part E (Restitution, Fines, Assessments, Forfeitures)

50. Section 5E1.2(a) is amended by striking the subsection in its entirety and inserting in lieu thereof the following:

"(a) The court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine.".

Section 5E1.2(d)(2) is amended by deleting "the ability of the defendant" and inserting in lieu thereof "any evidence presented as to the defendant's ability".

The Commentary to section 5E1.2 captioned "Application Notes" is amended in Note 3 by striking the fourth sentence and inserting the following additional paragraphs at the end:

"Where it is readily ascertainable that the defendant cannot, and is not likely to become able to, pay a fine greater than the maximum fine set forth in Column B of the Fine Table in subsection (c)(3), calculation of the alternative maximum fines under subsections (c)(2)(B) (twice the gross pecuniary loss caused by the offense) and (c)(2)(C) (three times the gross pecuniary gain to all participants in the offense) is unnecessary. In such cases, a statement that 'the alternative maximums of the fine table were not calculated because it is readily ascertainable that the defendant cannot, and is not likely to become able to, pay a fine greater than the maximum set forth in the fine table' is recommended in lieu of such calculations.

"The determination of the fine guideline range may be dispensed with entirely upon a court determination of present and future inability to pay any fine. The inability of a defendant to post bail bond (having otherwise been determined eligible for release) and the fact that a defendant is represented by (or was determined eligible for) assigned counsel are significant indicators of present inability to pay any fine. In conjunction with other factors, they may also indicate that the defendant is not likely to become able to pay any fine.".

Reason for Amendment: This amendment clarifies the operation of this guideline.

Chapter Five, Part H

51. Amendment: The Introductory Commentary to chapter five, part H is amended by inserting the following additional paragraph at the end:

"In addition, 28 U.S.C. 994(e) requires the Commission to assure that its guidelines and policy statements reflect the general inappropriateness of considering the defendant's education, vocational skills, employment record, family ties and responsibilities, and community ties in determining whether a term of imprisonment should be imposed or the length of a term of imprisonment.".

Reason for Amendment: This amendment clarifies the relationship of 28 U.S.C. 994(e) to certain of the policy statements contained in this part.

Chapter Five, Part K (Departures)

52. Amendment: Chapter five, part K, subpart 2, is amended in the title by deleting "GENERAL PROVISIONS:" and inserting in lieu thereof "OTHER GROUNDS FOR DEPARTURE".

Section 5K2.0 is amended in the first sentence of the first paragraph by inserting a comma immediately following "degree", and by inserting "that should result in a sentence different from that described" immediately following "the guidelines"; in the third sentence of the first paragraph by deleting "court at the time of sentencing" and inserting in lieu thereof "courts"; in the fourth sentence of the first paragraph by deleting "the present section" and inserting in lieu

thereof "this subpart", by deleting "fully" immediately before "take", by inserting "fully" immediately following "account", and by deleting "precise" and inserting in lieu thereof "the"; and in the sixth sentence of the first paragraph by deleting "judge" and inserting in lieu thereof "court".

Section 5K2.0 is amended in the first sentence of the second paragraph by inserting ", for example," immediately following "Where", by deleting "guidelines, specific offense characteristics," and inserting in lieu thereof "offense guideline", by deleting "part" and inserting in lieu thereof "subpart", by deleting "guideline" and inserting in lieu thereof "applicable guideline range", and by deleting "of conviction" immediately following "offense"; in the second sentence of the second paragraph by deleting "offense of conviction" and inserting in lieu thereof "applicable offense guideline"; in the third sentence of the second paragraph by deleting "offense of conviction is theft" and inserting in lieu thereof "theft offense guideline is applicable", by deleting "when" immediately before "the theft", and by inserting "range" immediately before "more readily"; and in the fourth sentence of the second paragraph by deleting "offense of conviction is robbery" and inserting in lieu thereof "robbery offense guideline is applicable", and by deleting "sentence" immediately before "adjustment".

Section 5K2.0 is amended by deleting the fourth paragraph.

Reason for Amendment: This amendment makes various editorial and clarifying changes. In addition, the last paragraph is deleted as unclear and overly restrictive.

Appendix A (Statutory Index)

53. Appendix A (Statutory Index) is amended by inserting the following in the appropriate place by title and section:

"7 U.S.C. 1361	2Q1.2",
"18 U.S.C. 34	2A1.1, 2A1.2, 2A1.3, 2A1.4",
"18 U.S.C. 35(b)	2A6.1",
"18 U.S.C. 219	2C1.3",
"18 U.S.C. 281	2C1.3",
"18 U.S.C. 332	2B1.1, 2F1.1",
"18 U.S.C. 335	2F1.1",
"18 U.S.C. 372	2X1.1",
"18 U.S.C. 608	2H2.1",
"18 U.S.C. 647	2B1.1",
"18 U.S.C. 650	2B1.1",
"18 U.S.C. 665(b)	2B3.3, 2C1.1",
"18 U.S.C. 667	2B1.1, 2B1.2",
"18 U.S.C. 712	2F1.1",
"18 U.S.C. 753	2P1.1",
"18 U.S.C. 915	2F1.1",
"18 U.S.C. 917	2F1.1",
"18 U.S.C. 970(a)	2B1.3, 2K1.4",
"18 U.S.C. 1015	2F1.1, 2J1.3, 2L2.1, 2L2.2",
"18 U.S.C. 1023	2B1.1, 2F1.1",
"18 U.S.C. 1024	2B1.2",
"18 U.S.C. 1031	2F1.1",
"18 U.S.C. 1091	2H1.3",
"18 U.S.C. 1115	2A1.4",
"18 U.S.C. 1167	2B1.1",
"18 U.S.C. 1168	2B1.1",
"18 U.S.C. 1201 (c), (d)	2X1.1",
"18 U.S.C. 1364	2K1.4",
"18 U.S.C. 1422	2C1.2, 2F1.1",
"18 U.S.C. 1541	2L2.3",
"18 U.S.C. 1716 (felony provisions only)	2K3.2",
"18 U.S.C. 1860	2R1.1",
"18 U.S.C. 1861	2F1.1",
"18 U.S.C. 1864	2Q1.6",
"18 U.S.C. 1991	2A2.1, 2X1.1",
"18 U.S.C. 1992	2A1.1, 2B1.3, 2K1.4, 2X1.1",
"18 U.S.C. 2072	2F1.1",
"18 U.S.C. 2118(d)	2X1.1",
"18 U.S.C. 2197	2B5.2, 2F1.1",
"18 U.S.C. 2232	2J1.2",
"18 U.S.C. 2233	2B1.1, 2B3.1",
"18 U.S.C. 2272	2F1.1",
"18 U.S.C. 2276	2B1.3, 2B2.2",
"18 U.S.C. 2331(a)	2A1.1, 2A1.2, 2A1.3, 2A1.4",
"18 U.S.C. 2331(b)	2A2.1",
"18 U.S.C. 2331(c)	2A2.2",
"22 U.S.C. 2780	2M5.2",
"42 U.S.C. 1973j(c)	2X1.1".

Appendix A is further amended:

In the line beginning "8 U.S.C. 1328" by deleting ", 2G2.1, 2G2.2";

In the line beginning "16 U.S.C. 1029" by deleting ", 2Q2.2";

In the line beginning "16 U.S.C. 1030" by deleting ", 2Q2.2,";

In the line beginning "16 U.S.C. 1857(2)" by deleting ", 2Q2.2" and inserting in lieu thereof "2Q2.1";

In the line beginning "16 U.S.C. 1859" by deleting "2Q2.2" and inserting in lieu thereof "2Q2.1";

And in the line beginning "16 U.S.C. 3373(d)" by deleting "2Q2.2" and inserting in lieu thereof "2Q2.1";

By deleting:

"18 U.S.C. 32(a)(1),–(4)	2K1.4, 2B1.3
18 U.S.C. 32(b)	2A1.1–2A2.3, 2A4.1, 2A5.1–2A5.2, 2K1.4, 2B1.3".

and inserting in lieu thereof:

"18 U.S.C. 32(a),(b)	2A1.1–2A2.3, 2A4.1, 2A5.1, 2A5.2, 2B1.3, 2K1.4";

In the line beginning "18 U.S.C. 33" by inserting "2A2.1, 2A2.2," immediately before ""2B1.3";

In the line beginning "18 U.S.C. 112(a)" by inserting "2A2.1," immediately before "SA2.2," and by inserting ", 2A4.1, 2B1.3, 2K1.4" immediately following "2A2.3";

In the line beginning "18 U.S.C. 152" by deleting "2F1.1," and by inserting ", 2F1.1, 2J1.3" immediately following "2B4.1";

In the line beginning "18 U.S.C. 201(b)(1)" by deleting ", 2J1.3, 2J1.8, 2J1.9";

In the line beginning "18 U.S.C. 241" by deleting "2H1.2,";

In the line beginning "18 U.S.C. 351(d)" by deleting ", 2A2.1" and inserting in lieu thereof "2A1.5";

In the line beginning "18 U.S.C. 371" by deleting "2A2.1" and inserting in lieu thereof "2A1.5";

In the line beginning "18 U.S.C. 373" by deleting "2A2.1" and inserting in lieu thereof "2A1.5";

In the line beginning "18 U.S.C. 474" by inserting ", 2B5.2" immediately following "2B5.1";

In the line beginning "18 U.S.C. 476" by inserting ", 2B5.2" immediately following "2B5.1";

In the line beginning "18 U.S.C. 477" by inserting ", 2B5.2" immediately following "2B5.1";

In the line beginning "18 U.S.C. 496" by deleting "2T3.1" and inserting in lieu thereof "2F1.1";

In the line beginning "18 U.S.C. 545" by deleting "2Q2.2" and inserting in lieu thereof "2Q2.1";

In the line beginning "18 U.S.C. 549" by inserting "2B1.1," immediately before "2T3.1" and by inserting ", 2T3.2" following "2T3.1";

In the line beginning "18 U.S.C. 551" by inserting "2J1.2," immediately before "2T3.1";

In the line beginning "18 U.S.C. 642" by inserting ", 2B5.2" immediately following "2B5.1";

By deleting:

"18 U.S.C. 666(a)	2B1.1, 2C1.1, 2C1.2, 2F1.1",

and inserting in lieu thereof:

"18 U.S.C. 666(a)(1)(A)	2B1.1, 2F1.1
18 U.S.C. 666(a)(1)(B)	2C1.1, 2C1.2
18 U.S.C. 666(a)(1)(C)	2C1.1, 2C1.2";

In the line beginning "18 U.S.C. 755" by deleting ", 2X2.1";

In the line beginning "18 U.S.C. 756" by deleting ", 2X2.1";

In the line beginning "18 U.S.C. 757" by deleting ", 2X2.1";

In the line beginning "18 U.S.C. 793(d), (e)" by inserting "2M3.2," immediately before "2M3.3";

In the line beginning "18 U.S.C. 842(a)" by deleting ",(h),(i)" by inserting in lieu thereof "-(g)";

In the line beginning "18 U.S.C. 844(f)" by inserting ", 2X1.1" immediately following "2K1.4";

By deleting:

"18 U.S.C. 922(a)(1)–(5)	2K2.3
18 U.S.C. 922(a)(6)	2K2.1
18 U.S.C. 922(b)(1)–(3)	2K2.3
18 U.S.C. 922(d)	2K2.3
18 U.S.C. 922(g)	2K2.1
18 U.S.C. 922(h)	2K2.1
18 U.S.C. 922(i)	2B1.2, 2K2.3
18 U.S.C. 922(j)	2B1.2, 2K2.3
18 U.S.C. 922(k)	2K2.3
18 U.S.C. 922(l)	2K2.3
18 U.S.C. 922(n)	2K2.1
18 U.S.C. 923	2K2.3
18 U.S.C. 924(c)	2K2.4",

and inserting in lieu thereof:

"18 U.S.C. 922(a)(1)	2K2.1, K2.2
18 U.S.C. 922(a)(2)	2K2.2
18 U.S.C. 922(a)(3)	2K2.1
18 U.S.C. 922(a)(4)	2K2.1
18 U.S.C. 922(a)(5)	2K2.2
18 U.S.C. 922(a)(6)	2K2.1
18 U.S.C. 922(b)–(d)	2K2.2
18 U.S.C. 922(e)	2K2.1, K2.2
18 U.S.C. 922(f)	2K2.1, K2.2
18 U.S.C. 922(g)	2K2.1
18 U.S.C. 922(h)	2K2.1
18 U.S.C. 922(i)–(1)	2K2.1, K2.2
18 U.S.C. 922(m)	2K2.2
18 U.S.C. 922(n)	2K2.1
18 U.S.C. 922(o)	2K2.1, K2.2
18 U.S.C. 923(a)	2K2.2
18 U.S.C. 924(a)(1)(A)	2K2.2
18 U.S.C. 924(a)(1)(C)	2K2.1, K2.2
18 U.S.C. 924(a)(3)(A)	2K2.2
18 U.S.C. 924(b)	2K2.3
18 U.S.C. 924(c)	2K2.4
18 U.S.C. 924(f)	2K2.3
18 U.S.C. 924(g)	2K2.3";

In the line beginning "18 U.S.C. 1012" by inserting "2C1.3," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1028" by inserting ", 2L2.4" immediately following ,"2L2.3";

In the line beginning "18 U.S.C. 1113" by inserting ", 2A2.2" immediately following "2A2.1";

In the line beginning "18 U.S.C. 1117" by deleting "2A2.1" and inserting in lieu thereof "2A1.5";

In the line beginning "18 U.S.C. 1362" by inserting ", 2K1.4" immediately following "281.3";

In the line beginning "18 U.S.C. "1363" by inserting ", 2K1.4" immediately following "2B1.3";

In the line beginning "18 U.S.C. 1426" by inserting ", 2L2.2" immediately following "2L2.1";

In the line beginning "18 U.S.C. 1460" by inserting "2G2.2," immediately before "2G3.l";

In the line beginning "18 U.S.C. 1512(a)" by inserting "2A1.3," immediately following "2A1.2,";

In the line beginning "18 U.S.C. 1512(b) by inserting "2A1.2," immediately before "2A2.2";

In the line beginning "18 U.S.C. 1704" by inserting ", 2F1.1" immediately following "285.2";

In the line beginning "18 U.S.C. 1751(c)" by inserting ", 2X1.1" immediately following "2A4.1";

In the line beginning "18 U.S.C. 1751(d)" by deleting "2A2.1" and inserting in lieu thereof "2A1.5", and by inserting ", 2X1.1" immediately following "2A4.1";

In the line beginning "18 U.S.C. 1909" by inserting ", 2C1.3," immediately before "2C1.4";

In the line beginning "18 U.S.C. 1951" by deleting "2B3.1, 2B3.2, 2C1.1,";

In the line beginning "18 U.S.C. 1952A" by deleting "2A2.l,";

In the line beginning "18 U.S.C. 1958" by deleting "2A2.1,";

By deleting:

"18 U.S.C. 2251	2G2.1",

and inserting in lieu thereof:

"18 U.S.C. 2251 (a), (b)	2G2.1
18 U.S.C. 2251(c)(1)(A)	2G2.2
18 U.S.C. 2251(c)(1)(B)	2G2.1";

In the line beginning "18 U.S.C. 2271" by deleting "2F1.1,";

In the line beginning "18 U.S.C. 2421" by inserting ", 2G1.2" immediately following "2G1.1";

In the line beginning "18 U.S.C. 2422" by inserting ", 2G1.2" immediately following "2G1.1";

By deleting "18 U.S.C. 4082(d) 2P1.1";

By deleting: "21 U.S.C. 333 2N2.1" and inserting in lieu thereof:

"21 U.S.C. 333(a)(1)	2N2.1
21 U.S.C. 333(a)(2)	2F1.1, 2N2.1
21 U.S.C. 333(b)	2N2.1";

By deleting:

"26 U.S.C. 5861(a)	2K2.3
26 U.S.C. 5861(b)–(1)	2K2.2",

and inserting in lieu thereof:

"26 U.S.C. 5861(a)	2K2.2
26 U.S.C. 5861(b)	2K2.1
26 U.S.C. 5861(c)	2K2.1
26 U.S.C. 5861(d)	2K2.1
26 U.S.C. 5861(e)	2K2.2
26 U.S.C. 5861(f)	2K2.2
26 U.S.C. 5861(g)	2K2.2
26 U.S.C. 5861(h)	2K2.1
26 U.S.C. 5861(i)	2K2.1
26 U.S.C. 5861(j)	2K2.1, 2X2.2
26 U.S.C. 5861(k)	2K2.1
26 U.S.C. 5861(l)	2K2.2";

In the line beginning "26 U.S.C. 5871" by deleting "2K2.2, 2K2.3" and inserting in lieu thereof "2A2.1, 2A2.2";

By deleting:

"33 U.S.C. 1319	2Q1.1, 2Q1.2, 2Q1.3",

and inserting in lieu thereof:

"33 U.S.C. 1319 (c)(1), (c)(2), (c)(4)	2Q1.2, 2Q1.3
33 U.S.C. 1319(c)(3)	2Q1.1";

And in the line beginning "42 U.S.C. 3631" by deleting ", 2H1.5".

Reason for Amendment: This amendment makes the statutory index more comprehensive and conforms it to amended guidelines.

[FR Doc. 90–10598 Filed 5–7–90; 8:45 am]

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federal register

Tuesday,
May 8, 1990

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 177

Direct Route Transportation of Radioactive Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[49 CFR Part 177]

[Docket No. HM-164C; Amdt. No. 177-76]

RIN 2137-AB59

Direct Route Transportation of Radioactive Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends 49 CFR 177.825 to require, with certain exceptions, that motor carriers of highway route controlled quantity (HRCQ) radioactive materials transport those materials directly from pickup points to preferred routes and directly from preferred routes to delivery points using a shortest distance criterion. This action is necessary to ensure that HRCQ radioactive materials are transported on pickup and delivery routes in a manner consistent with the intent of § 177.825. The intended effect is to enhance the safe transportation of HRCQ radioactive materials by limiting the length of pickup and delivery routes to the shortest distance. Other changes are included to clarify the requirements of that section.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, or Ray Gassaway, Transportation Specialist, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590, (202) 366-4400 or 366-4488.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** under Docket HM-164C (54 FR 40272; September 29, 1989). The NPRM contained proposals to enhance the safety of highway route controlled quantity (HRCQ) radioactive materials transportation by requiring carriers to select pickup and delivery routes to and from preferred routes using a shortest distance criterion.

The proposal was developed primarily in response to an enforcement case involving 49 CFR 177.825 in which DOT's Chief Administrative Law Judge (ALJ) ruled that § 177.825(b)(2) provides a carrier with broad discretion (within the parameters of § 177.825(a)) in selecting a route to carry HRCQ radioactive materials from a pickup point to a preferred route or from a preferred route to a delivery point. The ruling made evident the fact that carriers could transport HRCQ radioactive materials for long distances on non-preferred routes on the pickup and delivery legs of such transport. However, the intent of the requirements in § 177.825(b) is to restrict HRCQ transportation to preferred routes wherever possible. Therefore, this final rule is necessary to ensure that HRCQ radioactive materials are transported on pickup or delivery routes in a manner consistent with the intent of § 177.825.

The NPRM also proposed to clarify many existing requirements within § 177.825 (a) and (b). This document will address the substantive comments received regarding shortest-distance pickup and delivery routes and other topics for clarification proposed in the NPRM which also prompted substantive comments. Comments received but not addressed in this document were either non-substantive or beyond the scope of the docket.

Summary of Comments

RSPA received seventeen comments to the NPRM under Docket HM-164C. Comments were received from chemical companies, public utilities, universities, and Federal and State agencies. No HRCQ radioactive materials carriers submitted comments to the docket. The shortest-distance pickup or delivery route concept was generally accepted by commenters with some reservations. It is believed that provision of a permissible deviation (PD) in this final rule allays many of those reservations expressed by commenters.

A. Permissible Deviation (PD)

The NPRM proposed two methods that would permit an HRCQ carrier to select a pickup or delivery route longer than the shortest-distance pickup or delivery route available. RSPA believes the use of a PD will result in an increase in shipment safety, because the PD will be related to the reduction in risks associated with the shipment of HRCQ radioactive materials.

A minority of commenters opposed the PD concepts for various reasons. A few commenters indicated that carriers would neither make the comparisons necessary for determining "k" factors nor try to apply either methodology. Others maintained that the use of either proposed method could lead to disagreements over the correct quantification of radiological risk criteria. Some felt that the calculations necessary to utilize method I were too complicated and would require carriers to apply variables to conditions that lack predictability. Two commenters opposed the permissible deviation concept because they believed that it would provide HRCQ radioactive materials carriers with too much discretion, and conversely states with too little discretion, in selecting routes.

Proposed PD method I was developed to enable an HRCQ radioactive materials carrier to avoid a base (shortest-distance) pickup or delivery route that would require the carrier to select a more time-consuming overall shipment route. This method would provide the carrier discretion to select a shorter preferred route among two or more preferred routes by using an alternate pickup or delivery route that was longer than the shortest distance pickup or delivery route, as proposed in the NPRM.

In situations where a state may find carrier discretion regarding the PD undesirable, the routing authority within that state could exercise its authority and designate a preferred route, thus limiting the carrier's discretion. On the other hand, carrier discretion through a PD would reduce the need for state designations to address small-scale routing decisions.

RSPA agrees with the commenters regarding the potential difficulties associated with using PD method I. The use of a PD must enhance transport safety and be easily quantifiable and readily enforceable to be of regulatory value. PD method I would not provide the latter two qualities. For the reasons cited above, PD method I is of limited value to the safe transportation of HRCQ radioactive materials and will not receive further consideration in this document.

RSPA also agrees with those commenters who favored inclusion of a PD to enhance HRCQ radioactive materials shipment safety and believes a limited PD from the base pickup or delivery route should be made available to HRCQ radioactive materials carriers. PD method II would allow the carrier discretion to deviate from the shortest distance base pickup or delivery route, using § 177.825(a) safety criteria, whenever the shortest distance pickup or delivery route may be the safest route. These safety criteria are described in the "Guidelines for Selecting Preferred Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."

The NPRM described PD method II as having two hypothetical delivery routes, X and Y, where X was 12 miles long and

passed through the middle of a densely-populated town that included several traffic lights, heavy traffic, and dilapidated roads. Route Y was 20 miles long, consisted of well-maintained roads and passed through sparsely-populated countryside. The PD was then derived by multiplying the length of route X (12) by 2, thereby yielding a product of 24 miles. Using this method, the HRCQ radioactive materials carrier would be allowed to take route Y because its length was 20 miles, less than the calculated PD of 24 miles. Although simple to calculate and enforce, this method may require the carrier to use the shorter pickup or delivery route where the mileage difference among pickup or delivery routes is small, regardless of safety considerations. For example, if route X as described above, is 2 miles long and route Y, as described above, is 5 miles long, doubling the length of route X will yield a product of 4 miles. PD method II will not allow a carrier to take route Y in this case. Another PD method appears to be necessary that will allow a carrier to deviate from a base pickup or delivery route in accordance with the safety criteria in § 177.825(a).

Although more than half of the commenters favored inclusion of PD method II in a final rule, few suggestions were provided to RSPA regarding the tolerances which might be used to calculate such a PD. RSPA believes a more effective and simpler method for calculating a PD would be to add 25 miles to the shortest distance base pickup or delivery route; however, the PD could not exceed 5 times the length of the base pickup or delivery route. Twenty-five miles was selected as a reasonable distance for a carrier to travel off of the shortest distance route to enhance overall HRCQ radioactive materials shipment safety. In addition, a percentage limitation of 5 times the length of the base pickup or delivery route is believed adequate to limit PD's in situations where the length of the base pickup or delivery route is a relatively small fraction of 25 miles. For example, if the length of the shortest-distance base pickup or delivery route A is 2 miles, the carrier may select a route, using § 177.825(a) radiological risk minimization criteria, with a length up to 10 miles. The carrier in this case may not add a 25-mile deviation to the length of the base pickup or delivery route since the product of 5 times the length of the base pickup or delivery route may not be exceeded. RSPA believes this PD method offers the HRCQ radioactive materials carrier a reasonable amount of discretion in selecting base pickup or delivery routes and ensures that HRCQ radioactive materials are transported in a manner consistent with the intent of § 177.825. Carriers may, of course, petition the appropriate state authority to have a particular pickup or delivery route designated as a preferred route, or may pursue the exemption procedure available in 49 CFR 107.103 is using this PD method is not feasible.

B. Applicability Statement

One commenter stated the proposed phrase "a carrier, driver, or person operating a motor vehicle" is redundant. In order to ensure enforceability, all parties who may violate the requirements in § 177.825 must be identified. RSPA agrees that the word "driver" is redundant. In this final rule, the phrase "a carrier or any person operating a motor vehicle" is used in paragraph (b).

C. Radiological Risk Minimization

One commenter indicated that the phrase "the State routing agency shall select routes that minimize radiological risk," proposed in § 177.825(b)(1)(i), would limit the states' flexibility in designating preferred routes. The comment is based on the premise that radiological risk should not be the sole determinant in routing decisions. The docket does not propose any substantive changes regarding the criteria to be used by states in designating preferred routes for HRCQ radioactive materials transportation. Language in the NPRM simply reiterates the primary objective of the routing analysis provided in the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."

Review by Sections

Section 177.825(a) requires that placarded radioactive materials shipments, other than HRCQ shipments, be transported on routes that minimize radiological risk and sets forth criteria for consideration in making risk minimization determinations. Paragraph (a) is revised to clarify existing requirements and eliminate ambiguities. The three explicit duties imposed on operators of motor vehicles carrying radioactive materials for which placards are required now appear in subparagrapsh (1)—(3) of paragraph (a). The third of the three operator duties is clarified by revising the phrase "tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken" to read "tell the driver which route to take and that the motor vehicle contains radioactive materials." A reference to part 172 for placarding requirements is added. The last sentence of the introductory text of paragraph (a) is amended to refer to the "requirements" of paragraph (a) instead of the "requirement" of paragraph (a). In paragraph (a)(2) the phrase "preferred highway" is removed because it is redundant.

Paragraph (b) of § 177.825 requires HRCQ radioactive materials to be transported over "preferred routes selected to reduce time in transit" except that an Interstate System bypass or beltway around a city must be used when available. "Preferred routes" consist of Interstate System highways for which alternative routes have not been designated by a State and State-designated routes. The practices and standards by which a State routing agency determines a preferred route, as stated in paragraph (b), is expanded from two to three subparagraphs to improve overall readability.

Section 177.825(b)(2) authorizes deviations from a preferred route for emergency conditions, necessary rest, fuel, vehicle repair stops, and "to the extent necessary to pick up, deliver or transfer a highway route controlled quantity package of radioactive materials." It also provides that the general requirements of paragraph (a) apply when any of these deviations from a preferred route is authorized.

The ALJ's opinion described above stated that the phrase "selected to reduce time in transit" in paragraph (b) is ambiguous. The opinion states that this phrase might be a requirement imposed by a government agency upon a carrier or person operating an HRCQ-carrying vehicle, might be a direction to State authorities concerning how to select alternative routes, or might be merely an introduction to the bypass or beltway language immediately following that phrase. To eliminate any ambiguity, additional language is added to indicate specifically that it is the carrier's responsibility to select those preferred routes that reduce time in transit.

The previous text in § 177.825(b) was not clear as to whether a State routing agency may designate a preferred route "in addition to," as well as "as an alternative to," one or more Interstate System highways. To eliminate any ambiguity, paragraph (b)(1)(ii) is amended to provide that a State routing agency may designate a route as an alternative to, or in addition to, one or more Interstate System highways. In addition, the first sentence in paragraph (b) as proposed in the NPRM under Docket HM-164C (54 FR 40272 at 40274)

is broken into two sentences to improve overall readability.

Paragraph (b) is amended by removing the phrase "a package of" preceding the phrase "a highway route controlled quantity of radioactive materials" because it is redundant since the definition in § 173.403(l) incorporates the term "package." Paragraph (b) is also amended to clarify that State-designated routes are effective when those State-designated routes are acknowledged in writing by the Director, OHMT. Also, a statement is included to indicate that the list of State-designated preferred routes and the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" are available from the RSPA Dockets Unit upon request.

Consistent with changes to paragraph (a), the phrase "a carrier or any person operating a motor vehicle" is used in paragraph (b). RSPA also is adding the words "Interstate System" prior to "beltway" in the introductory text of paragraph (b) to make it clear that only Interstate System beltways, as well as Interstate System bypasses, around cities are required (and authorized) for use. The phrase "shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route" is added to the introductory text of paragraph (b) to acknowledge State routing agency selections of preferred routes which are not Interstate System beltways or Interstate System bypasses.

Editorial changes are included in the first sentence in paragraph (b) to identify the specific exceptions to the general requirement for using preferred routes. Also, editorial changes are included in the first and sixth sentences in paragraph (b) to enhance clarity and reduce usage of the passive voice.

Paragraphs (b)(2)(i) and (b)(2)(ii) are revised to clarify the authorized deviations from a preferred route and for pickup and delivery not over preferred routes. Paragraph (b)(2)(iii) characterizes the provisions of paragraph (a) as "radiological risk minimization criteria." Paragraph (b)(1)(i) states specifically that the "State routing agency shall select routes to minimize radiological risk." This addition reemphasizes that the underlying principle of paragraph (a) applies to state designations under paragraph (b); this concept already exists in the current requirement that designating states use DOT "Guidelines" or an equivalent routing analysis considering overall risk to the public.

Administrative Notices

This final rule affects carriers that transport highway route controlled quantities of radioactive materials. This provisions of this final rule will have minimal impact on these entities. Over the two (2) year period from January 1987 through December 1989, a total of 301 HRCQ radioactive materials shipments were reported by 14 carriers. Based on available information concerning the size and nature of entities likely to be affected, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, RSPA has further determined that this final rule: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus, this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

List of Subjects in 49 CFR Part 177

Hazardous materials transportation, Highway route controlled quantity, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 177 is amended as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1, unless otherwise noted.

2. In § 177.825, paragraphs (a) and (b) are revised to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

(a) Except as provided in paragraph (b) of this section, a carrier or any person operating a motor vehicle that contains a radioactive material for which placarding is required under part 172 of this subchapter shall—

(1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;

(2) In determining the level of radiological risk, consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which transportation will occur; and

(3) Tell the driver which route to take and that the motor vehicle contains radioactive materials.

The requirements of this paragraph do not apply when there is only one practicable highway route available, considering operating necessity and safety, or when the routing of the motor vehicle is subject to paragraph (b) of this section.

(b) Except as otherwise permitted in this paragraph and in paragraph (e) of this section, a carrier or any person operating a motor vehicle containing a highway route controlled quantity of radioactive materials, as defined in § 173.403(l) of this subchapter, shall operate the motor vehicle only over preferred routes. Those routes must be selected by the carrier or that person operating a motor vehicle containing a highway route controlled quantity of radioactive materials to reduce time in transit over the preferred route segment of the trip. An Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route.

(1) A preferred route is either or both an Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, or a State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the following conditions:

(i) The State routing agency shall select routes to minimize radiological risk using "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials", or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

(ii) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or

more Interstate System highways, including an Interstate System bypass or an Interstate System beltway.

(iii) A State-designated route is effective when—

(A) The State gives written notice by certified mail, return receipt requested to the Director, OHMT, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590 (Attention: Registry of State-designated Routes, Docket HM–164A); and

(B) Receipt thereof is acknowledged in writing by the Director, OHMT.

(iv) Upon request, the Dockets Unit will provide a list of State-designated preferred routes and a copy of the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."

(2) A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:

(i) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of radioactive materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(ii) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:

(A) Is based upon the radiological risk minimization criteria of paragraph (a) of this section; and

(B) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.

(iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the radiological risk minimization criteria of paragraph (a) of this section unless, due to emergency conditions, time does not permit use of those criteria.

* * * * *

Issued in Washington, DC, on May 2, 1990, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 90–10600 Filed 5–7–90; 8:45 am]

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federal register

Tuesday,
May 8, 1990

Part V

National Archives and Records Administration

General Services Administration

36 CFR Part 1234
41 CFR Part 201-45
Electronic Records Management; Final Rules

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AA29

Electronic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This final rule revises NARA regulations concerning Federal agencies' electronic records. This revision mandates procedures to manage electronic records, to provide for the selection and maintenance of electronic storage media, and to follow the legal requirements for the disposition of such records. As a result, regulations will more effectively deal with the issues associated with data base management systems and office automation technologies. Identical regulations will be issued simultaneously by the General Services Administration and published at FIRMR 201–45.2.

EFFECTIVE DATES: This rule is effective June 7, 1990, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–501–5110 (FTS 241–5110).

SUPPLEMENTARY INFORMATION: On December 5, 1988, NARA published a notice of proposed rulemaking in the **Federal Register** (53 FR 48936). On December 27, 1988 (53 FR 52202), NARA formally extended the comment period to February 3, 1989, in order to allow Federal agencies and the public more time to comment. By March 20, 1989, NARA had received comments from 18 Federal agencies, two private organizations, and one Member of Congress. NARA believes that the rule as now revised accommodates valid criticisms and suggestions.

General Comments

Most of the commenters expressed support for the regulation as they offered recommendations for clarification. These recommendations are addressed in the section-by-section analysis below. Several commenters expressed reservations about what they considered excessive detail in portions of the regulation. NARA has revised the rule in several places to eliminate unnecessary detail and redundancy. NARA believes that the detail remaining, primarily in § 1234.28, is essential to ensure the proper maintenance of records that must be preserved indefinitely.

The remaining detailed maintenance reqirements apply only to permanent or unscheduled records. The potential burden on agencies can be reduced significantly by promptly scheduling all electronic records, thus limiting the application of these requirements to the very small percentage of records that are scheduled as permanent. Furthermore, NARA urges agencies to transfer permanent electronic records to NARA as soon as possible after their creation, thus providing another means of reducing the management burden for agencies.

One commenter suggested adding a section outlining NARA and GSA responsibilities for electronic records management. NARA believes this is unnecessary since these responsibilities are already enumerated in records management laws.

A concern of some agencies was the repetition of existing standards or requirements (FIPS and FIRMR) in the NARA regulation. To the extent that these requirements are repetitive, they should not be burdensome, but they are necessary to make this rule comprehensive and coherent.

One commenter suggested several additions to the regulations in regard to the Freedom of Information Act. These recommendations have not been adopted because they are outside the scope of this rule.

One commenter suggested a phase-in of the requirements, beginning with the most important new records systems. NARA believes this is inappropriate and impractical since the requirements are so interrelated. NARA recognizes, however, that it will take time to apply some of the maintenance requirements to existing records systems and endorses the concept of proceeding in priority order.

Section-by-Section Analysis

Section 1234.1 Scope of Part

In response to several comments, NARA has added a section of definitions, which should make clear what documentary materials are covered by the rule. Other records management terms are defined in 36 CFR 1220.14. Section 1234.1 was also revised to clarify the application of the regulation, particularly to optical disks. NARA does not agree with one recommendation to provide separate regulations for systems created on mainframe computers in agency computer centers and for documents created on personal computers in an office. NARA believes the more meaningful distinction is between "data files" and "text documents" as explained in §§ 1234.20 and 1234.22.

Section 1234.10 Agency Responsibilities

NARA adopted a suggested change in the introductory sentence of this section to recognize that agencies are already required to have a program for managing electronic records.

Section 1234.10 (a) and (b) (Assigning Responsibility for Program)

Five comments were made on these paragraphs. There was no consensus among the commenters. Two recommended that the responsibility for electronic records management should be assigned directly to the agency's existing records management office, while another observed that such a decision should be the agency's prerogative. NARA has revised these two sections to emphasize the importance of assigning overall responsibility and integrating the management of electronic records with related management programs.

Section 1234.10(c) (Program Directive)

NARA has revised this section as suggested by one commenter in order to emphasize incorporation of electronic records management into existing directives to keep from divorcing electronic records management from other records management. NARA has rejected a recommendation to add more detailed guidance about defining electronic records. NARA has added such a definition to this rule, and further guidance about applying that definition more properly belongs in a supplemental handbook, which NARA is now preparing.

Section 1234.10(d) (Records Management Participation in Approval of ADP Systems)

This section has been reworded to reflect the recommendations of several commenters to emphasize the importance of considering records management issues when designing new or enhanced electronic information systems. NARA has not added a suggested requirement for a Standard Form checklist to use when reviewing new systems. NARA believes that such a requirement would be too detailed and prescriptive.

Section 1234.10(e) (Training)

As recommended by one commenter, the word "appropriate" has been substituted for "all."

Section 1234.10(f) (Inventory of Systems)

Five commenters raised concerns about the excessive detail of this provision. NARA has substituted more general requirements for system-level documentation and added a general requirement to maintain inventories in § 1234.10(g). NARA has used the word "maintaining" to indicate that agency compliance with other inventorying requirements, such as those imposed by GSA and OMB, will satisfy this requirement. More detailed advice about inventorying electronic records systems will be provided in a forthcoming NARA handbook.

Section 1234.10(g) (Specify Location, Manner, and Media in Which Records Are To Be Maintained)

One commenter questioned the need for references to both operational and archival requirements. NARA has specified both because operational requirements and archival requirements may differ as, for example, in the case of storage media. Agencies must specify procedures for satisfying archival requirements, pursuant to the guidance in this rule, in order to fulfill their statutory responsibility to preserve adequate and proper documentation (44 USC 3101).

Section 1234.10(h) (Secure NARA Approval of Schedules)

NARA rejected a recommendation to add specific time limits for NARA review of records schedules because it does not believe that such procedural details are appropriate for a rule. Also, because of the enormous variety of schedules submitted to NARA, arbitrary time limits for review are not realistic.

Section 1234.10(i) (Issue Internal Procedures for System Documentation)

One commenter found this paragraph confusing when taken in conjunction with §§ 1234.20 and 1234.22, and another found it too detailed. NARA has rewritten this section to emphasize the distinction between these general, system-level documentation requirements and the more specific documentation requirements in § 1234.20 and § 1234.22. As rewritten, this section has been redesignated as § 1234.10(f).

Section 1234.10(j) (Contractor Records)

This section has been rewritten to clarify the primary emphasis that agencies should maintain control over electronic records created or maintained by contractors. One commenter's questions about the use of data deliverable and rights-in-data clauses are addressed in NARA Bulletin 86–8, Data Created or Maintained for the Government by Contractors, and will be addressed in a forthcoming NARA handbook. The question of another commenter is answered by § 1234.30, which specifically requires the scheduling of information in electronic records systems operated for the Government by a contractor.

Section 1234.10(k) (Compliance with Governmentwide Policies)

NARA adopted a suggestion to add GAO to the list of agencies issuing Governmentwide directives in the records management area.

Section 1234.20 Creation and Use of Data Files

NARA has retitled this section and § 1234.22, and defined the terms used, in order to clarify the intended distinction between data files created as part of an electronic information system and word processing documents. NARA believes that the minimal requirements for technical documentation in § 1234.20(b) are not too detailed and are essential for all electronic records systems, regardless of their disposition. NARA believes that these requirements apply to information such as recorded voice messages, if they are part of an electronic records system.

Section 1234.22 Creation and Use of Text Documents

The new definitions in § 1234.2 should clarify any questions about the applicability of this section. Two commenters questioned the meaning of paragraph (a)(3) requiring a standard interchange format. This requirement is meant to apply only to records systems that maintain the official file copy of documents on electronic media and only when the agency determines that it needs to exchange documents between different systems within the agency. NARA is not prescribing the use of any specific standard interchange format. NARA does not agree with the single commenter who felt that the procedures in paragraphs (a)(3) and (b) are too detailed.

Section 1234.24 Judicial Use of Electronic Records

Two commenters questioned the relevance of paragraph (c) concerning vital records. NARA agrees that it is not necessary to include vital records procedures in this rule since they are already summarized in 36 CFR part 1236.

Section 1234.26 Security of Electronic Records

One commenter recommended adding a new paragraph related to electronic signatures. NARA believes it is premature to issue regulatory guidance on this subject at the present time. NARA has revised paragraph (d) as recommended by one commentator to substitute the phrase "Minimizes the risk of" for "Prevents".

Section 1234.28 General

Several commenters questioned whether the maintenance requirements of paragraphs (f), (g), and (h) should apply to unscheduled records as well as permanent ones. NARA believes this is necessary because all unscheduled records are potentially permanent. While these requirements do not apply to temporary records, NARA agrees with one commenter that it would be advisable to apply these standards to temporary records with longer retention periods as well as permanent or unscheduled records.

Section 1234.28(a) (Selection of Media)

NARA has added a new subparagraph (3) as a reminder to agencies that they should exercise care to keep electronic records separate from nonrecord material.

Section 1234.28(b) (Factors in Selecting Storage Medium)

One commenter asked why the requirements should be imposed if the records have been scheduled as disposable. NARA believes that consideration of these factors will improve the effectiveness of all information systems. Also, paragraph (b)(1) states specifically that the authorized disposition is one factor to consider. NARA has incorporated modified language suggested by one commenter for paragraph (b)(6).

Section 1234.28(c) (Ban on Floppy Disks for Long-term Storage of Permanent Records)

Four commenters objected to the ban on floppy disks. NARA continues to believe that this is a prudent and flexible precaution but has modified the language to give agencies more discretion. While there are disagreements about the longevity of floppy disks, experience shows that careless handling is more likely with this medium than with magnetic tapes. If agencies schedule their electronic records promptly, this warning will apply to only a small percentage of electronic records. This paragraph also

does not prohibit the temporary storage of permanent records on floppy disks. Finally, it permits the use of floppy disks for reference purposes if one copy is stored on magnetic tape, which is the recommended storage medium for permanent records.

Section 1234.28(f) (Back Up Records Maintained at a Separate Location)

NARA has revised this paragraph to clarify that it requires storage of backup copies of permanent and unscheduled records in a storage area separate from the working copies, but not necessarily off-site storage. NARA provides off-site storage, at its Federal records centers, for agencies that prefer off-site storage.

Section 1234.28(g) (Maintenance of Magnetic Computer Tape)

NARA has indicated clearly in every paragraph of this section that these requirements do not apply to records systems that have been approved by NARA as disposable. Nor do they apply to tapes retained by agencies after copies have been accessioned into the National Archives.

Section 1234.28(g)(1) (Testing Tapes)

One commenter disagreed with this requirement because most equipment automatically tests tape at the time of use. NARA does not believe that this paragraph would prevent agencies from testing tapes at the time of use. The comment that NIST does not have standards for error-free tape was based on a misreading of the paragraph.

Section 1234.28(g)(2) (Temperature/ Humidity Standards)

NARA does not agree with the comment that upper levels of temperature and humidity should be raised slightly. They are based on standards established by NIST and they apply to NARA's Federal records centers.

Section 1234.28(g)(4) (Read 3% Sample of Tapes)

NARA revised this paragraph as suggested by one commenter to ensure a statistically valid sample.

Section 1234.28(g)(5) (Recopy Records Onto New Tapes Before Present Tapes Are 10 Years Old)

One commenter noted that this requirement could be expensive for an agency. NARA agrees and, for that reason, encourages agencies to transfer permanent tapes to the National Archives before they are ten years old.

Section 1234.28(g)(6) (External Labels)

Several commenters noted the difficulty, if not impossibility, of including all the required information on external labels. NARA has revised this paragraph to limit the information on the label to that required for unique identification of the reel. The additional information needed for permanent and unscheduled tapes, which may be included in the system's technical documentation, may be maintained separately by the agency. NARA agreed with the recommendation of one commenter to add the element of security classification to this paragraph and to § 1234.28(h)(2).

Section 1234.30 (Retention of Electronic Records)

One commenter suggested that paragraph (b) might also need to contain a requirement to transfer a copy of the software and operating system in order for the records to be read at the Archives. NARA believes it is unnecessary to add such language to this rule because the transfer of the software and operating system, whenever necessary, will be specified by NARA when approving a records schedule.

Section 1234.32 (Destruction of Electronic Records)

NARA adopted the suggestion of one commenter to include a reference to the General Records Schedules in the introductory paragraph.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1234

Archives and records.

For the reasons set forth in the preamble, part 1234 of chapter XII of title 36 of the Code of Federal Regulations is revised to read as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart A—General

Sec.

1234.1 Scope of part.
1234.2 Definitions.

Subpart B—Program Requirements

1234.10 Agency responsibilities.

Subpart C—Standards for the Creation, Preservation, and Disposition of Electronic Records

1234.20 Creation and use of data files.
1234.22 Creation and use of text documents.
1234.24 Judicial use of electronic records.
1234.26 Security of electronic records.
1234.28 Selection and maintenance of electronic records storage media.
1234.30 Retention of electronic records.
1234.32 Destruction of electronic records.

Authority: 44 U.S.C. 2904, 3101, 3102, and 3105.

Subpart A—General

§ 1234.1 Scope of part.

This part establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records. Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks; and optical disks. Unless otherwise noted, these requirements apply to all electronic records systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media, in network or stand-alone configurations. Guidance on electronic records management and related issues may be obtained from the National Archives and Records Administration, Agency Services Division (NIA), Washington, DC 20408 and the General Service Administration, Office of Innovative Office Systems (KO), Washington, DC 20405.

§ 1234.2 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1234—

Data base means a set of data, consisting of at least one data file, that is sufficient for a given purpose.

Data base management system means a software system used to access and retrieve data stored in a data base.

Data file means related numeric, textual, or graphic information that is organized in a strictly prescribed form and format.

Electronic record means any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record in 44 USC 3301.

Electronic records system means any information system that produces, manipulates, or stores Federal records by using a computer.

Information system has the meaning given to it by the Office of Management and Budget in Circular No. A–130: "the organized collection, processing, transmission, and dissemination of information in accordance with defined

procedures, whether automated or manual."

Text documents means narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.

Subpart B—Program Requirements

§ 1234.10 Agency responsibilities.

The head of each Federal agency shall ensure that the management of electronic records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for the management of all records created, received, maintained, used, or stored on electronic media; and notifying the National Archives and Records Administration, Office of Records Administration (NI), Washington, DC 20408 and the General Services Administration, Regulations Branch (KMPR), Washington, DC 20405, of the name and title of the person assigned the responsibility.

(b) Integrating the management of electronic records with other records and information resources management programs of the agency.

(c) Incorporating electronic records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management requirements, including recordkeeping requirements and disposition, before approving new electronic records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for users of electronic records systems in the operation, care, and handling of the equipment, software, and media used in the system.

(f) Developing and maintaining up-to-date documentation about all electronic records systems that is adequate to: Specify all technical characteristics necessary for reading or processing the records; identify all defined inputs and outputs of the system; define the contents of the files and records; determine restrictions on access and use; understand the purpose(s) and function(s) of the system; describe update cycles or conditions and rules for adding information to the system, changing information in it, or deleting information; and ensure the timely, authorized disposition of the records.

(g) Specifying the location, manner, and media in which electronic records will be maintained to meet operational and archival requirements, and maintaining inventories of electronic records systems to facilitate disposition.

(h) Developing and securing NARA approval of records disposition schedules, and ensuring implementation of their provisions.

(i) Specifying the methods of implementing controls over national security-classified sensitive proprietary, and Privacy Act records stored and used electronically.

(j) Establishing procedures to ensure that the requirements of this part are applied to those electronic records that are created or maintained by contractors.

(k) Ensuring compliance with applicable Governmentwide policies, procedures, and standards such as those issued by the Office of Management and Budget, the General Accounting Office, the General Services Administration, the National Archives and Records Administration, and the National Institute of Standards and Technology.

(l) Reviewing electronic records systems periodically for conformance to established agency procedures, standards, and policies as part of the periodic reviews required by 44 U.S.C. 3506. The review should determine if the records have been properly identified and described, and whether the schedule descriptions and retention periods reflect the current informational content and use. If not, or if substantive changes have been made in the structure, design, codes, purposes, or uses of the system, submit an SF 115, Request for Records Disposition Authority, to NARA.

Subpart C—Standards for the Creation, Preservation, and Disposition of Electronic Records

§ 1234.20 Creation and use of data files.

(a) For electronic records systems that produce, use, or store data files, disposition instructions for the data shall be incorporated into the system's design.

(b) Agencies shall maintain adequate and up-to-date technical documentation for each electronic records system that produces, uses, or stores data files. Minimum documentation required is a narrative description of the system; physical and technical characteristics of the records, including a record layout that describes each field including its name, size, starting or relative position, and a description of the form of the data (such as alphabetic, zoned decimal, packed decimal, or numeric), or a data dictionary or the equivalent information associated with a data base management system including a description of the relationship between data elements in data bases; and any other technical information needed to read or process the records.

§ 1234.22 Creation and use of text documents.

(a) Electronic records systems that maintain the official file copy of text documents on elecronic media shall meet the following minimum requirements:

(1) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;

(2) Provide an appropriate level of security to ensure integrity of the documents;

(3) Provide a standard interchange format when necessary to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and

(4) Provide for the disposition of the documents including, when necessary, the requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) Before a document is created electronically on electronic records systems that will maintain the official file copy on electronic media, each document shall be identified sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.

§ 1234.24 Judicial use of electronic records.

Electronic records may be admitted in evidence to Federal courts for use in court proceedings (Federal Rules of Evidence 803(8)) if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it. Agencies should implement the following procedures to enhance the legal admissibility of electronic records.

(a) Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) Substantiate that security procedures prevent unauthorized addition, modification or deletion of a record and ensure system protection against such problems as power interruptions.

(c) Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage medium, and the NARA-approved disposition of all records.

(d) Coordinate all of the above with legal counsel and senior IRM and records management staff.

§ 1234.26 Security of electronic records.

Agencies shall implement and maintain an effective records security program that incorporates the following:

(a) Ensures that only authorized personnel have access to electronic records.

(b) Provides for backup and recovery of records to protect against information loss.

(c) Ensures that appropriate agency personnel are trained to safeguard sensitive or classified electronic records.

(d) Minimizes the risk of unauthorized alteration or erasure of electronic records.

(e) Ensures that electronic records security is included in computer systems security plans prepared pursuant to the Computer Security Act of 1987 (40 USC 759 note).

§ 1234.28 Selection and maintenance of electronic records storage media.

(a) Agencies shall select appropriate media and systems for storing agency records throughout their life, which meet the following requirements:

(1) Permit easy retrieval in a timely fashion;

(2) Facilitate distinction between record and nonrecord material;

(3) Retain the records in a usable format until their authorized disposition date; and

(4) When appropriate, meet requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) The following factors shall be considered before selecting a storage medium or converting from one medium to another:

(1) The authorized life of the records, as determined during the scheduling process;

(2) The maintenance necessary to retain the records;

(3) The cost of storing and retrieving the records;

(4) The records density;

(5) The access time to retrieve stored records;

(6) The portability of the medium (that is, selecting a medium that will run on equipment offered by multiple manufacturers) and the ability to transfer the information from one medium to another (such as from optical disk to magnetic tape); and

(7) Whether the medium meets current applicable Federal Information Processing Standards.

(c) Agencies should avoid the use of floppy disks for the exclusive long-term storage of permanent or unscheduled electronic records.

(d) Agencies shall ensure that all authorized users can identify and retrieve information stored on diskettes, removable disks, or tapes by establishing or adopting procedures for external labeling.

(e) Agencies shall ensure that information is not lost because of changing technology or deterioration by converting storage media to provide compatibility with the agency's current hardware and software. Before conversion to a different medium, agencies must determine that the authorized disposition of the electronic records can be implemented after conversion.

(f) Agencies shall back up electronic records on a regular basis to safeguard against the loss of information due to equipment malfunctions or human error. Duplicate copies of permanent or unscheduled records shall be maintained in storage areas separate from the location of the records that have been copied.

(g) *Maintenance of magnetic computer tape.*—(1) Agencies shall test magnetic computer tapes no more than 6 months prior to using them to store electronic records that are unscheduled or scheduled for permanent retention. This test should verify that the tape is free of permanent errors and in compliance with National Institute of Standards and Technology or industry standards.

(2) Agencies shall maintain the storage and test areas for computer magnetic tapes containing permanent and unscheduled records at the following temperatures and relative humidities:

Constant temperature—62 to 68 °F.
Constant relative humidity—35% to 45%

(3) Agencies shall rewind under controlled tension all tapes containing unscheduled and permanent records every 3½ years.

(4) Agencies shall annually read a statistical sample of all reels of magnetic computer tape containing permanent and unscheduled records to identify any loss of data and to discover and correct the causes of data loss. In tape libraries with 1800 or fewer reels, a 20% sample or a sample size of 50 reels, whichever is larger, should be read. In tape libraries with more than 1800 reels, a sample of 384 reels should be read. Tapes with 10 or more errors should be replaced and, when possible, lost data shall be restored. All other tapes which might have been affected by the same cause (i.e., poor quality tape, high usage, poor environment, improper handling) shall be read and corrected as appropriate.

(5) Agencies shall copy permanent or unscheduled data on magnetic tapes before the tapes are 10 years old onto tested and verified new tapes.

(6) External labels (or the equivalent automated tape management system) for magnetic tapes used to store permanent or unscheduled electronic records shall provide unique identification for each reel, including the name of the organizational unit responsible for the data, system title, and security classification, if applicable. Additionally, the following information shall be maintained for (but not necessarily attached to) each reel used to store permanent or unscheduled electronic records: file title(s); dates of creation; dates of coverage; the recording density; type of internal labels; volume serial number, if applicable; number of tracks; character code/software dependency; information about block size; and reel sequence number, if the file is part of a multi-reel set. For numeric data files, include record format and logical record length, if applicable; data set name(s) and sequence, if applicable; and number of records for each data set.

(7) Agencies shall prohibit smoking and eating in magnetic computer tape storage libraries and test or evaluation areas that contain permanent or unscheduled records.

(h) Maintenance of direct access storage media.

(1) Agencies shall issue written procedures for the care and handling of direct access storage media which draw upon the recommendations of the manufacturers.

(2) External labels for diskettes or removable disks used when processing or temporarily storing permanent or unscheduled records shall include the following information: name of the organizational unit responsible for the records, descriptive title of the contents, dates of creation, security classification, if applicable, and identification of the software and hardware used.

§ 1234.30 Retention of electronic records.

Agencies shall establish policies and procedures to ensure that electronic records and their documentation are retained as long as needed by the Government. These retention procedures shall include provisions for:

(a) Scheduling the disposition of all electronic records, as well as related documentation and indexes, by applying General Records Schedules (particularly GRS 20 or GRS 23) as appropriate or submitting an SF 115, Request for Records Disposition Authority, to NARA (see part 1228 of this chapter). The information in electronic records systems, including those operated for the Government by a contractor, shall be scheduled as soon as possible but no later than one year after implementation of the system.

(b) Transferring a copy of the electronic records and any related documentation and indexes to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in § 1228.188 of this chapter. Transfer may take place at an earlier date if convenient for both the agency and the National Archives and Records Administration.

(c) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle (see § 1234.28).

§ 1234.32 Destruction of electronic records.

Electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules. At a minimum each agency shall ensure that:

(a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information.

(b) Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information are not reused if the previously recorded information can be compromised by reuse in any way.

Dated: April 2, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-10654 Filed 5-7-90; 8:45 am]

BILLING CODE 7515-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-45

[FIRMR Amdt. 18]

Electronic Records Management

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes Governmentwide policies and procedures for the management of electronic records. Specifically, agency responsibilities for the creation, maintenance, use and disposition of electronic records are prescribed. The intent is to increase economy and efficiency in the management of electronic records. Identical regulations will be issued simultaneously by the National Archives and Records Administration and published in the Code of Federal Regulations (CFR) at 36 CFR chapter XII, part 1234.

EFFECTIVE DATE: This rule is effective June 7, 1990, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Regulations Branch, Office of Information Resources Management, telephone (202) 501-3194 or FTS, 241-3194.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking regarding this section was published in the **Federal Register** on December 5, 1988 (53 FR 48947). All comments have been considered. The General Services Administration has determined that this is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is an Governmentwide management regulation that will have little or no net cost effect on society. It is therefore certified that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201-45

Archives and records, Government records management, Information resources activities.

Title 41 Part 201-45 of the Code of Federal Regulations is amended as follows:

PART 201-45—MANAGEMENT OF RECORDS

1. The authority citation for part 201-45 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Subpart 201-45.2 is added to read as follows:

Subpart 201-45.2—Electronic Records Management

201-45.200 Scope of subpart.
201-45.201 Definitions.
201-45.202 Agency responsibilities.
201-45.203 Creation and use of data files.
201-45.204 Creation and use of text documents.
201-45.205 Judicial use of electronic records.
201-45.206 Security of electronic records.
201-45.207 Selection and maintenance of electronic records storage media.
201-45.208 Retention of electronic records.
201-45.209 Destruction of electronic records.

Subpart 201-45.2—Electronic Records Management

§ 201-45.200 Scope of subpart.

This subpart establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records. Electronic records include numeric, graphic and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic records systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media, in network or stand-alone configurations. Guidance on electronic records management and related issues may be obtained from the General Services Administration, Office of Innovative Office Systems (KO), Washington, DC 20405 and the National Archives and Records Administration, Agency Services Division (NIA), Washington, DC 20408.

§ 201-45.201 Definitions.

Basic records management terms are defined in 41 CFR 201-2.001. As used in part 201-45.2—"Data base" means a set of data, consisting of at least one data file, that is sufficient for a given purpose.

Data base management system means a software system used to access and retrieve data stored in a data base.

Data file means related numeric, textual, or graphic information that is organized in a strictly form and format.

Electronic record means any information that is recorded in a form that only a computer can process and

that satisfies the definition of a Federal record in 44 U.S.C. 3301.

Electronic records system means any information system that produces, manipulates, or stores Federal records by using a computer.

Information system has the meaning given to it by the Office of Management and Budget in Circular No. A–130: "the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual."

Text documents means narrative or tabular documents, such as letters memorandums, and reports, in loosely prescribed form and format.

§ 201–45.202 Agency responsibilities.

The head of each Federal agency shall ensure that the management of electronic records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for the management of all records created, received, maintained, used, or stored on electronic media; and notifying the General Services Administration, Regulations, Branch (KMPR), Washington, DC 20405 and the National Archives and Records Administration, Office of Records Administration (NI), Washington, DC 20408, of the name and title of the person assigned the responsibility.

(b) Integrating the management of electronic records with other records and information resources management programs of the agency.

(c) Incorporating electronic records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management, requirements, including recordkeeping requirements and disposition, before approving new electronic records systems or enhancement to existing systems.

(e) Ensuring that adequate training is provided for users of electronic records systems in the operation, care, and handling of the equipment, software, and media used in the system.

(f) Developing and maintaining up-to-date documentation about all electronic records systems that is adequate to: specify all technical characteristics necessary for reading or processing the records; identify all defined inputs and outputs of the system; define the contents of the files and records; determine restrictions on access and use; understand the purpose(s) and function(s) of the system; describe update cycles or conditions and rules for adding information to the system, changing information in it, or deleting information; and ensure the timely, authorized disposition of the records.

(g) Specifying the location, manner, and media in which electronic records will be maintained to meet operational and archival requirements, and maintaining inventories of electronic records systems to facilitate disposition.

(h) Developing and securing NARA approval of records disposition schedules, and ensuring implementation of their provisions.

(i) Specifying the methods of implementing controls over national security-classified, sensitive, proprietary, and Privacy Act records stored and used electronically.

(j) Establishing procedures to ensure that the requirements of this part are applied to those electronic records that are created or maintained by contractors.

(k) Ensuring compliance with applicable Government-wide policies, procedures, and standards such as those issued by the Office of Management and Budget, the General Accounting Office, the General Services Administration, the National Archives and Records Administration, and the National Institute of Standards and Technology.

(l) Reviewing electronic records systems periodically for conformance to established agency procedures, standards, and policies as part of the periodic reviews required by 44 U.S.C. 3506. The review should determine if the records have been properly identified and described, and whether the schedule descriptions and retention periods reflect the current informational content and use. If not, or if substantive changes have been made in the structure, design, codes, purposes, or uses of the system, submit an SF 115, Request for Records Disposition Authority, to NARA.

201–45.203 Creation and use of data files.

(a) For electronic records systems that produce, use, or store data files, disposition instructions for the data shall be incorporated into the system's design.

(b) Agencies shall maintain adequate and up-to-date technical documentation for each electronic records system that produces, uses, or stores data files. Minimum documentation required is a narrative description of the system; physical and technical characteristics of the records, including a record layout that describes each field including its name, size, starting or relative position, and a description of the form of the data (such as alphabetic, zoned decimal, packed decimal, or numeric), or a data dictionary or the equivalent information associated with a data base management system including a description of the relationship between data elements in data bases; and any other technical information needed to read or process the records.

201–45.204 Creation and use of text documents.

(a) Electronic records systems that maintain the official file copy of text documents on electronic media shall meet the following minimum requirements:

(1) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;

(2) Provide an appropriate level of security to ensure integrity of the documents;

(3) Provide a standard interchange format when necessary to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and

(4) Provide for the disposition of the documents including when necessary, the requirements for transferring permanent records to NARA (see 36 CFR 1228.188).

(b) Before a document is created electronically on electronic records systems that will maintain the official file copy on electronic media, each document shall be identified sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained on such systems can be correlated with related records on paper, microform, or other media.

201–45.205 Judicial use of electronic records.

Electronic records may be admitted in evidence to Federal courts for use in court proceedings (Federal Rules of Evidence 803(8)) if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it. Agencies should implement the following procedures to enhance the legal admissibility of electronic records.

(a) Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) Substantiate that security procedures prevent unauthorized addition, modification, or deletion of a record and ensure system protection against such problems as power interruptions.

(c) Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage media, and the NARA-approved disposition of all records.

(d) Coordinate all of the above with legal counsel and senior IRM and records management staff.

201-45.206 Security of electronic records.

Agencies shall implement and maintain an effective records security program which incorporates the following:

(a) Ensures that only authorized personnel have access to electronic records.

(b) Provides for back up and recovery of records to protect against information loss.

(c) Ensures that appropriate agency personnel are trained to safeguard sensitive or classified electronic records.

(d) Minimizes the risk of unauthorized alteration or erasure of electronic records.

(e) Ensures that electronic records security is included in computer systems security plans prepared pursuant to the Computer Security Act of 1987 (40 U.S.C. 759).

§ 201-45.207 Selection and maintenance of electronic records storage media.

(a) Agencies shall select appropriate media and systems for storing agency records throughout their life cycle, which meet the following requirements:

(1) Permit easy retrieval in a timely fashion;

(2) Facilitate distinction between record and nonrecord material;

(3) Retain the records in a usable format until their authorized disposition date; and

(4) When appropriate, meet requirements for transferring permanent records to NARA (see 36 CFR 1228.188).

(b) The following factors shall be considered before selecting a storage medium or converting from one medium to another:

(1) The authorized life of the records, as determined during the scheduling process;

(2) The maintenance necessary to retain the records;

(3) The cost of storing and retrieving the records;

(4) The records density;

(5) The access time to retrieve stored records;

(6) The portability of the medium (that is, selecting a medium that will run on equipment offered by multiple manufacturers) and the ability to transfer the information from one medium to another (such as from optical disk to magnetic tape); and

(7) Whether the medium meets the current applicable Federal Information Processing Standards.

(c) Agencies should avoid the use of floppy disks for the exclusive long-term storage of permanent or unscheduled electronic records.

(d) Agencies shall ensure that all authorized users can identify and retrieve the information stored on diskettes, removable disks, or tapes by establishing or adopting procedures for external labeling.

(e) Agencies shall ensure that information is not lost because of changing technology or deterioration by converting storage media to provide compatibility with the agency's current hardware and software. Before conversion to a different medium, agencies must determine that the authorized disposition of the electronic records can be implemented after conversion.

(f) Agencies shall back up electronic records on a regular basis to safeguard against the loss of information due to equipment malfunctions or human error. Duplicate copies of permanent or unscheduled records shall be maintained in storage areas separate from the location of the records that have been copied.

(g) Maintenance of magnetic computer tape.

(1) Agencies shall test magnetic computer tapes no more than 6 months prior to using them to store electronic records that are unscheduled or scheduled for permanent retention. This test should verify that the tape is free of permanent errors and in compliance with National Institute of Standards and Technology or industry standards.

(2) Agencies shall maintain the storage and test areas for computer magnetic tapes containing permanent and unscheduled records at the following temperatures and relative humidities:

Constant temperature—62 to 68 degrees F.
Constant relative humidity—35% to 45%

(3) Agencies shall rewind under controlled tension all tapes containing unscheduled and permanent records every 3½ years.

(4) Agencies shall annually read a statistical sample of all reels of magnetic computer tape containing permanent and unscheduled records to identify any loss of data and to discover and correct the causes of data loss. In tape libraries with 1800 or fewer reels, a 20% sample or a sample size of 50 reels, whichever is larger, should be read. In tape libraries with more than 1800 reels, a sample of 384 reels should be read. Tapes with 10 or more errors shall be replaced and, when possible, lost data shall be restored. All other tapes which might have been affected by the same cause (i.e., poor quality tape, high usage, poor environment, improper handling) shall be read and corrected as appropriate.

(5) Agencies shall copy permanent or unscheduled data on magnetic tapes before the tapes are 10 years old onto tested and verified new tapes.

(6) External labels (or the equivalent automated tape management system) for magnetic tapes used to store permanent or unscheduled electronic records shall provide unique identification for each reel, including the name of the organizational unit responsible for the data, system title, and security classification, if applicable. Additionally, the following information shall be maintained for (but not necessarily attached to) each reel used to store permanent or unscheduled electronic records: file title(s); dates of creation; dates of coverage; the recording density; type of internal labels; volume serial number, if applicable; number of tracks; character code/software dependency; information about block size; and reel sequence number, if the file is part of a multi-reel set. For numeric data files, include record format and logical record length, if applicable; data set name(s) and sequence, if applicable; and number of records for each data set.

(7) Agencies shall prohibit smoking and eating in magnetic computer tape storage libraries and test or evaluation areas that contain permanent or unscheduled records.

(h) *Maintenance of direct access storage devices.* (1) Agencies shall issue written procedures for the care and handling of direct access storage devices which draw upon the recommendations of the manufacturers.

(2) External labels for diskettes or removable disks used when processing or temporarily storing permanent or unscheduled records shall include the following information: name of the organizational unit responsible for the records; descriptive title of the contents; dates of creation; security classification,

if applicable; and identification of the software and hardware used.

§ 201-45.208 Retention of electronic records.

Agencies shall establish policies and procedures to ensure that electronic records and their documentation are retained as long as needed by the Government. These retention procedures shall include provisions for:

(a) Scheduling the disposition of all electronic records, as well as related documentation and indexes, by applying General Records Schedules (particularly GRS 20 or 23) as appropriate or submitting an SF 115, Request for Records Disposition Authority, to NARA (see 36 CFR 1228). The information in electronic records systems, including those operated for the Government by a contractor, shall be scheduled as soon as possible but no later than one year after implementation of the system.

(b) Transferring a copy of the electronic records and any related documentation and indexes to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in 36 CFR 1228.188. Transfer may take place at an earlier date if convenient for both the agency and the National Archives and Records Administration.

(c) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle (see 201-45.206).

§ 201-45.209 Destruction of electronic records.

Electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules. At a minimum each agency shall ensure that:

(a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information.

(b) Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information are not reused if the previously recorded information can be compromised by reuse in any way.

Dated: March 21, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 90-10516 Filed 5-7-90; 8:45 am]

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-12]
RIN 2120-AD07

Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Tampa, FL. The TCA will consist of airspace from the surface or higher within a 25-nautical mile radius of the Tampa International Airport up to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate aircraft in the terminal airspace around the Tampa International Airport. Tampa International Airport is currently served by an Airport Radar Service Area (ARSA) which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 utc, September 20, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an exensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

Tampa International Airport qualifies for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 27 TCA's. The FAA is proposing to take action to modify or implement the application of these proven safety techniques on more airports so as to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA established by this amendment is being adopted after discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration established in this final rule has been developed through substantial public participation. Initially, informal airspace meetings were held in St. Petersburg, on August 24, and in Sarasota, on August 25, 1988, to allow local aviation interests and airspace users an opportunity to provide input for the design of the proposed TCA. In addition, the Florida Airspace Planning Utilization Committee (FAPUC) appointed a special task group to make recommendations on designing a TCA to meet the needs of the flying community while providing the greatest safety. Technical assistance and support were provided by Tampa ATC personnel.

After those initial meetings and further coordination with FAPUC representatives, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on October 17, 1989 (54 FR 42694). Fourteen comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

The FAA received fourteen comments pertaining to the TCA proposal. All comments were considered fully before developing the final design contained in this rule. The FAA believes that the final TCA design best meets ATC and user requirements and promotes the safe and efficient use of airspace.

A Sunshine Flying Club member suggested that a special type of chart should be developed for the TCA's in the Central Florida area.

The FAA has developed a single chart that depicts both the Orlando and Tampa TCA's because of their proximity to each other. The first chart will show Tampa on one side and Orlando on the other side. The later chart will depict both TCA's on one side of the chart.

The Board of County Commissioners of Pinellas County, FL, recommended modifying Area C to provide a floor of 4,000 feet MSL in the Pinellas County area, and modifying Area B to provide a floor 2,100 feet MSL in the vicinity of the St. Petersburg-Clearwater International Airport Traffic Area, extended to include arrival routes from the north.

The FAA has decided not to adopt the 4,000-foot MSL floor in the Pinellas County area because those altitudes are not used for ARSA separation and radar vectoring: therefore, we found no justification for the higher altitude. Also, the altitude requested for 2,100 feet MSL in Area B was not adopted because the intent of the TCA to increase air safety would be compromised by permitting operations above 1,200 feet AGL so close to Tampa's arrival/departure area.

The Board of County Commissioners also recommended establishing a VFR Corridor in the vicinity of V-579 between St. Petersburg and Sarasota.

During discussions at the public meetings, this recommendation was discussed by the attendees. The user group members noted that this area was a military training area used by MacDill AFB for a considerable number of low

altitude, high speed operations in the vicinity of Skyway Bridge. The FAA has determined that a VFR corridor in that area would render military training flights less effective by requiring them to pass through a VFR corridor while en route to/from the Gulf of Mexico flight operations area.

The Tampa Bay Soaring Society, Inc., was concerned that the floor of 3,000 feet MSL will restrict their operations to 2,932 feet of airspace which makes it impossible to fly cross country. They recommended a 2-mile wide corridor along State Road 54; however, they would welcome a compromise proposal.

The FAA agrees with the Tampa Bay Soaring Society, Inc., and has incorporated a design change in the floor of the TCA to provide additional and adequate operational flexibility to meet their requirements. This design change includes extending a portion of Area D of the proposed Tampa TCA upward from a floor of 3,000 feet MSL to a floor of 6,000 feet MSL and moving the boundary east of Highway 54 to Interstate 75. This change was suggested in Tampa Bay Soaring Society's comment.

One commenter was concerned about the traffic pattern altitude at the Manatee Airport, and has submitted a number of signatures from the users in that area. The 1,200-foot MSL floor makes it impossible to operate VFR in that area.

The FAA manager of Tampa Tower will evaluate the traffic situation at the Manatee Airport, and will develop, if appropriate, a Letter of Agreement or a flight procedure to accommodate these operations.

Another commenter wrote that the Tampa TCA design is not bad, but it has some problems. He believes that there is no way for north/southbound aircraft to fly past the TCA without penetrating the TCA. He also admitted he lives in California and could be wrong in his assessment.

The FAA believes that the design of the TCA provides adequate references by which VFR pilots can operate north and southbound while remaining clear of the TCA. Furthermore, the FAA recommends that VFR pilots contact Tampa Approach Control and take advantage of the radar service for flight safety enhancement.

One commenter objected to the TCA layout because it infringes on V–7 in the vicinity of Lakeland. He contended that VFR operations require that all altitudes be available to maintain the required distances from clouds; V–7 in the vicinity of Lakeland, FL, does penetrate the outer edge of the Tampa TCA. However, the user group found that this area, which has a floor of 6,000 feet MSL, would not have a significant impact on VFR operations, because the majority of VFR operations are below 6,000 feet MSL.

The U.S. Coast Guard objected to the extra communication and coordination required to penetrate the TCA in an area where the floor is 1,200 feet MSL.

The FAA is aware of the required communications and coordination; however, these requirements are necessary to increase the capability of ATC to separate all aircraft in the terminal airspace around Tampa International Airport.

A pilot, based at the Hernando County Airport, was concerned about pilots who will attempt to avoid the TCA when taking off from a runway that is under the outer ring of the TCA.

The FAA notes that the floor of the TCA in that area is 6,000 feet MSL which we consider more than adequate for local operations at that airport. The FAA recommends that this pilot contact the manager of the Tampa Tower to resolve operational problems through a Letter of Agreement or a change in flight procedures, if appropriate.

The owner of a private airport located 5 miles northwest of Tampa International Airport stated that the establishment of a TCA could make operations at that airport impossible.

The FAA manager at Tampa International Airport is aware of the situation at this private airport; a procedure will be developed that will accommodate operations from that airport.

The Air Line Pilots Association was concerned about the lack of a VOR/DME located on the Tampa Airport. Much of the TCA is described by landmarks, therefore, ALPA contends that a NAVAID on the primary airport is an essential tool for the pilot to determine the location of the TCA.

The FAA is aware that a VOR/DME would be beneficial. However, we believe that the landmarks which describe the TCA are easily identifiable and will be adequate for the VFR pilot to determine the location of the TCA boundaries. Furthermore, existing NAVAID's to the south and east of Tampa International Airport provide an acceptable means by which pilots can identify their location in the area. The FAA notes that a VOR is planned for location on the Tampa Airport after establishment of the TCA.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Tampa International Airport, FL. In 1987, the total number of annual enplaned passengers at Tampa International Airport was 5,002,812 which exceeds the 3.5 million necessary for consideration as a TCA candidate. The total number of airport operations was 522,787 of which 177,999 were air carrier. Consequently, the FAA has determined that establishment of a TCA at Tampa International Airport is in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in that terminal area. Tampa International Airport is currently served by an ARSA which is rescinded concurrent with the establishment of this TCA. Sections 71.401(b) and 71.501 of Part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.6F dated January 2, 1990.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Anaylsis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order, therefore a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is

contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

This rule is intended to reduce the chance of midair collisions by increasing the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Tampa International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve visual flight rules (VFR) aircraft are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Cost-Benefit Analysis

Costs

The FAA estimates the total cost of implementing this rule will be $311,000 in 1987 dollars, discounted at 10 percent over 15 years. Approximately $107,000 (or 34 percent) of this cost will be incurred by the FAA primarily for additional equipment. Small general aviation (GA) aircraft operators will incur the remaining costs. They will be required to equip their aircraft with Mode C transponders sooner than they would be if the Tampa Terminal Control Area (TCA) had remained an airport radar service area (ARSA) under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). The Mode C rule was issued on June 17, 1988, and it will be implemented in two phases. Phase I, which became effective on July 1, 1989, requires a trasponder with Mode C at and above 10,000 feet MSL in the vicinity (30 nautical miles) of TCA-primary airports. There are currently 27 TCA's. Phase II will require a Mode C transponder in the airspace in the vicinity (10 nautical miles) of ARSA-primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a TCA-primary airport, within 10 nautical miles of a ARSA-primary airport, or within the controlled airspace of other designated airports that will also require Mode C transponders. The FAA assumes in this evaluation that all affected aircraft without Mode C transponders will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment are non-electrical and antique types. Costs to these types of aircraft operators will already been accounted for by the Mode C rule. As a result, aircraft operators affected by this rule will only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would have been required to in accordance with Phase II of the Mode C rule.

Benefits

This rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a reduced chance of midair collisions because of the increased positive control in Tampa airspace by establishing the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule would be the reduction in the probability of midair collisions resulting from converting the former ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance System (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be lower. Nevertheless, this rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

The improved safety benefit can be illustrated with the use of statistical models based on actual and projected critical near midair collision (CNMAC) incidents in lieu of actual midair collisions. (A critical near midair collision is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot; but, rather, it is due purely to chance.) Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of CNMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this rule.

Simple regression analyses were prepared for this evaulation which focus on CNMAC's and aircraft operations in 23 TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have 68 percent fewer CNMAC's per year, on average, than ARSA's. While there is no demonstrated relationship between CNMAC's and actual midair collisions, this lower CNMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the Tampa TCA has remained an ARSA (and the recent Mode C and TCAS rules were not in effect), the Tampa terminal area would have been expected to experience 1.6 CNMAC's annually (or 24 CNMAC's over the next 15 years). Since, however, the former Tampa ARSA has become a TCA, this figure could reduce to 0.5 CNMAC's annually (or 7 CNMAC's over the next 15 years). Thus, over the next 15 years, this rule could result in the reduction of 17 (24–7) CNMAC's. However, it is important to note that many of these potential CNMAC's will not materialize as predicted primarily because of the Mode C rules and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5-mile "shelf") of an ARSA-primary airport must be equipped with a Mode C transponder by December 30, 1990. Phase I of the Mode C rule requires, as of July 1, 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of creating a TCA in March 1990 at Tampa is that the safety enhancements of the Mode C (and TCAS) requirements will occur approximately one year earlier than they otherwise would without this rule. A second safety benefit will be in terms of the reduced chance of midair collisions as a result of expanding the lateral boundaries of positive ATC, by 20 nautical miles, through the establishment of the Tampa TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C (and TCAS) rules. Since this rule essentially extends the effects of the Mode C rule, a large portion of its potential safety benefits are assumed to be part of the Mode C rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 for 10 years has been adjusted to a

15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these potential safety benefits are attributed to the TCAS rule. Thus, the potential safety benefits of this rule, and the Mode C and TCAS rules, are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this rule, Mode C transponder requirements will ease controller workload per aircraft being controlled because of the reduction in radio communications. The rule will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of controller workload, increased by separation requirements in the TCA, will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA. Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As a result of converting the former Tampa ARSA to a TCA, improved operational efficiency will accrue because of the availability of additional air traffic equipment. If the former Tampa ARSA had remained intact, such additional equipment would not be required. Therefore, potential benefits of improved operational efficiency, which is not considered to be quantifiable in monetary terms in this evaluation, will be attributed to this rule rather than either the Mode C rule or TCAS rule.

Comparison of Costs and Benefits

The total cost that is expected to accrue from implementation of this rule is estimated to be $311,000 (discounted, in 1987 dollars). Approximately 66 percent of this cost will fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs. They will have to acquire such avionics equipment approximately one year sooner than they otherwise would have under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $86 to $191 (discounted) under this rule. (The reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these cost estimates were derived.)

The potential benefits of this rule will be the reduced chance of midair collisions as a result of converting the former Tampa ARSA to a TCA. The FAA believes that the risk of such collisions will be substantially reduced. An FAA analysis prepared for this evaluation has shown that critical near midair collisions (CNMAC's) occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's will continue to experience reduced CNMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the low cost of compliance relative to the reduction in the likelihood of midair collisions as well as improved operational efficiency in the Tampa terminal area, the FAA believes that this rule is cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft. Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annal FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes 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.

International Trade Impact Assessment

This rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation 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, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. § 71.401(b) is amended as follows:

Tampa, FL [New]

Primary Airport
Tampa International Airport (lat. 27°58'31" N., long. 82°32'00" W.)
Tampa International Airport
(LOC/DME) Antenna (lat. 27°57'41" N., long. 82°31'45" W.)
(ASR) (lat. 27°59'15" N., long. 82°32'40" W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by an area beginning at lat. 27°54'29" N., long. 82°30'58" W., then clockwise along the 5-mile arc of the Tampa ASR to lat. 27°57'43" N., long. 82°27'18" W., to the point of beginning.

Area B. That airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL beginning at the Anna Maria Island, FL, shoreline and the Tampa ASR 30-mile arc, north along the shoreline to lat. 27°40'42" N., long. 82°44'21" W.; to lat. 27°44'25" N., long. 82°40'36" W. (the end of the Skyway Bridge), north along the shoreline to the 10-mile arc of the Tampa ASR clockwise to U.S. Highway 301, south along U.S. Highway 301 to Interstate 75, then south along Interstate 75 to the 10-mile arc of the Sarasota, FL, ARSA then clockwise along the Sarasota ARSA 10-mile arc to the 30-mile arc of the Tampa ASR clockwise along the Tampa ASR 30-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL bounded by a line beginning at the shoreline due west of and to the intersection of Highway 19 and Highway 52, at Hudson, FL, east along Highway 52 to Interstate 75, south along the eastern edge of Interstate 75 to Highway 54, east along Highway 54 to Highway 39–301 at Zephyrhills, FL, south on Highway 39 to Highway 60, west on Highway 60 to lat. 27°56'15" N., long. 82°11'00" W., south to and along the railroad to Parrish, FL, then southwest along Highway 301 to the 10-mile DME arc of the Sarasota, FL, ARSA then counterclockwise along the Sarasota ARSA 10-mile DME arc to Interstate 75, north along Interstate 75 to the 10-mile DME arc of the Tampa ASR then counterclockwise along the Tampa ASR 10-mile DME arc to the shoreline, then along the shoreline to lat. 27°42'25" N., long. 82°40'42" W.; to lat. 27°40'42" N., long. 82°44'21" W.; then north along the shoreline to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Anna Maria Island, FL, shoreline and the 30-mile DME arc of the Tampa ASR, clockwise along the Tampa 30-mile DME arc to long. 83°00'00" W., then north along long. 83°00'00" W., to the 30-mile DME arc of the Tampa ASR, then clockwise along the Tampa ASR 30-mile DME arc to Dade City, FL, then south on Highway 39–301 to Highway 54 at Zephyrhills, FL, then west on Highway 54 to Interstate 75, north on the eastern edge of Interstate 75 to Highway 52, then west on Highway 52 to the intersection on Highway 52 and Highway 19 at Hudson, FL, then due west to and south along the shoreline to lat. 27°40'42" N., long. 82°44'21" W., south along the shoreline to the point of beginning; and that airspace beginning at Highway 301 and the Sarasota, FL, ARSA 10-mile DME arc, then northeast along Highway 301 to Parrish, FL, then northeast along the railroad to lat. 27°56'15" N., long. 82°11'00" W., then east along Highway 60 to the intersection of Highway 60 and Highway 39, then south along Highway 39 to the 30-mile DME arc of the Tampa ASR, clockwise along the Tampa ASR 30-mile DME arc to Sarasota, FL, 10-mile DME arc, then counterclockwise along the Sarasota 10-mile DME arc to the point of beginning.

§ 71.501 [Amended]

3. § 71.501 is amended as follows:

Tampa International Airport, FL [Removed]

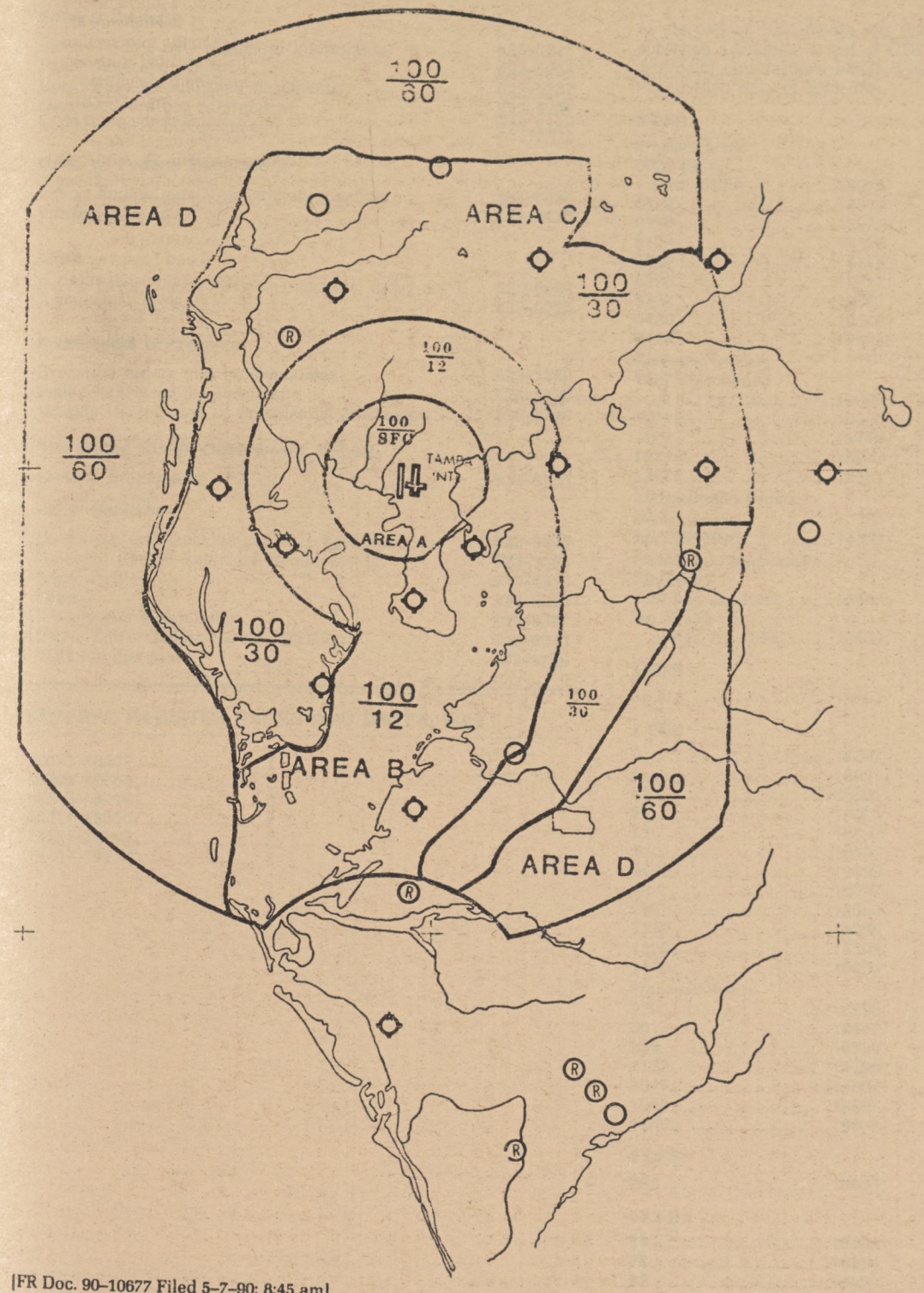
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James B. Busey,

Administrator.

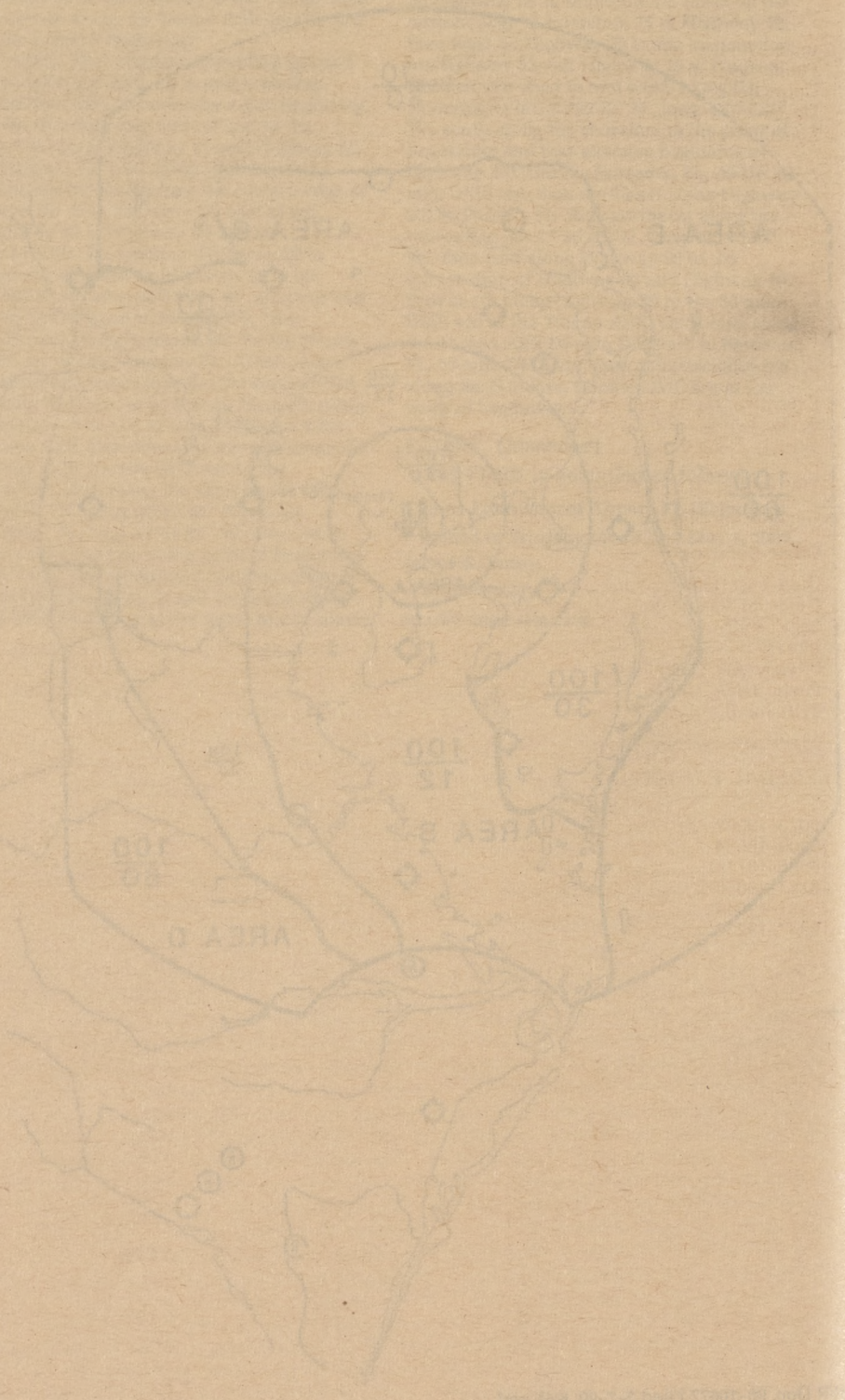
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TERMINAL CONTROL AREA
TAMPA FLORIDA
TAMPA INTERNATIONAL AIRPORT



[FR Doc. 90–10677 Filed 5–7–90; 8:45 am]

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Tuesday, May 8, 1990

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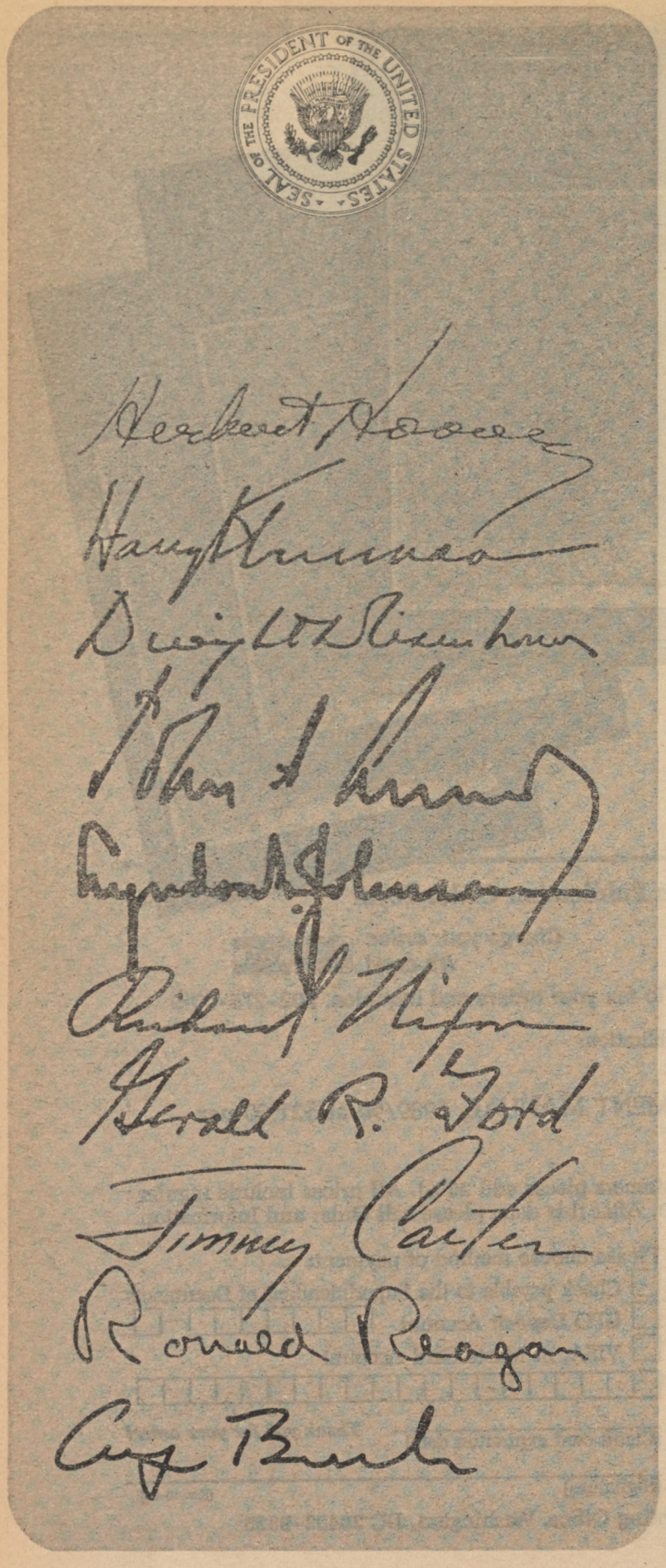
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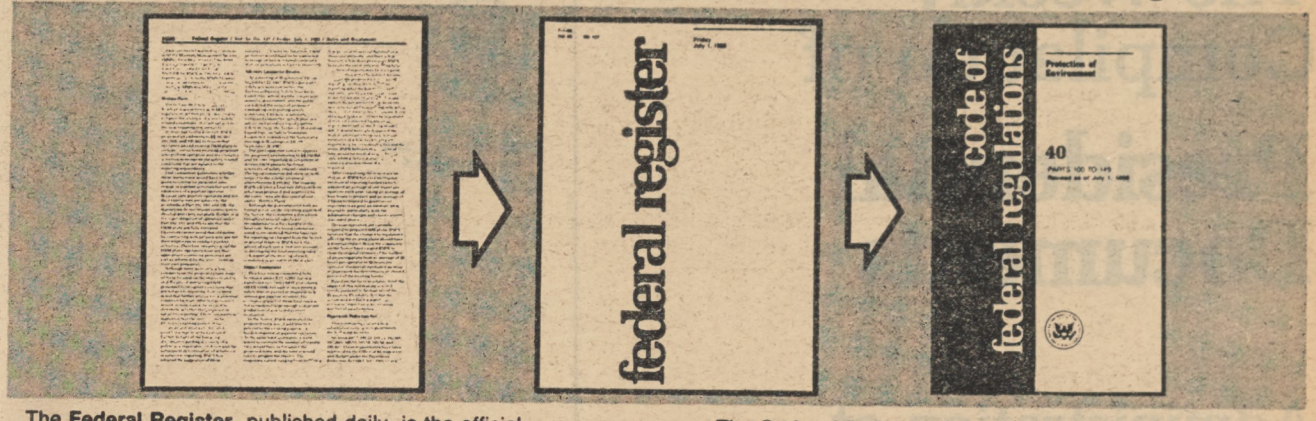
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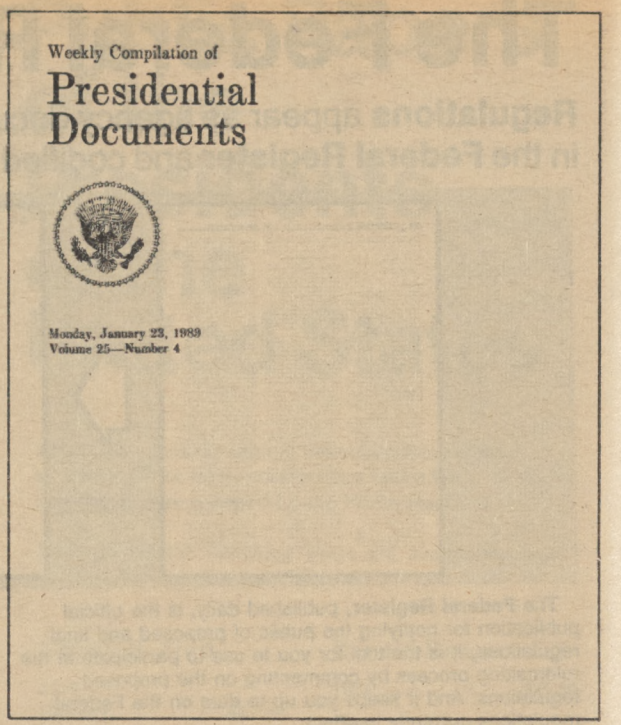
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