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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD71

1994 Specifications for Cotton Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with The Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this final rule will eliminate obsolete provisions and more appropriately reflect loan eligibility quality requirements for the 1994 and subsequent year crops.

EFFECTIVE DATES: July 22, 1994. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined not to be significant for purposes of Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because 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 these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collections have previously been cleared under the current regulations by OMB, and assigned OMB Nos. 0560–0087 and 0560–0129. The amendments to 7 CFR 1427 set forth in this final rule do not contain new or revised information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Background

Each year the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council in cooperation with the American Textile Manufactures Institute, approves specifications for cotton bale packaging to be used as industry guidelines. Accordingly, this final rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1993 to 1994 for the Specifications for Cotton Bale Packaging Materials published by the JCIBPC.

List of Subjects in 7 CFR Part 1427

Cotton, Incorporation by reference, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.5 is amended by revising paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Be packaged in materials which meet specifications adopted by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1994 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1994 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis,

Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 3623, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

* * * * *

Signed in Washington, DC, on July 14, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–17825 Filed 7–21–94; 8:45 am]

BILLING CODE 3410–05–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 607, 614, 615, and 620

RIN 3052–AB44

Assessment and Apportionment of Administrative Expenses; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), amends the regulations relating to the components of permanent capital for Farm Credit System (Farm Credit or System) banks and associations. The objective of these regulations is to implement amendments to the Farm Credit Act of 1971 (1971 Act) made by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The effect of the regulations is to establish requirements for the agreement between a Farm Credit Bank (FCB) and its related direct lender associations specifying where the earnings held by the FCB and allocated to associations may be counted as permanent capital, to specify how these earnings would be counted in the absence of an agreement, to provide a date certain for the exclusion from capital of payments by Farm Credit institutions to the Farm Credit System Financial Assistance Corporation (FAC) made in connection with the repayment of Treasury-paid interest, and to make other conforming changes to implement the statutory amendments. Technical and conforming changes are made throughout the agency's regulations.

EFFECTIVE DATE: The regulations shall become effective on December 31, 1994.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On June 15, 1993, the FCA Board proposed amendments to its regulations that would implement the changes set forth by the 1992 Act. (See 58 FR 34004, June 23, 1993.) The FCA received comments in response to these proposed regulations from The Farm Credit Council on behalf of its membership and the Federal Farm Credit Banks Funding Corporation, two Farm Credit Banks (FCBs), a Farm Credit association, and a state bankers' association. These comments were fully considered by the FCA in drafting the final regulations. The comments and the FCA's response to the comments are discussed below, along with an explanation of any material changes made to the proposed regulations. In addition, technical and clarifying changes to language of the proposed regulations have been made in the final regulations.

I. General Comments

A commenter asserted that some of the proposed regulations, particularly § 615.5210(e)(2)(ii)(A) through (C) and (E), inject the FCA into the decision making process of the banks and associations as they attempt to develop agreements that will best fit their business needs. The proposed regulations cited by the commenter pertain to the time period of the allocation agreement, the effective date, the prohibition on amendments more often than annually without FCA approval, and the automatic 1-year extension if neither party objects. As is explained in more detail below, the regulatory requirements were proposed primarily for safety and soundness reasons but also provided for the administrative convenience of the System institutions and the FCA. The FCA also attempted to provide a framework that would permit negotiation between banks and associations on an equitable basis. The final regulations contain modifications to the proposed regulations, including certain deletions of provisions pertaining to administrative convenience, to the extent the FCA believes appropriate without compromising safety and soundness and fairness principles.

A commenter asserted that the underlying impact of the proposed regulations was to provide greater flexibility to the FCBs in competing with private sector lenders and criticized this as contrary to the public good and inconsistent with the objective of reducing Government's role in the free market. The FCA disagrees. The proposed regulations do not augment the statutory authority of the FCBs. The "greater flexibility" in allocating capital is provided by the statute and is not expanded by the regulations.

A commenter stated a belief that the intent of the 1992 Act amendment to section 4.3A(a)(1)(B) of the 1971 Act was to require FCBs and associations to enter into allocation agreements. The FCA disagrees that the law mandates allocation agreements and does not believe it is appropriate or feasible to promulgate a regulation forcing nonagreeing associations and FCBs to enter into agreements. In the event that there is no agreement, the allocation formula provides an orderly way of determining which institution will count the allocated investment, or any part of it, as permanent capital.

II. Specific Comments

Section 615.5201(a)—Definition of "Allocated Investment"

One commenter requested clarification that allocated earnings "retained by the bank" means "not paid in cash." This was the intended meaning of the regulation, consistent with the statutory language. The FCA has added clarifying language in the final regulation.

Section 615.5201(j)(6)—Definition of "Permanent Capital"

A commenter encouraged the FCA to provide guidelines in the regulations by which the financial assistance provided by the Farm Credit System Insurance Corporation (FCSIC) would be counted as permanent capital. In addition, the commenter asserted that the nature of the security, and not the holder of the security, should be the determinant in counting capital.

The FCA does not believe it necessary or useful to set forth in the regulations guidelines to be followed by the FCA in determining how it would count assistance provided by the FCSIC. Since the FCA does not know what form FCSIC assistance may take, it is impossible to determine at this time whether the assistance would qualify as permanent capital. Moreover, the FCA disagrees with the comment that the

FCSIC should be treated the same as any other security holder in determining whether FCSIC assistance is permanent capital. The role of the FCSIC as a provider of financial assistance to System institutions is statutory and unique.

Section 615.5210(d)—Counting of Treasury-Paid Interest as Permanent Capital

A commenter stated a belief that the preamble description of proposed § 615.5210(d) was inconsistent with the text of the proposed regulation, in that the preamble indicated that only assessments passed on directly to associations would be added back to the association's capital (and would not be added back to the bank's capital).

For purposes of calculating the permanent capital ratio, it was not the FCA's intention to differentiate between assessments directly passed on to the associations and assessments passed on "indirectly (through loan pricing or otherwise)" as provided by the statute. Congress apparently contemplated that there would be three possible ways of paying the cost of assessments:

(1) The FCB would not directly or indirectly pass on the cost, even though the ultimate effect would be felt by the associations;

(2) The FCB would assess associations directly for an amount based on proportionate average accruing retail loan volumes of the associations for the preceding year; or

(3) The bank would indirectly assess associations by adjusting the interest rate on the direct loan or some other method based on proportionate average accruing retail loan volumes of each association for the preceding year.

The difference between method 1 and method 3 is that the ultimate effect of method 1 on an association is in proportion to the amount of its investment in the bank or its direct loan, whereas method 3's "cost" is based on average accruing retail loan volumes. Changes have been made in the final regulations to clarify that, when an FCB directly assesses an association (method 2), or when it indirectly assesses an association by specifically identifying the assessment in other charges made by the FCB to the association (method 3), the amount of the assessment is added back to the capital of the association (and not to the capital of the bank).

In this connection, it is the FCA's view that, while the regulations do not require an FCB to enter into an agreement with its direct lender associations that would specify whether and how assessments would be passed through, there are important advantages in having a written understanding. This would clearly document the understandings and expectations of all parties and would provide more certainty to all parties for business planning and capital building purposes.

A commenter asked how the amount of assessments passed indirectly to an association is to be reported in the Call Reports of the institution. The instructions to the Call Reports specify how this is to be done.

Section 615.5210(e)(2)(ii)—Basis for Allotment of Allocated Investment

A commenter recommended that the references to "a percentage allotment" of the allocated investment be changed to a "percentage or other allotment." Such a change would, for example, enable an FCB to count the allocated investment up to a specific percentage of the association's direct loan from the bank. Alternatively, the bank may wish to count a specified dollar amount of the investment. The FCA believes that an allotment based on a specific dollar amount would be appropriate but does not believe that the allotment should be tied to floating factors such as the direct loan amount. The permanent capital ratio is used as one of the key determinants of a Farm Credit institution's financial health and stability. Allowing permanent capital to move frequently based on floating measures, such as loan volume outstanding, diminishes the permanent capital ratio's usefulness as a financial measure. If the allotment is left to float, it could change daily, beyond the control of management. This may not be appropriate during stressful periods in some institutions.[1] Accordingly, the final regulation has been revised to permit only an allocation based on a dollar amount and/or a percentage of the allocated investment. The amount of allocated investment could be determined based on a dollar amount, and any earnings that may be distributed could be allotted on a percentage basis. The FCA believes that this permits adequate flexibility.

Section 615.5210(e)(2)(ii)(C)—Amendments to Allocation Agreement

Three commenters objected to the restrictions in the proposed regulations that would prohibit the reallotment of the association's investment in the FCB more often than annually without the FCA's approval. While one commenter acknowledged that the FCA may have a legitimate regulatory concern in curbing the potential abuse of amendments to manipulate capital ratios, the commenter asserted that FCA prior approval is an inappropriate means of addressing the concern. In the commenter's view, a prior approval is inconsistent with the FCA's role as an arm's-length regulator, and without specific criteria for granting approval the FCA could become involved in the business decisions of the institutions.

The FCA has reexamined the proposed prior approval procedure and has determined that it would be appropriate to replace it with a provision enumerating specific circumstances in which a reallotment may be made. Therefore, the final regulations permit only annual amendments to the allocation agreement, except in the event of a reorganization or merger, or when a reallotment is required to enable the FCB to make payments in connection with the Capital Preservation Agreements.

The FCA strongly believes that the more frequently an allocated investment "moves" in the computation of the permanent capital ratio, the less reliable the permanent capital ratio is as an indicator of the financial soundness of an institution or of trends in the institution's operations. Consequently, one of the most important uses of the minimum permanent capital standard would be eliminated if institutions were permitted to change their allotments frequently and at will.

Other than in the context of a merger or other corporate reorganization of one of the parties, when a reallotment would likely be necessary, or when a reallotment is necessary to enable the FCB to make payments in connection with the Capital Preservation Agreements, the FCA is aware of only a limited number of situations in which there would be any incentive for the institutions to reallot capital. For example, as part of its examinations, the FCA makes evaluations of the capital adequacy of each institution. The FCA is concerned that, if a reallotment is permitted as often as desired, it would be permissible to reallot capital in the time period between the examination of an FCB and an affiliated association for the benefit of the institution to be examined next.

Moreover, since the lending limit of an institution is based on the amount of its permanent capital, it would also be permissible to temporarily reallot capital to enable an institution to make a loan that would otherwise be in excess of its lending limits. Similarly, an institution could reallot capital in order to retire stock that it would otherwise be

[1] If, for example, an institution's permanent capital ratio were under the minimum required, the capital ratio should not be lowered based on an automatic adjustment.

unable to retire, or even attempt to forestall an enforcement action by the FCA based on insufficient permanent capital. Although these matters could be viewed by institutions as "internal business decisions," they raise safety and soundness and other issues.

Consequently, as a policy matter, the FCA views frequent changes in where the capital is counted as undesirable. The FCA believes that it is more efficacious to prevent the possibility of manipulation by regulation rather than to examine institutions to determine, after the fact, if such manipulation of their capital has occurred.

Section 615.5210(e)(2)(ii)(A)—Effective Date of Allocation Agreement

Proposed § 615.5210(e)(2)(ii)(A) provided that all of the allocation agreements would become effective at the start of the second quarter of each year. A commenter stated that there was no need for delay in implementing the agreement and noted that many districts currently implement the agreement on a calendar year basis. The commenter also stated the opinion that the effective date of these agreements is a procedural matter that ought to be left to the discretion of the parties and should be controlled by the business needs and planning processes of the affected institutions.

The date proposed by the regulations was set, for the convenience of the parties, as the quarter following the allocation of earnings from the FCBs to associations so that the actual dollar amount of the allocation would be known when the allotment was being determined. In addition, setting a specific date would have facilitated the FCA's oversight of institutions. However, upon reconsideration, the FCA believes that the requirement to file a copy of the agreement with the responsible FCA examination field office will be sufficient to enable the agency to fulfill its oversight responsibilities. The final regulations permit banks and associations to select any date as the effective date of their agreement, provided that such date is no less than 12 months after the effective date of the existing agreement.

Section 615.5210(e)(2)(ii)(D)—Filing of Allocation Agreement With the FCA

Proposed § 615.5210(e)(2)(ii)(D) required an allocation agreement to be sent to the FCA and any nonparty associations (*i.e.*, associations that were not parties to that allocation agreement) in the district within 3 days after the agreement was signed. A commenter asked that the time period be increased from 3 days to 20 business days, stating that this would enable a district with many associations to submit all of the agreements in one mailing.

The FCA has reconsidered the proposal and has determined that a more flexible filing requirement would be less burdensome to the banks and associations, without compromising the FCA's ability to monitor the capital strength of the institutions. The final regulation deletes the 3-day FCA filing requirement and provides, instead, that a certified copy of the agreement must be filed with the appropriate FCA field office on or before the effective date of the agreement, and that copies of agreements must be sent to other associations in the district within 30 calendar days of signing.

A commenter requested assurance that the allocation agreement could consist of a contract, an exchange of board resolutions, or an incorporation of the terms of the agreement into the business plans of the institutions. The commenter is correct that any of the means described would be appropriate.

Section 615.5210(e)(2)(ii)(E)—Notification to the FCA of Objection to the Extension of an Allocation Agreement

Proposed § 615.5210(e)(2)(ii)(E) provided that the allocation agreement would be automatically extended for another year if not amended and if neither party to the agreement notifies the FCA of its objection to the continuation of the agreement at least 30 days before the expiration date. A commenter suggested that the notification to the FCA be made in writing. The FCA agrees that this notification should be made in writing, and the final regulations include this requirement.

The commenter also stated that the agreement itself should govern such matters as termination and extension rather than the regulations. The FCA has considered this comment and agrees in principle that the bank and association should be free to provide in their agreement for such matters as termination and extension. However, the FCA also believes that it is appropriate to provide for an automatic extension of the agreement if the matter has not been addressed in the agreement. The final regulations reflect this change.

Section 615.5210(e)(2)(ii)(F)—Default Allotment Formula

A commenter asked for clarification of whether permanent capital ratios for the default allocation formula would be computed in proposed § 615.5210(e)(2)(ii)(F) using a 3-month average daily balance, as the regulations otherwise require for permanent capital ratio computations. The ratios would be computed in the same manner in this circumstance, using a 3-month average daily balance, and the final regulations contain this clarification. The regulations further provide that the permanent capital computations must be calculated as of the expiration date of the existing agreement.

Section 615.5210(e)(2)(ii)(G)—Reallotment in Connection With Payments Relating to Capital Preservation Agreements

Proposed § 615.5210(e)(2)(ii)(G) required a bank and one or more associations to amend their agreement in order to reallot the allocated investment if such reallotment would enable the FCB to make its Capital Preservation Agreement annuity payment and still meet minimum permanent capital standards. However, it did not specify a basis to determine which associations must amend their agreements. A commenter recommended that the regulations require that the allocation agreements provide for such reallotment.

The FCA agrees with the commenter and believes that this issue would be appropriately provided for in the allocation agreements as suggested. The final regulations include a provision requiring the issue to be addressed in the allocation agreement.

Other Issues

One commenter recommended that, in addition to the preferred stock that System institutions are presently authorized to issue, subordinated notes and intermediate-term preferred stock be allowed to be counted as permanent capital. The commenter suggested that such issues be limited to 25 percent of total capital so that an institution would not be able to rely principally on this source. Another commenter expressed an opinion that the use of debt instruments as a substitute for capital would undermine the safety and soundness of the System and, therefore, opposed that part of the proposal. Yet another commenter stated that debt securities should be included in permanent capital if they are counted on a discounted or sinking fund basis. These proposals are still under consideration by the FCA and will be addressed in future proposed regulations.

The FCA has deleted from the definition of permanent capital the reference to preferred stock issued to the FAC, since all such stock has now been retired.

In addition, the proposed regulations inadvertently eliminated a provision of existing § 615.5210(d)(3) regarding investments made in connection with loan participations. That provision states that, where an institution invests in another institution to capitalize a participation interest, the investing institution must deduct from its total capital an amount equal to its investment in the participating institution. The proposed regulations addressed situations where an institution invested in a bank for any purpose, including to capitalize a loan participation, but did not address any situation where a bank or association invested in another association (to capitalize a loan participation or for any other purpose). The provision from the existing regulations has been revised to apply only to investments in associations and restored as § 615.5210(e)(5) in the final regulations, and the succeeding paragraphs have been renumbered accordingly. Furthermore, proposed § 615.5210(e)(3) has been revised and a new paragraph (e)(4) has been added to clarify that all earnings allocated by a bank to a recipient will count as permanent capital of the bank in the absence of an allocation agreement, except when the bank is a Farm Credit Bank or agricultural credit bank and the recipient is a Farm Credit association, in which case the default allotment formula would apply.

Finally, these regulations include amendments to parts 607, 614, 615 (subpart E), and 620 of the regulations. These changes, as more fully described below, are conforming and clarifying changes to provisions containing references to existing capital regulations that are now covered by various provisions of new §§ 615.5201 and 615.5210(d), (e), and (f). The FCA has determined that the notice and comment requirements of 5 U.S.C. 553 (b) and (c) do not apply in this situation. Notice and public procedure thereon are unnecessary because the amendments are not substantive in nature and do not impose new requirements. Therefore, there is no reason to solicit public comments on them. Accordingly, the FCA finds that good cause exists to promulgate final amendments to these provisions without notice and comment.

Conforming changes have been made to the capital regulation references in § 614.4351(a) to account primarily for the renumbering of paragraphs. The references to revised paragraph (e) (2), (3), and (4) of § 615.5210, replace the reference to paragraph (d)(2) of that section in the existing regulations. While the methodology in amended § 614.4351(a) for computing an institution's lending limit base will be somewhat different, and in some cases more complicated, because of the amendments to the capital regulations, the effect will be the same.[2] To facilitate institutions' understanding and interpretation of the lending limit calculation, the language describing the calculation has been clarified regarding the sequence of the adjustments and regarding which institution will count the investment in question in its lending limit base. We note, in this connection, that the "investment" includes any equities that are purchased as well as equities that are allocated in a distribution of earnings on participations. The FCA is considering how the calculation might be simplified and will publish for comment any proposed substantive changes that may be appropriate.

With regard to regulation § 614.4710(a)(1)(i), instead of the current reference by citation to the capital regulations relating to the elimination of certain investments for the purpose of calculating a limit on bankers acceptances for a bank for cooperatives, the actual referenced language has been inserted as an aid to the reader.

Lastly, the conforming amendments in §§ 607.2, 615.5131(t), and 620.1(j) have been made to reflect the renumbering of existing capital provisions.

List of Subjects

12 CFR Part 607

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 607, 614, 615, and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

[2] In other words, the revised § 614.4351(a) will continue to require that an investment held to capitalize a loan participation interest sold to another institution will be included in the lending limit base of the institution that holds the investment (*i.e.*, the institution that sold the participation interest).

PART 607—ASSESSMENT AND APPORTIONMENT OF ADMINISTRATIVE EXPENSES

1. The authority citation for part 607 continues to read as follows:

Authority: Secs. 5.15, 5.17 of the Farm Credit Act (12 U.S.C. 2250, 2252, 3025).

§ 607.2 [Amended]

2. Section 607.2 is amended by removing the reference "§ 615.5210(e)" and adding in its place "§ 615.5210(f)" in the introductory text of paragraph (b).

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart J—Lending Limits

4. Section 614.4351 is amended by revising paragraph (a) to read as follows:

§ 614.4351 Computation of lending limit base.

(a) *Lending limit base.* An institution's lending limit base is composed of the permanent capital of the institution, as defined in § 615.5201(j) of this chapter, with adjustments provided for in § 615.5210(d), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(6) of this chapter, and with the following further adjustments:

(1) Where one institution invests in another institution in connection with the sale of a loan participation interest, the amount of investment in the institution purchasing this participation interest that is owned by the institution originating the loan shall be counted in the lending limit base of the originating institution and shall not be counted in the lending limit base of the purchasing institution.

(2) Stock protected under section 4.9A of the Act may be included in the lending limit base until January 1, 1998.

* * * * *

Subpart Q—Banks for Cooperatives Financing International Trade

5. Section 614.4710 is amended by revising the first sentence of paragraph (a)(1)(i) to read as follows:

§ 614.4710 Bankers acceptance financing.

* * * * *

(a) * * *

(1) * * *

(i) The dollar amount of such acceptances outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to 10 percent of the net worth of a bank for cooperatives as calculated on a monthly basis after eliminating from its net worth an amount equal to the total of the bank's investments made to capitalize participation interests purchased by other institutions. * * *

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

6. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

§ 615.5131 [Amended]

7. Section 615.5131 is amended by removing the reference "§ 615.5201(l)" and adding in its place "§ 615.5201(n)" in paragraph (t).

Subpart H—Capital Adequacy

8. Section 615.5201 is amended by redesignating paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) as paragraphs (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), (m), and (n) consecutively; by removing the reference "§ 615.5210(d)" and adding in its place "§ 615.5210 (d) and (e)" and also by removing the reference "§ 615.5210(e)" and adding in its place "§ 615.5210(f)" in newly designated paragraph (k); by adding new paragraphs (a) and (h); and by revising newly designated paragraph (j) to read as follows:

§ 615.5201 Definitions.

* * * * *

(a) *Allocated investment* means earnings allocated but not paid in cash by a System bank to an association or other recipient.

* * * * *

(h) *Nonagreeing association* means an association that does not have an allocation agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to § 615.5210(e).

* * * * *

(j) *Permanent capital* means—

(1) Current year retained earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except—

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(iv) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted;

(5) Payments to, or obligations to pay, the Farm Credit System Financial Assistance Corporation to the extent permitted by section 6.26(c)(5)(G) of the Act and § 615.5210(d); and

(6) Financial assistance provided by the Farm Credit System Insurance Corporation that the Farm Credit Administration determines appropriate to be considered permanent capital.

* * * * *

9. Section 615.5210 is amended by removing the reference to "paragraph (d)" and adding in its place "paragraph (e)" in paragraph (c); by redesignating paragraphs (d) and (e) as paragraphs (e) and (f); by adding a new paragraph (d); by removing the reference to "paragraph (e)(3)" and adding in its place "paragraph (f)(3)" in newly designated paragraph (f)(1); by removing the references "(e)(3)(ii)" and "(e)(2)" and by adding in their places "(f)(3)(ii)" and "(f)(2)" in newly designated paragraph (f)(3)(i); by removing the reference "§ 615.5210(e)(2)" and adding in its place "§ 615.5210(f)(2)" in newly designated paragraph (f)(3)(ii)(D)(*1*); by redesignating newly designated paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) as paragraphs (e)(6), (e)(7), (e)(8), and (e)(9), consecutively; by revising newly designated paragraph (e)(2); by removing newly designated (e)(3); and by adding new paragraphs (e)(3), (e)(4), and (e)(5) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(d) Until September 27, 2002, payments of assessments to the Farm Credit System Financial Assistance Corporation, and any part of the obligation to pay future assessments to the Farm Credit System Financial Assistance Corporation that is recognized as an expense on the books of a bank or association, shall be included in the capital of such bank or association for the purpose of determining its compliance with regulatory capital requirements, to the extent allowed by section 6.26(c)(5)(G) of the Act. If the bank directly or indirectly passes on all or part of the payments to its affiliated associations pursuant to section 6.26(c)(5)(D) of the Act, such amounts shall be included in the capital of the associations and shall not be included in the capital of the bank. After September 27, 2002, no payments of assessments or obligations to pay future assessments may be included in the capital of the bank or association.

(e) * * *

(2) Where a Farm Credit Bank or an agricultural credit bank is owned by one or more Farm Credit System institutions, the double counting of capital shall be eliminated in the following manner:

(i) All equities of a Farm Credit Bank or agricultural credit bank that have been purchased by other Farm Credit institutions shall be considered to be permanent capital of the Farm Credit Bank or agricultural credit bank.

(ii) Each Farm Credit Bank or agricultural credit bank and each of its affiliated associations may enter into an agreement that specifies, for the purpose

of computing permanent capital only, a dollar amount and/or percentage allotment of the association's allocated investment between the bank and the association. The following conditions shall apply:

(A) The agreement shall be for a term of 1 year or longer.

(B) The agreement shall be entered into on or before its effective date.

(C) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized, or in the event of a reallotment pursuant to paragraph (e)(2)(ii)(G) of this section. The agreement shall include a provision addressing how the agreement will be amended if a reallotment is required by paragraph (e)(2)(ii)(G) of this section.

(D) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, shall be sent to the field office of the Farm Credit Administration responsible for examining the institution. A copy shall also be sent within 30 calendar days of adoption to the bank's other affiliated associations.

(E) Unless the parties otherwise agree, if the bank and the association have not entered into a new agreement on or before the expiration of an existing agreement, the existing agreement shall automatically be extended for another 12 months, unless either party notifies the Farm Credit Administration in writing of its objection to the extension prior to the expiration of the existing agreement.

(F) In the absence of an agreement between a Farm Credit Bank or an agricultural credit bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula shall be applied with respect to the allocated investments held by those associations with which there is no agreement (nonagreeing associations), and shall not be applied to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(*1*) The allotment formula shall be calculated annually.

(*2*) The permanent capital ratio of the Farm Credit Bank or agricultural credit bank shall be computed as of the date that the existing agreement terminates, using a 3-month average daily balance, excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are allotted to the bank under applicable allocation agreements. The permanent capital ratio of each nonagreeing association shall be computed as of the same date using a 3-month average daily balance, and shall be computed excluding its allocated investment in the bank.

(*3*) If the permanent capital ratio for the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is 7 percent or above shall be allotted 50 percent to the bank and 50 percent to the association.

(*4*) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose capital ratio is below 7 percent shall be allotted to the association until the association's capital ratio reaches 7 percent or until all of the investment is allotted to the association, whichever occurs first. Any remaining unallotted allocated investment shall be allotted 50 percent to the bank and 50 percent to the association.

(*5*) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent shall be determined, and an amount of the allocated investment of each nonagreeing association shall be allotted to the Farm Credit Bank or agricultural credit bank as follows:

(*i*) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association shall be multiplied by a fraction whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount shall be allotted to the bank. Next, if the permanent capital ratio of any nonagreeing association is less than 7 percent, a sufficient amount of unallotted allocated investment shall then be allotted to each nonagreeing association, as necessary, to increase its permanent capital ratio to 7 percent, or until all such remaining investment is allotted to the association, whichever occurs first. Any unallotted allocated investment still remaining shall be allotted 50 percent to the bank and 50 percent to the nonagreeing association.

(*ii*) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations shall be allotted to the bank.

(G) If a payment or part of a payment to the Farm Credit System Financial Assistance Corporation pursuant to section 6.9(e)(3)(D)(ii) of the Act would cause a bank to fall below its minimum permanent capital requirement, the bank and one or more associations shall amend their allocation agreements to increase the allotment of the allocated investment to the bank sufficiently to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the associations would continue to meet their minimum permanent capital requirement. In the case of a nonagreeing association, the Farm Credit Administration may require a revision of the allotment sufficient to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. The Farm Credit Administration Board may, at the request of one or more of the institutions affected, waive the requirements of this paragraph (e)(2)(ii)(G) if the Board deems it is in the overall best interest of the institutions affected.

(3) A Farm Credit Bank or agricultural credit bank and a recipient, other than an association, of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of the bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(4) A bank for cooperatives and a recipient of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such

agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(5) Where a bank or association invests in an association to capitalize a loan participation interest, the investing institution shall deduct from its total capital an amount equal to its investment in the participating institution.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

10. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

§ 620.1 [Amended]

11. Section 620.1 is amended by removing the reference "§ 615.5201(h)" and adding in its place "§ 615.5201(j)" in paragraph (j).

Dated: July 19, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–17907 Filed 7–21–94; 8:45 am]

BILLING CODE 6705–01–P

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12 CFR Parts 611, 618, and 620

RIN 3052–AB42

Organization; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a final rule concerning director and senior officer compensation. The regulation amends the director compensation regulations to reflect changes to the Farm Credit Act of 1971 (Act) made by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Amendments),[1] and amends the annual report disclosure rules for director reimbursable expenses to address concerns raised by Farm Credit banks regarding the equity and regulatory burden of the existing rule. Additionally, the rule amends the disclosure requirements for senior officer compensation to make the disclosures more informative and useful to shareholders.

EFFECTIVE DATE: The regulation shall become effective upon expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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Joy E. Strickland, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

1. Overview

The FCA published a proposed rule concerning director and senior officer compensation and reimbursable expense disclosures on December 23, 1993 (58 FR 68069). The comment period closed January 24, 1994.

Section 611.400, concerning bank director compensation, is adopted substantially as proposed with the exception that the cap on the amount by which the FCA Board would consider waiving the statutory limitation on bank director compensation for exceptional circumstances has been increased from 25 to 30 percent. Section 618.8270, regarding the reimbursement of travel, subsistence, and related expenses, has been modified by reducing several of the policy and procedure requirements originally proposed. The final rule retains the requirement that each Farm Credit System (FCS or System) institution develop a written policy regarding the reimbursement of travel, subsistence, and other related expenses to its directors, officers, and employees and provide stockholders with a brief description of the policy. Substantial changes have been made to the proposed senior officer compensation disclosure requirements in § 620.5(i)(2). The final rule requires FCS institutions to disclose: (1) Individual compensation information of chief executive officers (CEOs) whose annualized salary and bonus exceed $150,000, adjusted annually to reflect changes in the Consumer Price Index (CPI); and (2) aggregate compensation information of all senior officers as a group. Both the CEO and aggregate senior officer compensation information is required to be reported for each of the last 3 fiscal years and presented in a Summary Compensation Table. The final rule retains the requirement that the institutions provide a discussion of compensation plans. Finally, a provision was added to allow associations the option of disclosing senior officer compensation information in either the Association Annual Meeting Information Statement or the annual report.

II. Response to Comments

The FCA received 140 comment letters from the Farm Credit Council (FCC) on behalf of its membership, 7 Farm Credit Banks, 3 Banks for Cooperatives, 122 associations, and 7 shareholders. Commenters expressed strong opposition to the proposed disclosure of individual compensation information for each of the five most highly paid senior officers. The following discussion focuses on the FCA response to commenters' concerns regarding the proposed senior officer disclosures as this was the predominant issue raised in their letters. The section-by-section discussion also addresses other comments received on the proposed rule.

A. Basis for Senior Officer Compensation Disclosures

Commenters stated that FCS institutions are not parallel to commercial banks or thrifts, or analogous to other Government-sponsored enterprises (GSEs). Therefore, commenters adamantly believe that FCS institutions should not be required to make similar executive compensation disclosures. Commenters stressed four main points in support of their position. First, the compensation disclosure requirements for commercial banks, national banks, thrift institutions, and state member banks are applicable only to financial institutions subject to the registration requirements of section 12(b) or (g) of the Securities Exchange Act of 1934 (1934 Act).[2] Second, equity securities in FCS institutions are owned only by borrowing members of the institutions, not purchased primarily for investment, and not publicly traded. Thus, the investor concerns addressed by the 1934 Act are not present in the case of FCS institutions. Third, although formally exempt from the registration

[1] Pub. L. 102–552, 106 Stat. 4102

[2] Public companies with at least 500 shareholders of record and assets of at least $5,000,000 must register with the SEC pursuant to SEC regulations implementing the Securities Exchange Act of 1934.

requirements of the 1934 Act, other GSEs report as if they were subject to Securities and Exchange Commission (SEC) statutes, in part, because their securities are subject to the listing requirements of the New York Stock Exchange. Fourth, the disclosures provide limited benefits to investors in FCS debt obligations because the banks are jointly and severally liable on these obligations. Consequently, investors generally rely on the strength of the System as a whole. Rather, commenters contend it would be more appropriate, in their judgment, for the FCA to compare the treatment of FCS institutions under the proposed rule to Federal Home Loan Banks (FHLBs) and credit unions, as the ownership structures of those entities more closely parallel those of the FCS banks and direct lender associations. Unlike commercial banks and thrifts, credit unions and FHLBs are not subject to executive compensation disclosures.

The FCA agrees with commenters that a comparison of ownership structures between FCS institutions and credit unions and FHLBs has some validity, and that FCS institutions are notably different from commercial banks, thrifts and other GSEs. Nevertheless, the FCA did not intend to imply or draw a direct parallel between FCS institutions and any other type of financial institution or to use a comparison between the institutions as the sole basis for establishing or modifying the senior officer compensation disclosure requirements. The primary comparison being made was that the FCA's proposed compensation disclosure requirements were similar in many respects to those imposed on commercial banks and thrifts by other regulators. As stated in the proposed rule, the FCA believes that more detailed compensation disclosures, such as those imposed by the SEC, would satisfy the objectives of section 514 of the Act,[3] and the proposed disclosures would benefit FCS shareholders by providing them with senior officer compensation information that was comparable to that available to shareholders of other financial institutions. The proposed disclosure requirements were still, however, markedly less extensive than those established by the SEC, partly due to the many differences between commercial banks and FCS institutions. The final regulations deviate further from the SEC's compensation disclosure requirements in consideration of the uniqueness of the FCS institutions. For example, the $100,000 compensation threshold established by the SEC for individual senior officer compensation disclosure was one area where the FCA chose to differ. Instead, the FCA decided to adopt a $150,000 compensation disclosure threshold that applies only to FCS institution CEOs.

The FCA's rationale for requiring director and senior officer compensation disclosures stems primarily from the "at-risk" nature of the stock and the significant number and wide distribution of shareholders, which are similar attributes to those of financial institutions with publicly traded stock. In terms of assets, the size of many FCS institutions is comparable to, and sometimes greater than, financial institutions whose equity and debt securities are widely held by the public. In addition, even if commenters are correct in their assertion that investors of FCS debt obligations are more concerned with the System as a whole, the FCA believes that the investor concerns addressed by the 1934 Act are not completely absent as suggested by commenters. Regardless of their motivation for purchasing the stock, borrowers make a financial investment in FCS institutions and obtain the right to participate in the affairs of those institutions. Shareholders can potentially benefit from their investment in terms of dividends and patronage refunds. Thus, shareholders need sufficient information to make intelligent decisions about the management and operation of the institutions in which they have invested and to hold directors and management accountable for their actions.

The FCA stated in the preamble to the shareholder disclosure regulations published on June 12, 1986 (51 FR 21337) that while not all FCS institutions would meet the test for public companies, many of them have in excess of 500 shareholders, and the number of institutions with fewer than 500 shareholders continues to decline in conjunction with the trend toward mergers. Further, the FCA stated that while the stock is not publicly traded on the secondary market, it is held by over 900,000 individuals and business entities that have a common interest in the financial and operating information of the institutions. The FCA Board continues to believe that the distinction between holding stock for investment and holding stock for doing business with an institution does not have a material bearing on the right of shareholders to have access to information in order to make informed decisions. Therefore, the final compensation disclosure requirements continue to place CEOs of FCS institutions with a significant amount of assets and number of shareholders under the same scrutiny as CEOs of financial institutions with publicly traded stock subject to the registration requirements of the 1934 Act.

B. Section 514 of the 1992 Amendments

The FCA agrees with the commenters that section 514 is quite broad and its interpretation, as it applies to compensation disclosures, is a matter of the FCA's discretion. Commenters stated that nothing in section 514 of the 1992 Amendments compels the disclosure of individualized senior officer compensation or concludes that the current disclosure requirements are inadequate in any respect. They felt strongly that the existing disclosure of senior officer compensation in the aggregate, coupled with the requirement that shareholders may request the individual compensation of any senior officer, or any other individual included in the aggregate whose compensation exceeds $50,000, was adequate.

There was no intention in the proposed rule to suggest that section 514 mandates individual disclosure of senior officer compensation. In section 514, Congress stressed the importance of disclosure of compensation paid to, loans made to, and transactions made with FCS institutions by directors and senior officers of the institution. Congress also directed the FCA to review its regulations to ensure that they meet the purpose of the section and applicable laws, but did not prescribe any specific regulation amendments. After reviewing its regulations, the FCA concluded that more detailed senior officer compensation disclosures satisfied the spirit and intent of section 514.

C. Board Accountability

Commenters expressed concern that providing individual compensation information would undermine the board's authority and its ability to effectively administer the institution's salary administration program. Further,

[3] The stated objective of section 514 is "to ensure that information reported by directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and reporting of potential conflicts of interests—(1) provides the stockholders of all Farm Credit System institutions with information to assist the stockholders in making informed decisions regarding the operations of the institutions; (2) provides investors and potential investors with information necessary to make investment decisions regarding Farm Credit System obligations or institutions; and (3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the System."

commenters asserted that the disclosure rule would dilute the board's responsibility and shift the oversight responsibility from the board of directors to the shareholders as a whole.

The FCA Board disagrees that disclosure of information undermines board accountability and responsibility. In fact, disclosure of senior officer compensation is intended to promote board accountability to shareholders rather than shift board responsibility to shareholders. The objective of this type of disclosure is to provide shareholders with information to assess whether senior officer compensation is appropriate in view of the institution's financial condition and performance and to hold the board accountable for maintaining a reasonable rationale for the level of compensation paid to its senior officers.

D. Invasion of Privacy

Although numerous reasons were cited in opposition to individualized compensation disclosure, no other issue generated the intense reaction created by concerns of "invasion of privacy." Respondents were highly concerned that the disclosure of potentially sensitive information in a public format, such as the annual report, would cause considerable staff dissension and would render management unable to effectively administer the institutions' salary programs. One commenter stated that disclosure of the individual salaries of the five highest paid senior officers will, more than likely, cause salaries to gravitate to the highest paid levels in order to maintain morale rather than "limit" compensation paid to senior officers. Several commenters expressed concern that the disclosures may cause employee flight. Additionally, some FCS associations were concerned that the individual compensation disclosures may inadvertently reach the branch officer level.

The FCA recognizes that internal conflict may be generated when the information presented is used by parties for purposes for which they were not intended, such as a means for co-workers to compare salaries or to use as a bargaining tool for salary negotiations. The FCA also believes, however, that management is ultimately responsible for maintaining employee morale and retaining competent staff through fair and reasonable compensation, and for communicating to staff how this is accomplished through the salary administration program. A primary aspect of the disclosures is to provide shareholders insight regarding the methodology and basis the boards use to determine what they consider to be "fair and reasonable" compensation, rather than to "limit" senior officer compensation as suggested by a commenter. Further, the FCA believes stockholders have valid reasons to have this type of information readily available to them and they should not be penalized because of the potential for internal conflicts.

Many commenters were opposed to the proposed disclosures because FCS institution annual reports are used as marketing tools, among other things, and made available to a wide spectrum of interested parties. Some commenters believed that the broad distribution of the reports could promote animosity among shareholders and employees throughout the FCS and possibly other members of rural communities. Several commenters also stated that in order to evaluate the reasonableness of individual senior officer compensation, shareholders would need to understand several key aspects of the employer/employee relationship, such as the experience and knowledge an employee brings to his/her job, geographical cost-of-living data, market compensation for similar positions, job responsibilities, and the competitive and regulatory environment in which the employee operates. Commenters also asserted that providing just a dollar amount of compensation, without any other relevant data, would be interpreted by the readers of the annual report in terms of their own frame of reference. This could easily lead to confusion and ill feelings among employees and shareholders because they are not provided with all the facts involved in determining an individual's compensation.

The FCA disagrees that shareholders would be unable to understand and assess the senior officer compensation disclosures. In addition to reporting "dollar amounts" of compensation paid, institutions are required to provide a discussion of the compensation plans to aid the reader's understanding of the disclosures. Moreover, nothing in the regulations prevents an institution from providing explanations of the market or any other factors used in the determination of compensation. Management always has the discretion to provide such explanations if they feel they are needed to fairly portray the amounts being paid to senior officers.

The FCA Board recognizes that it should, to the extent possible, balance shareholders' needs to receive meaningful information concerning their institutions and individual privacy concerns. As expressed in the FCA Board's Policy Statement on Regulatory Philosophy, "The FCA Board is mindful that most regulatory activities will involve competing considerations and is committed to considering and weighing those competing considerations and arriving at thoughtful regulatory judgments". (Published June 22, 1994 at 59 FR 32189) Therefore, in reaching a balance between the competing considerations regarding the proposed regulation, substantial modifications were made to the senior officer disclosure requirements and are more fully explained in the section-by-section discussion.

III. Section-by-Section Discussion

A. Section 611.400—Compensation of Bank Board Members

The commenters generally expressed support for proposed § 611.400, Bank Director Compensation. The FCC stated that the proposed procedure for adjusting the bank directors' compensation ceiling and the approval process for exceeding the statutory limitation in "exceptional circumstances" seemed to be both fair and well-considered.

The FCA is adopting the amendments to § 611.400 as proposed with two modifications. The proposed rule included a 25-percent cap on the amount by which the FCA Board would approve a waiver of the statutory limitation on bank director compensation. The FCA received two requests for waivers of the statutory limitation since publishing the proposed rule. Based on its operational experience in reviewing those requests, the FCA Board determined that a 30-percent cap on the amount by which it would approve waivers of the statutory limitation would be more appropriate. In addition, the requirement in proposed § 611.400(c)(3) that the FCA respond to requests for waivers of the statutory limitation within 30 days was modified by extending the agency's self-imposed response time to 60 days. The FCA will respond to requests for waivers as quickly as possible and anticipates replying to the vast majority of requests in well under 60 days. Nevertheless, there may be unusual circumstances that would necessitate a longer period to gather and analyze pertinent information related to the request, and the longer response period should reduce the frequency of formal extensions of the response period.

The FCA recognizes the difficulty in predicting all the exceptional circumstances under which a bank may desire to seek a waiver of the statutory limitation on bank director compensation. Therefore, the FCA would like to clarify that

§ 611.400(d)(3), pertaining to a bank's policy on bank director compensation, need only address exceptional circumstances that the bank's board is able to identify. The policy should also include a procedure for evaluating, on a case-by-case basis, other extraordinary circumstances that may arise where the bank's board would consider seeking a waiver of the limitation.

B. Section 618.8270—Travel, Subsistence, and Other Related Expenses

Commenters generally supported proposed § 618.8270, but challenged whether the level of detail in policy and procedure requirements was necessary. The FCC commended the FCA Board for its openmindedness and willingness to reconsider the existing requirement for individual disclosure of bank director reimbursable expenses and replace it with an aggregate disclosure requirement. The FCC and other commenters stated that while it is quite appropriate for the FCA to require each FCS institution's board to develop written policies concerning the reimbursement of travel, subsistence, and other related expenses, the details of such policies should be left to each board's discretion. In their judgment, the degree of detail spelled out in proposed § 618.8270(a) constitutes micro-management, which they believed the current FCA Board was seeking to remove from the regulations. Another commenter responded that the administrative burden created by the detailed policy requirements, documentation, reporting, and auditing is not supported by the value, if any, that would be added to the stockholder disclosure process.

In February 1994, subsequent to publication of the proposed regulations, the FCA Board adopted the previously mentioned Policy Statement on Regulatory Philosophy (59 FR 32189, June 22, 1994) that stated "It is the FCA Board's philosophy to promulgate regulations that are necessary to implement the law and to promote the safety and soundness of the Farm Credit System." One method cited for achieving the FCA Board's regulatory objective was to issue regulations, to the extent feasible, that specify performance criteria and objectives rather than operational methods for achieving its purposes. In light of this recently adopted position, the FCA reevaluated proposed § 618.8270 and made modifications accordingly.

The examples of guidelines and limitations that an institution may consider addressing in their travel policy (i.e., modes of transportation; mileage rates for use of personal vehicles and per diem allowances, including maximum or limitations on lodging, meals and incidental expenses; and telephone calls and any other miscellaneous expenses) were eliminated from the final rule. The examples cited in proposed § 618.8270(a)(2)(i) through (iv) were removed because many commenters interpreted them as mandatory regulatory requirements. However, the FCA Board continues to believe that the management of each FCS institution should determine to what extent the individual items cited as sample guidelines and limitations in the proposed rule are necessary to ensure that the reimbursement of expenses for directors, officers, and employees is reasonable and well-justified.

Certain aspects of proposed § 618.8270 that incorporated, in part, procedures from existing § 611.400(b) and (c) were eliminated from the final rule. The FCA Board believes that such detailed operating procedures should remain at the discretion of each FCS institution's management rather than be formally prescribed by regulations. Therefore, all of the procedures in proposed § 618.8270(a)(3) and (4) were removed and the basic requirement for maintaining written records of expense reimbursements was assimilated into final § 618.8270(a).

One commenter recommended that the last sentence in § 618.8270(b) referring to "the personnel authorized to process reimbursements," be amended by substituting "approve" for "process." The commenter asserted that the persons who normally process reimbursements are accounting clerks, and stated that it is not usually part of their function to attempt to determine whether expenses are appropriate. In an effort to clarify the regulation, the last sentence was stricken from the final rule.

Two commenters misinterpreted proposed § 618.8270(c) to require that an internal auditor review every expense claim and record. The FCA has clarified that the regulation only requires an internal auditor to determine whether the institution's policies and procedures are being consistently followed by testing the reimbursement process through a sampling of expense claims and records. The final rule reads that "Each board shall require a review by the institution's internal auditor (or person designated by the board) of at least a sampling of records maintained * * *." Furthermore, the requirement for an internal audit review of travel records is now contained in § 618.8270(b) in the final rule.

C. Section 620.5(i)—Compensation of Directors and Senior Officers

1. Director compensation

The disclosure requirements in the final regulation remain unchanged from the proposed regulation.

2. Senior officer compensation

The senior officer compensation disclosure requirements were substantially changed in the final regulation. As previously discussed, the modifications were made because the FCA Board considered it important to balance commenters' privacy concerns with the shareholders' need for access to pertinent information regarding their institutions, and to further reflect the unique attributes of FCS institutions in the regulations. In addition, technical and clarifying changes were made to improve the understanding of the requirements and enhance the consistency of the disclosures presented to shareholders.

An alternative means for associations to disseminate senior officer compensation information was added to the final rule. Many commenters asserted that the disclosure of compensation information is more appropriate for a proxy statement. To address this issue, final § 620.5(i)(2) permits associations to disclose senior officer compensation information in either the Association Annual Meeting Information Statement (AAMIS) or the annual report. By allowing associations to disclose compensation information in the AAMIS, the FCA Board aims to reduce the concern of wide distribution of potentially sensitive information in a public format. Currently, there is no other disclosure medium for banks that serves a similar purpose as the AAMIS. Thus, the banks would continue to publish senior officer compensation in the annual report.

The final rule limits the requirement for disclosure of individual compensation information to FCS institution CEOs. Proposed § 620.5(i)(2)(i), which would have required institutions to make individual compensation disclosure for each of the five highest compensated senior officers, was dropped from the final rule. Final § 620.5(i)(2)(i)(A) requires FCS institutions to report the total compensation and the amount of each component of compensation paid to the institution's CEO for each of the last 3 completed fiscal years. If more than one person served in the capacity of CEO during any given fiscal year, individual

compensation information must be reported for each CEO. However, no disclosure need be provided for any CEO whose salary and bonus (or annualized salary and bonus, if the CEO served in that capacity less than a year) do not exceed $150,000, adjusted annually to reflect changes in the Consumer Price Index (CPI) for all urban consumers. The 1994 calendar year will serve as the base year for making subsequent CPI adjustments to the $150,000 disclosure threshold.

Proposed § 620.5(i)(2)(ii), which would have required FCS institutions to report the aggregate amount of compensation and the components of compensation paid to all officers as a group, was revised in the final regulation. The FCA did not perceive the proposed requirement as markedly different from the existing aggregate senior officer compensation disclosure requirement. Yet, several commenters interpreted the requirement to be more extensive. The FCA decided to retain the language in the existing rule with some modifications to reduce any ambiguity that may have been raised by the proposed requirement. Final § 620.5(i)(2)(i)(B) requires institutions to report the aggregate amount of compensation and the components of compensation paid during each of the last 3 completed fiscal years to all senior officers as a group, stating the number of officers in the group without naming them. As with the existing regulation, at a minimum, institutions must disclose the aggregate amount of compensation paid to the five most highly compensated officers, whether or not designated as a senior officer by the board.

A requirement for preparation of a "Summary Compensation Table" (table) was added to the final regulation to enhance the comparability of the compensation disclosures. Commenters indicated there was a need to improve the consistency of reporting compensation information and suggested the regulations stipulate a format for disclosure. In response, the general definition of "compensation" was eliminated and replaced by the more descriptive table and corresponding instructions. For purposes of reporting compensation information in the table, compensation is divided into two main categories: (1) "Annual;" and (2) "Other." The separation is to distinguish normal annual compensation from compensation that is unusual, infrequent, reflects special circumstances, or is earned during the fiscal year but is not usually available to the senior officer until a later date.

The components of "Annual" compensation include salary, bonuses, deferred compensation and perquisites. Amounts shown as "salary" and "bonus" are to reflect the gross amounts earned during the fiscal year before any reductions for amounts contributed during the fiscal year to a 401(k) plan or similar plan. If, for any reason, the exact amount of salary or bonus earned in the fiscal year is not expected to be known in time for its inclusion in the report, the institution is to include in the report its best estimate of the compensation amount and provide appropriate footnote disclosure with the table. Amounts shown as "deferred/perquisites" will include such items as deferred compensation, perquisites, and any other significant personal benefits customarily paid, earned or received on an annual basis. With respect to deferred compensation, this amount should reflect all forms of deferred compensation earned during the fiscal year, whether or not paid in cash. For example, if the deferred compensation was earned during the period but payment in cash was voluntarily deferred by the senior officer to a later period (e.g., upon retirement) the amount earned must still be included in the current period's compensation amount. Consequently, cash payments under deferred compensation arrangements where the amounts were earned in previous periods would not be included as part of the current period's compensation.

The category depicted as "Other" in the table includes amounts not appropriately characterized as components of annual compensation. Section 620.5(i)(2)(i)(E) specifies two forms of compensation that should be included in this category: (1) Compensation in the form of payouts due to a senior officer's resignation, retirement, or termination from employment; and (2) contributions by the institution on behalf of the senior officer to a defined contribution plan for which cash payments from the plan are typically not available to the senior officer until a later date. Any form of compensation in this part must be specifically identified and described in a footnote to the table.

The FCA received a mixed response to proposed § 620.5(i)(2)(iii), which would have required FCS institutions to provide a general discussion of compensation plans of its senior officers. While many commenters supported the proposed requirement, others believed that the disclosures would be too burdensome to compile. The FCA Board continues to believe that such discussion would be beneficial in providing explanations of compensation plans to the readers of the report. For the most part, the final regulation retains the requirements in proposed § 620.5(i)(2)(iii) that FCS institutions provide a description of the compensation plans of all those senior officers covered by the regulations. Proposed § 620.5(i)(2)(iii) (F) and (G), which would have required institutions to discuss the amounts paid under the plans, were dropped from the final rule because the final rule requires these comments to be disclosed in the table. The remaining compensation discussion requirements are now contained in § 620.5(i)(2)(ii) in the final rule.

The final rule clarifies that bank senior officer compensation information is part of the financial information that should be made available to shareholders of both the bank and its related associations upon request. When the disclosure regulations in part 620 of this chapter were initially adopted, the FCA determined that, due to the structure of the System and the impact the banks have on the financial results of the associations, there was a need for association shareholders to receive the financial information of the bank in addition to the financial information of the association. Existing § 620.4(b) implements this philosophy by requiring banks to distribute their annual reports to shareholders of related associations. Likewise, under the proposed rule, both the shareholders of the bank and related associations would have received the bank's annual report containing individual compensation information on the five most highly compensated bank senior officers. Although the disclosure requirement for individual senior officer compensation information was limited to CEOs in the final rule, the FCA Board continues to believe that it is important for shareholders of related associations to have access to individual compensation information of bank senior officers included in the aggregate disclosure required by § 620.5(i)(2)(i)(B).

Therefore, the required disclosure statement in proposed § 620.5(i)(2)(iv) was modified to clarify its requirements and is now contained in § 620.5(i)(2)(iii) in the final rule. Final § 620.5(i)(2)(iii) requires institutions to include a statement in the annual report or the AAMIS (if the association chooses to include compensation information in the AAMIS) that "information concerning the total compensation paid during the last fiscal year to any senior officer or to any other officer included in the aggregate whose compensation exceeds $50,000 is available and will be disclosed to shareholders of the

institution and shareholders of related associations (if applicable) upon request."

3. Travel, subsistence, and other related expenses

The disclosure requirements for travel, subsistence, and other related expenses in the final regulation remain unchanged from the proposed regulation with one exception. Pursuant to the preceding discussion, the final rule clarifies that the institution's policy regarding travel, subsistence, and other related expenses should also be made available to shareholders of related associations (if applicable) upon request.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart D—Rules for Compensation of Board Members

2. Section 611.400 is revised to read as follows:

§ 611.400 Compensation of bank board members.

(a) Farm Credit System banks are authorized to pay fair and reasonable compensation to directors for services performed in an official capacity at a rate not to exceed the level established in section 4.21 of the Farm Credit Act of 1971, as amended, unless the FCA determines that such a level adversely affects the safety and soundness of the institution.

(b) The bank director compensation level established in section 4.21 of the Act shall be adjusted to reflect changes in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics, in the following manner: Current year's maximum compensation = Prior year's maximum compensation adjusted by the prior year's annual average percent change in the CPI for all urban consumers. Adjustments will be made to the bank director statutory compensation limit beginning from October 28, 1992 (the date of enactment of the Farm Credit Banks and Associations Safety and Soundness Act of 1992). Additionally, each year the FCA will distribute a bookletter to all FCS banks that communicates the CPI adjusted bank director statutory compensation limit.

(c) A waiver of the compensation limitation prescribed by section 4.21 of the Act may be granted under exceptional circumstances as approved on a case-by-case basis by the FCA. However, the FCA shall not grant a waiver that allows a bank to pay any director in excess of 30 percent more than the statutory maximum compensation as determined in accordance with paragraph (b) of this section. A waiver approval shall precede any payments by the bank to its director(s) that exceed the maximum limitation determined in paragraph (b) of this section. A bank seeking a waiver shall provide the FCA Chairman with a written request that:

(1) Describes and explains the exceptional circumstance(s) that the bank believes necessitates a waiver of section 4.21 of the Act;

(2) States the amount and the terms and conditions (if any) of the proposed compensation level for each director that would exceed the statutory maximum determined in accordance with paragraph (b) of this section; and

(3) Justifies the compensation level of each director that would exceed the statutory limitation based on the extraordinary time and service devoted to bank business.

The FCA shall respond to written requests within 60 days of receipt of the preceding information and the receipt of any other additional information requested by the FCA.

(d) Each bank board shall adopt a written policy regarding compensation of bank directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which attendance is necessary and appropriate and may be compensated, except that a Farm Credit System bank shall not compensate any director for rendering services on behalf of any other Farm Credit System institution or a cooperative of which the director is a member, or for performing other assignments of a non-official nature;

(2) The methodology for determining each director's rate of compensation; and

(3) The exceptional circumstances under which the board would seek a waiver of the statutory limitation on bank director compensation for any of its directors and any limitations or conditions the board wishes to place on the availability of such waivers.

(e) Directors may also be reimbursed for reasonable travel, subsistence, and other related expenses in accordance with the policy adopted pursuant to § 618.8270 of this chapter.

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart F—Miscellaneous Provisions

4. Section 618.8270 is revised to read as follows:

§ 618.8270 Travel, subsistence, and other related expenses.

(a) Each Farm Credit institution board shall develop a written policy and maintain written records regarding the reimbursement of travel, subsistence, and other related expenses to its directors, officers, and employees. The policy shall address, at a minimum, the authorized purposes for which reimbursement of travel, subsistence, and other related expenses may be made and the guidelines and limitations on reimbursement.

(b) Each board shall require a review by the institution's internal auditor (or person designated by the board) of at least a sampling of the records maintained pursuant to paragraph (a) of this section to determine if the policies are being consistently followed. This review shall be conducted at least annually, with the results reported to the board audit committee or the full board, if the board does not have an audit committee.

PART 620—DISCLOSURE TO SHAREHOLDERS

5. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

6. Section 620.5 is amended by revising paragraph (i) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(i) *Compensation of directors and senior officers.*

(1) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and any noncash compensation that exceeds 10 percent of total compensation) and state the total cash compensation paid to all directors as a group during the last fiscal year. If applicable, describe any exceptional circumstances under which a waiver of section 4.21 of the Act was granted by the FCA. For each director, state:

(i) The number of days served at board meetings;

(ii) The total number of days served in other official activities;

(iii) The total compensation paid to each director during the last fiscal year.

(2) *Senior officer compensation.* Disclose the information on senior officer compensation and compensation plans as required by this paragraph. Farm Credit System associations may disclose the information required by this paragraph in the Association Annual Meeting Information Statement (AAMIS), but must include a reference in the annual report stating that the senior officer compensation information is included in the AAMIS.

(i) The institution shall disclose the total amount of compensation paid to senior officers in substantially the same manner as the tabular form specified in the following Summary Compensation Table (table):

SUMMARY COMPENSATION TABLE

Name of individual or No. in group	Year	Annual			Other	Total
		Salary	Bonus	Deferred/perquisites		
(a)	(b)	(c)	(d)	(e)	(f)	(g)
CEO	199X					
	199X					
	199X					
Aggregate No. of Senior Officers						
(X)	199X					
(X)	199X					
(X)	199X					

(A) Report the total amount of compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO) for each of the last 3 completed fiscal years, naming the individual. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO. Except that, no disclosure need be provided for any CEO whose salary and bonus (or annualized salary and bonus, if the CEO served in that capacity less than a year) do not exceed $150,000, adjusted annually to reflect changes in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics. The threshold for individually disclosing CEO compensation information shall be adjusted in the following manner: Current year's compensation disclosure threshold = Prior year's compensation disclosure threshold adjusted by the prior year's annual average percent change in the CPI for all urban consumers. The 1994 calendar year shall serve as the base year for making subsequent CPI adjustments to the $150,000 compensation disclosure threshold.

(B) Report the aggregate amount of compensation paid and the components of compensation paid during each of the last 3 completed fiscal years to all senior officers as a group, stating the number of officers in the group without naming them. At a minimum, disclose the aggregate amount of compensation paid to the five most highly compensated officers, whether or not designated as a senior officer by the board.

(C) Amounts shown as "Salary" (column (c)) and "Bonus" (column (d)) shall reflect the dollar value of salary and bonus earned by the senior officer during the fiscal year. Amounts contributed during the fiscal year by the senior officer pursuant to a plan established under section 401(k) of the Internal Revenue Code, or similar plan, shall be included in the salary column or bonus column, as appropriate. If the amount of salary or bonus earned during the fiscal year is not calculable by the time the report is prepared, the reporting institution shall provide its best estimate of the compensation amount(s) and disclose that fact in a footnote to the table.

(D) Amounts shown as "deferred/perquisites" (column (e)) shall reflect the dollar value of other annual compensation not properly categorized as salary or bonus, including but not limited to:

(*1*) Deferred compensation earned during the fiscal year, whether or not paid in cash; or

(*2*) Perquisites and other personal benefits unless the aggregate value of such compensation is the lesser of either $25,000 or 10 percent of the total of annual salary and bonus reported for the senior officer in columns (c) and (d).

(E) Compensation amounts reported under the category "Other" (column (f)) shall reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column shall be specifically identified and described in a footnote to the table. Such compensation includes, but is not limited to:

(*1*) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination of such officer's employment with the institution; or

(*2*) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is made available to all employees on the same basis.

(F) Amounts displayed under "Total" (column (g)) shall reflect the sum total of amounts reported in columns (c), (d), (e), and (f).

(ii) Provide a description of all plans pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year, to those individuals described in paragraph (i)(2)(i) of this section. The description of each plan must include, but not be limited to:

(A) A summary of how the plan operates and who is covered by the plan;

(B) The criteria used to determine amounts payable, including any performance formula or measure;

(C) The time periods over which the measurement of compensation will be determined;

(D) Payment schedules; and

(E) Any material amendments to the plan during the last fiscal year.

(iii) The annual report or AAMIS shall include a statement that disclosure of information on the total compensation paid during the last fiscal year to any senior officer or to any other officer included in the aggregate whose compensation exceeds $50,000 is available and will be disclosed to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(3) *Travel, subsistence, and other related expenses.*

(i) Briefly describe the policy adopted pursuant to § 618.8270 of this chapter addressing reimbursements for travel, subsistence, and other related expenses as it applies to directors and senior officers. The report shall include a statement that a copy of the policy is available to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(ii) For each of the last 3 fiscal years, state the aggregate amount of reimbursement for travel, subsistence, and other related expenses for all directors as a group.

* * * * *

Dated: July 15, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–17906 Filed 7–21–94; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Delegations of Authority: Surety Guarantees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is extending its delegations of authority for guaranteeing sureties against a portion of the losses resulting from the breach of bid, payment or performance bonds on contracts to include the District Director and the Assistant District Director for Economic Development in certain specified district offices.

EFFECTIVE DATE: This rule is effective on July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Dorothy D. Kleeschulte, Associate Administrator, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, (202) 205–6540.

SUPPLEMENTARY INFORMATION: SBA is expanding its delegations of authority for guaranteeing sureties against a portion of the losses resulting from the breach of bid, payment or performance bonds on contracts. Under the amendment the District Director and the Assistant District Director for Economic Development in the following District Offices have been delegated such authority for contracts not to exceed $1,250,000: Boston, MA; New York, NY; Philadelphia (King of Prussia), PA; Atlanta, GA; Chicago, IL; Dallas, TX; Kansas City, MO; Denver, CO; San Francisco, CA; and Seattle, WA.

Because this final rule governs matters of agency organization, management and personnel and makes no substantive change in SBA's regulations, SBA is not required to determine if these changes constitute a major or significant rule for purposes of Executive Order 12866, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to perform a Federalism assessment pursuant to Executive Order 12612. SBA certifies that these changes will not impose a new recordkeeping or reporting requirement under the Paperwork Reduction Act (44 U.S.C. CH 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for notice and public comment pursuant to 5 U.S.C. 553(b)(A). The rule will be effective upon publication to expedite the more efficient processing of applications for surety guarantees.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies); Administrative practice and procedure; Organization and functions (Government agencies).

Part 101 of title 13, Code of Federal Regulations, is amended as follows:

PART 101—[AMENDED]

1. The authority citations for part 101 continue to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (August 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2 is revised in Part III, Section C, by redesignating items 1(c) through 1(f) as 1(e) through 1(h) and by inserting items 1(c) and 1(d) to read as follows:

§ 101.3–2 Delegations of authority to conduct program activities in field offices.

* * * * *

PART III—OTHER FINANCIAL AND GUARANTY PROGRAMS

* * * * *

Section C—Surety Guarantee

* * * * *

c. District Director for the following District Offices: Boston, MA; New York, NY; Philadelphia (King of Prussia), PA; Atlanta, GA; Chicago, IL; Dallas, TX; Kansas City, MO; Denver, CO; San Francisco, CA, and Seattle, WA $1,250,000

d. Assistant District Director for Economic Development for the following District Offices: Boston, MA; New York, NY; Philadelphia (King of Prussia), PA; Atlanta, GA, Chicago, IL; Dallas, TX; Kansas City, MO; Denver, CO; San Francisco, CA; and Seattle, WA $1,250,000

* * * * *

Dated: July 12, 1994.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 94–17702 Filed 7–21–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–95–AD; Amendment 39–8980; AD 94–15–09]

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR72 series airplanes. This action requires inspections to detect damage, corrosion, or cracking of the hinge pin on each shock absorber on the main landing gear (MLG), and repair or replacement of the pins, if necessary. This amendment is prompted by reports of rupture of certain hinge pins due to stress corrosion of the pins in the shock absorber on the MLG on Model ATR72 series airplanes. The actions specified in this AD are intended to prevent loss of the MLG during a hard landing due to malfunction of the shock absorber on the MLG.

DATES: Effective August 8, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 8, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Technical Publications Department, Messier-Eram, Zone Aeronautique Luis Breget, B.P. 10, 78142 Velizy Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR72 series airplanes. The DGAC advises that it has received reports of rupture of the upper hinge pins in the shock absorber on the main landing gear (MLG) on Model ATR72 series airplanes. Investigation revealed that these hinge pins ruptured due to stress corrosion inside the pin. Corrosion inside the hinge pins, if not detected and corrected in a timely manner, could result in malfunction of the shock absorber on the MLG. This condition, if not corrected, could result in loss of the MLG during a hard landing.

Avions de Transport Regional (ATR) has issued Service Bulletin ATR72–32–1025, dated April 5, 1994. This service bulletin references Messier-Bugatti Service Bulletin 631–32–099, dated April 12, 1994, for additional service information. The Messier-Bugatti service bulletin describes procedures for repetitive visual inspections (using a borescope) to detect damage to the protective treatments on the inside diameter of the hinge pin on each shock absorber on the MLG. The service bulletin describes procedures for stripping any damaged protective treatments to determine if the base metal is corroded, completing a paint scheme of the damaged area, and reinstalling any pin on which no corrosion of the base metal is found. For pins on which the base metal is corroded, the service bulletin describes procedures for removal of the corrosion and a dye penetrant or fluorescent penetrant inspection to detect cracking of the pin; repair or replacement of any uncracked pin; and replacement of any cracked pin with a serviceable pin.

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 94–065–020(B), dated March 30, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of the MLG during a hard landing. This AD requires repetitive visual inspections (using a borescope) to detect damage to the protective treatments on the inside diameter of the hinge pin on each shock absorber on the MLG. This AD also requires stripping any damaged protective treatments to determine if the base metal is corroded. For pins on which the base metal is not corroded, this AD requires completion of a paint scheme of the damaged area and reinstallation of the pin. For pins on which the base metal is corroded, this AD requires removal of the corrosion and a dye penetrant or fluorescent penetrant inspection to detect cracking of the pin; repair or replacement of any uncracked pin; and replacement of any cracked pin with a serviceable pin. The actions are required to be accomplished in accordance with the Messier-Bugatti service bulletin described previously.

Messier-Bugatti advises that a modification of the link between the shock absorber and the universal joint is currently under study. Therefore, this AD is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–95–AD." The postcard will be date stamped and returned to the commenter.

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 that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further 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 Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

List of Subjects in 14 CFR Part 39

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–15–09 Aerospatiale: Amendment 39–8980. Docket 94–NM–95–AD.

Applicability: All Model ATR72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the main landing gear (MLG) during a hard landing, accomplish the following:

(a) Perform a visual inspection (using a borescope) to detect damage to the protective treatments on the inside diameter of the upper hinge pins on each shock absorber on the MLG, in accordance with Messier-Bugatti Service Bulletin 631–32–099, dated April 12, 1994, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Repeat this inspection thereafter at intervals not to exceed 4,000 landings.

(1) For airplanes on which the MLG has accumulated more than 9,000 total landings as of the effective date of this AD: Inspect within 300 landings after the effective date of this AD.

(2) For airplanes on which the MLG has accumulated 6,000 or more total landings but less than or equal to 9,000 total landings as of the effective date of this AD: Inspect prior to the accumulation of 9,300 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs first.

(3) For airplanes on which the MLG has accumulated less than 6,000 total landings as of the effective date of this AD: Inspect prior to the accumulation of 7,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later.

(b) If no damaged protective treatment is found, prior to further flight, reinstall the grease duct and fill the cavity between the pin and the grease duct with grease in accordance with Messier-Bugatti Service Bulletin 631–32–099, dated April 12, 1994. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

(c) If any damaged protective treatment is found, prior to further flight, strip the damaged protective treatment to determine if the base metal is corroded, in accordance with Messier-Bugatti Service Bulletin 631–32–099, dated April 12, 1994.

(1) If no corrosion of the base metal is found, within 250 landings, complete a paint scheme of the damaged area, reinstall the grease duct, and fill the cavity between the pin and the grease duct with grease in accordance with the service bulletin. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

(2) If any corrosion of the base metal is found, prior to further flight, remove the corrosion, and perform a dye penetrant or a fluorescent penetrant inspection to detect cracking of the pin, in accordance with the service bulletin.

(i) If no crack is found, accomplish either paragraph (c)(2)(i)(A) or (c)(2)(i)(B) of this AD in accordance with the service bulletin. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

(A) Prior to further flight, repair the hinge pin; or

(B) Within 50 landings after performing the inspection required by paragraph (c)(2) of this AD, replace the hinge pin with a serviceable pin.

(ii) If any crack is found, prior to further flight, replace the hinge pin with a serviceable pin in accordance with the service bulletin. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Messier-Bugatti Service Bulletin 631–32–099, dated April 12, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Technical Publications Department, Messier-Eram, Zone Aeronautique Luis Breget, B.P. 10, 78142 Velizy Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 8, 1994.

Issued in Renton, Washington, on July 15, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17766 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 97

[Docket No. 27828; Amdt. No. 1612]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 18, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

. . . *Effective Oct 13, 1994*

Trinidad, CO, Perry Stokes, NDB–A, Amdt 2
Trinidad, CO, Perry Stokes, DF Rwy 21, Amdt 1, CANCELLED
Belle Plaine, IA, Belle Plaine Muni, VOR/DME–A, Orig
Jamestown, NY, Chautauqua County, VOR/DME RNAV RWY 13, Amdt 3
Jamestown, NY, Chautauqua County, VOR/DME RNAV RWY 31, Amdt 2
Greenwood, SC, Greenwood County, VOR Rwy 9, Amdt 13
Greenwood, SC, Greenwood County, VOR Rwy 27, Amdt 12
Greenwood, SC, Greenwood County, NDB Rwy 27, Amdt 1
Panhandle, TX, Panhandle-Carson County, VOR RWY 17, Orig

. . . *Effective Sep 15, 1994*

Abbeville, LA, Abbeville Municipal, VOR/DME–A, Amdt 1
Abbeville, LA, Abbeville Municipal, VOR/DME–B, Amdt 1
Lagrange, TX, Fayette Regional Air Center, VOR/DME–A, Orig
Waco, TX, Mc Gregor Muni, VOR RWY 17, Amdt 8
Waco, TX, Mc Gregor Muni, RADAR–1, Amdt 1

. . . *Effective Aug 18, 1994*

Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, NDB–A, Amdt 3
Ormond Beach, FL, Ormond Beach Muni, VOR Rwy 8, Amdt 10, CANCELLED
Williston, FL, Williston Muni, VOR/DME or GPS Rwy 22, Amdt 1
Boise, ID, Boise Air Terminal (Gowen Field), LOC/DME BC Rwy 28L, Amdt 5, CANCELLED
Boise, ID, Boise Air Terminal (Gowen Field), LOC BC Rwy 28L, Orig
Dowagiac, MI, Dowagiac Municipal, VOR–A, Amdt 9
Dowagiac, MI, Dowagiac Municipal, VOR/DME RNAV RWY 27, Amdt 6
Gothenburg, NE, Quinn Field, VOR–A, Amdt 1
Gothenburg, NE, Quinn Field, NDB RWY 32, Amdt 1
Cincinnati, OH, Cincinnati-Blue Ash, VOR RWY 24, Amdt 5
Shelbyville, TN, Shelbyville Municipal, VOR Rwy 18, Amdt 5
Shelbyville, TN, Shelbyville Municipal, VOR/DME Rwy 18, Amdt 4
Shelbyville, TN, Shelbyville Municipal, VOR or GPS Rwy 36, Amdt 15
Somerville, TN, Fayette County, NDB Rwy 18, Orig
Superior, WI, Richard I Bong, NDB RWY 31, Amdt 4
Superior, WI, Richard I Bong, VOR/DME RWY 31, Amdt 1 CANCELLED
Superior, WI, Richard I Bong, VOR RWY 13, Amdt 3, CANCELLED

. . . *Effective Jul 12, 1994*

Monterey, CA, Monterey Peninsula, ILS RWY 10R, Amdt 26

Note: The FAA published amendments in Docket No. 27813, Amdt. No. 1610 to Part 97 of the Federal Aviation Regulations (Vol. 59, No. 131, Page 35249; dated Monday, July 11, 1994) under Sections 97.23 and 97.25 Effective 18 AUG 94 which are hereby amended as follows:

Farmingdale, NY, Republic, LOC BC RWY 32, Amdt. 3, CANCELLED change to loc BC RWY 32, Amdt. 4, CANCELLED
Paris, TX, Cox Fld, VOR RWY 35, Orig change to VOR OR GPS RWY 35, Orig

[FR Doc. 94–17871 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27829; Amdt. No. 1613]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 18, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

. . . Effective Upon Publication.

FDC date	State	City	Airport	FDC No.	SIAP
07/05/94 ...	AK	Ambler	Ambler	FDC 4/3387	NDB Rwy 36, Amdt 1...
07/05/94 ...	AK	Gustavus	Gustavus	FDC 4/3385	NDB–A, Amdt 3...
07/05/94 ...	AK	Gustavus	Gustavus	FDC 4/3386	VOR/DME–B, Amdt 3A...
07/05/94 ...	AK	Mekoryuk	Mekoryuk	FDC 4/3383	NDB Rwy 23, Amdt 1A...
07/05/94 ...	AK	Mekoryuk	Mekoryuk	FDC 4/3384	NDB/DME–A, Amdt 2A...
07/05/94 ...	AK	Shishmaref	Shishmaref	FDC 4/3380	NDB Rwy 23, Orig–A...
07/05/94 ...	AK	Shishmaref	Shishmaref	FDC 4/3381	NDB Rwy 5, Orig–A...
07/05/94 ...	AK	Valdez	Valdez	FDC 4/3379	LDA/DME–C, Amdt 3...
07/06/94 ...	ME	Auburn-Lewiston	Auburn-Lewiston Muni	FDC 4/3419	VOR/DME–A, Orig...
07/06/94 ...	MI	Niles	Jerry Tyler Memorial	FDC 4/3407	VOR Rwy 3, Amdt 7...
07/06/94 ...	MI	Niles	Jerry Tyler Memorial	FDC 4/3408	VOR Rwy 21, Amdt 3...
07/07/94 ...	MI	Benton Harbor	Ross Rield-Twin Cities	FDC 4/3431	ILS Rwy 27, Amdt 6B...
07/07/94 ...	OH	New Philadelphia	Harry Clever Field	FDC 4/3432	VOR/DME–B, Amdt 2...
07/07/94 ...	OH	New Philadelphia	Harry Clever Field	FDC 4/3433	VOR–A, Orig...
07/12/94 ...	HI	Lanai City	Lanai	FDC 4/3560	VOR or TACAN Rwy 3, Amdt 6...

[FR Doc. 94–17872 Filed 7–21–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to disclosure of official records in order to delegate authority to certain officials within the agency for disclosure to foreign governments.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 19, 1993 (58 FR 61598), FDA published a final rule amending the regulations in § 20.89 (21 CFR 20.89), effective December 20, 1993, to provide that the Commissioner of Food and Drugs (the Commissioner) may designate any other FDA officer or employee to act on the Commissioner's behalf to authorize the nonpublic disclosure, under certain specified conditions, of confidential commercial information submitted to FDA or incorporated into agency-prepared records. This amendment permits such disclosure to foreign government officials who perform counterpart functions to FDA as part of cooperative law enforcement or regulatory efforts. The amendment also permits the disclosure of trade secret information to visiting foreign scientists under certain limited conditions. Section 5.23 *Disclosure of official records* (21 CFR 5.23) is being revised to add § 20.89(c) to the sections already referenced in § 5.23(a), and to list those officials authorized to make such disclosures.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.23 is amended by revising the introductory text of paragraph (a) and by adding new paragraphs (a)(10)(i) through (a)(10)(vii) to read as follows:

§ 5.23 Disclosure of official records.

(a) The following officials are authorized to make determinations to disclose official records and information under part 20 of this chapter, except that only the officials listed in paragraph (a)(1) of this section may disclose official records and information under §§ 20.82 and 20.85 of this chapter, and only officials listed in paragraph (a)(10) of this section may disclose information under § 20.89(c) of this chapter.

* * * * *

(10)(i) The Associate Commissioner for Regulatory Affairs, Deputy Associate Commissioner for Regulatory Affairs, and Director, Office of Enforcement, FDA.

(ii) The Director, Deputy Director, and Associate Director for Policy Coordination and Public Affairs, Center for Biologics Evaluation and Research (CBER), and Director, Division of Congressional and Public Affairs, CBER.

(iii) The Director, Deputy Directors, and Associate Director for Science and Medical Affairs, Center for Drug Evaluation and Research (CDER).

(iv) The Director and Deputy Director for Regulations and Policy, Center for Devices and Radiological Health (CDRH).

(v) The Director, Center for Food Safety and Applied Nutrition (CFSAN), and Deputy Director for Systems and Support, CFSAN.

(vi) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

(vii) The Director, Deputy Director, and Associate Director for Scientific Coordination, National Center for Toxicological Research (NCTR).

* * * * *

Dated: July 18, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17808 Filed 7–21–94; 8:45 am]
BILLING CODE 4160–01–F

21 CFR Part 172

[Docket Nos. 87F–0389, 88F–0151, and 89F–0042]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Polydextrose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polydextrose in peanut spread, fruit spreads, sweet sauces, toppings, and syrups. This action is in response to three petitions filed by Pfizer Central Research, Pfizer, Inc. (Pfizer).

DATES: Effective July 22, 1994; written objections and requests for a hearing by August 22, 1994. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 172.841(b), effective July 22, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION:

I. Background and Estimates of Consumption

In a notice published in the **Federal Register** of January 26, 1988 (53 FR

2093), which was amended in the **Federal Register** of June 9, 1988 (53 FR 21729), FDA announced that a food additive petition (FAP 7A3998) had been filed by Pfizer, 235 East 42d St., New York, NY 10017, proposing that § 172.841 *Polydextrose* (21 CFR 172.841) be amended to provide for the safe use of polydextrose in peanut spread. In a notice published in the **Federal Register** of May 26, 1988 (53 FR 19046), FDA announced that another food additive petition (FAP 8A4068) had been filed by Pfizer, proposing to amend the same regulation for the safe use of polydextrose in fruit spreads. Then, in a notice published in the **Federal Register** of March 15, 1989 (54 FR 10727), the agency announced that Pfizer had filed a third food additive petition (FAP 9A4126), proposing to amend the same regulation for the safe use of polydextrose in sweet sauces, toppings, and syrups. In a notice published in the **Federal Register** of November 18, 1992 (57 FR 54406), FDA announced that the agency was amending the filing notices for three food additive petitions (FAP's 7A3998, 8A4068, and 9A4126) filed by Pfizer, dated January 26 and May 26, 1988, and March 15, 1989, respectively, to state that the petitioner had requested that § 172.841 be amended to include, through incorporation by reference, specifications of the "Food Chemicals Codex," 3d ed. (1981), 2d supp. (1986), pp. 57 through 59, and 3d supp. (1992), p. 136.

The agency has estimated that the proposed uses of polydextrose in peanut spread, fruit spreads, sweet sauces, toppings, and syrups would add no more than 4.2 grams per person per day (g/p/d) to the mean and 4.6 g/p/d to the 90th percentile estimated daily intake (EDI) for the 2- to 5-year age group and 3.2 g/p/d to the mean and 4.1 g/p/d to the 90th percentile EDI for the 2+ years age group (all ages). Upon regulation, the cumulative EDI will be no greater than 16 g/p/d for mean consumption and 26 g/p/d for consumption at the 90th percentile for the 2- to 5-year-old-age group and 18 g/p/d (mean) and 29 g/p/d (90th percentile) for the "all ages" age group (Ref. 1).

II. Lead Specification for Polydextrose

The agency has been attempting to reduce consumer exposure to lead in foods by revising or setting new lead specifications for food additives. (See 59 FR 5363, February 4, 1994). During the Food Chemicals Codex (FCC) Committee workshop on May 2, 1991, the agency presented its concerns regarding lead levels in food additives. The FCC Committee of the National Academy of Science/Institute of Medicine thereafter revised its policy for establishing lead specifications for food additives to require that lead specifications should be set at the lowest levels practicable on the basis of: (1) Current good manufacturing practice; (2) potential hazard; (3) the availability of analytical methodology for the determination of low lead levels in food matrices; and (4) estimates of food intake. Revised and new lead specifications have recently been published for a number of food ingredients in the "Food Chemicals Codex," 3d ed., 3d supp. (1992). In amending the current regulation for polydextrose (21 CFR 172.841), the agency is incorporating by reference the specifications for polydextrose set out in the "Food Chemicals Codex ," 3d ed., 2d supp. (1986), as amended by the 3d supp. (1992), including the new lowered specifications for lead (0.5 parts per million (ppm)) as well as that for heavy metals (as lead) (5 ppm).

III. Conclusion

The agency concludes that the available data provide reasonable certainty of no harm from the proposed food additive uses. In reaching this conclusion, the agency has considered the potential for excessive consumption of polydextrose to cause laxation effects in sensitive individuals. 21 CFR 172.841(d) currently requires that consumers be informed of this potential through special labeling of products containing more than 15 g of polydextrose per serving. The agency has considered the cumulative effect of the additional petitioned uses and has concluded that the current labeling requirement is adequate to protect the public. Accordingly, the agency is amending § 172.841 of the food additive regulations to provide for the safe use of polydextrose in peanut spread, fruit spreads, sweet sauces, toppings, and syrups.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment for each of the three petitions, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 22, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Memoranda of September 30, 1992, and September 7, 1993, by M. J. DiNovi, Division of Product Manufacture and Use.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.841 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, by adding new paragraph (b), and by revising newly redesignated paragraph (c) to read as follows:

§ 172.841 Polydextrose.

* * * * *

(b) The additive meets the specifications of the "Food Chemicals Codex," 3d ed. (1981), 2d supp. (1986), pp. 57–59, as amended by the 3d supp. (1992), p. 136, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Division of Product Policy (HFS-205), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) Polydextrose is used in accordance with current good manufacturing practices as a bulking agent, formulation aid, humectant, and texturizer in the following foods when standards of identity established under section 401 of the act do not preclude such use: Baked goods and baking mixes (restricted to fruit, custard, and pudding-filled pies; cakes; cookies; and similar baked products); chewing gum; confections and frostings; dressings for salads; frozen dairy desserts and mixes; fruit spreads; gelatins, puddings and fillings; hard and soft candy; peanut spread; sweet sauces, toppings, and syrups.

* * * * *

Dated: June 6, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–17923 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 343

[Docket No. 94N–0255]

Over-the-Counter Marketing of Internal Analgesic, Antipyretic, and Antirheumatic Drug Products; Background Document for Advisory Committee Meeting; Availability; Establishment of a Public Docket and Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of background document; establishment of a public docket and request for comments.

SUMMARY: The Food and Drug Administration is announcing the availability of a background document for the joint meeting of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee on effectiveness data requirements and labeling for over-the-counter (OTC) marketing of internal analgesic, antipyretic and antirheumatic drug products scheduled for September 8 and 9, 1994. The background information is being made available to ensure that all interested parties are aware of the issues that are the subject of the committee discussion. FDA is also announcing that it is establishing a public docket for comments, views, and other information submitted to the agency on these subjects from interested persons.

DATES: Submit written comments by August 15, 1994 , in order for written comments to be considered for discussion at the September 8 and 9, 1994, advisory committee meeting.

ADDRESSES: Submit written comments or relevant data and requests for single copies of the background document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments and requests should be identified with the docket number found in the brackets in the heading of this document. Send two self-addressed adhesive labels to assist the branch in processing your requests. Three copies of written comments should be submitted, except that individuals may submit one copy. The background document and received comments are available for public examination at the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1994 (59 FR 35375), FDA announced that a forthcoming joint meeting of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee on effectiveness data requirements and labeling for over-the-counter (OTC) marketing of internal analgesic, antipyretic and antirheumatic drug products will be held on September 8 and 9, 1994. FDA is holding this meeting to discuss:

(1) Data requirements to support specific types of indications for OTC analgesic drug products;

(2) Recommendations for labeling indications for OTC analgesics; and

(3) The current state of scientific knowledge in the areas of pain receptors, mechanism(s) of pain perception, and the basis for response to analgesic drug classes.

The purpose of this meeting is to address specific topics and questions contained in the background document that could result in future rulemaking.

FDA has established public docket No. 94N–0255 to enable interested persons to submit comments or other relevant data on the background document.

Dated: July 15, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17811 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Melatonin Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wildlife Laboratories, Inc. The NADA provides for the subcutaneous use of melatonin implant in healthy male and female kit and adult female mink to accelerate the fur priming cycle.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Wildlife Laboratories, Inc., 1401 Duff Dr., suite 600, Fort Collins, CO 80524, filed NADA 140–846 which provides for the subcutaneous use of melatonin implant in healthy male and female kit and adult female mink (*Mustela vison*) to accelerate the fur priming cycle. The drug product is an implant consisting of a silicone rubber elastomer that contains 2.7 milligrams of homogeneously dispersed melatonin. The NADA is approved as of June 21, 1994, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.1350 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning June 21, 1994, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.1350 is added to read as follows:

§ 522.1350 Melatonin implant.

(a) *Specifications.* The drug is a silicone rubber elastomer implant containing 2.7 milligrams of melatonin.

(b) *Sponsor.* See No. 053923 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* One implant per mink.

(2) *Indications for use.* For use in healthy male and female kit and adult female mink (*Mustela vison*) to accelerate the fur priming cycle.

(3) *Limitations.* For subcutaneous implantation in mink only. Do not implant potential breeding stock. Do not use in food-producing animals.

Dated: July 15, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94–17809 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No R–94–1653; FR–3382–F–05]

RIN 2502–AG13

Amendments to Regulation X, the Real Estate Settlement Procedures Act Regulation (Subordinate Liens); Technical Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; technical amendments.

SUMMARY: The Department is publishing technical amendments to clarify the final rule on Amendments to Regulation X, the Real Estate Settlement Procedures Act Regulation (Subordinate Liens), published February 10, 1994 (59 FR 6505), and corrected on March 30, 1994 (59 FR 14748).

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Senior Attorney for RESPA, Office of General Counsel, Room 10252 (202) 708–1550, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410–0500. The TDD number is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary, and not required, because the rule is in the nature of a clarification that reflects the Department's interpretation of existing requirements.

Background and Justification for Effective Date

On February 10, 1994, the Department issued amendments to its regulations to implement sections 908 and 951 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (Act). That Act expanded the coverage of RESPA to include mortgages secured by subordinate liens, and restated the Department's authority over refinancing transactions. The Department's final rule of February 10, 1994, adopted certain definitions and disclosure requirements of the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, to minimize the burden on lenders and others in complying with different or conflicting definitions and disclosure requirements for transactions also covered by the TILA.

As published, the preamble and the final rule contained material that might have been misleading, so the Department published a correction to clarify certain provisions in the rule (59 FR 14748). The Department has now determined that two additional clarifications of the final rule would be helpful. Because the final rule has an effective date of August 9, 1994, the Department is also making these technical amendments effective on August 9, 1994. A longer period before effectiveness of these amendments would not benefit the public, and coinciding effective dates for the rule and amendments may avoid unnecessary confusion about the rule.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is in the nature of a clarification that merely reflects the Department's interpretation of existing requirements.

Environmental Impact

Because this rule clarifies a rule published on February 10, 1994 (59 FR 6505), the finding of no significant impact prepared for that rule remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. This rule merely clarifies the applicable regulatory requirements.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 3500 of Title 24 of the Code of Federal Regulations is amended as set forth below.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. Section 3500.6 is amended by removing the word "and" at the end of paragraph (a)(3)(ii); by removing the punctuation "." at the end of paragraph (a)(3)(iii) and replacing it with "; and"; and by adding a new paragraph (a)(3)(iv), to read as follows:

§ 3500.6 Special information booklet at time of loan application.

(a) * * *

(3) * * *

(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

* * * * *

3. Section 3500.7 is amended in paragraph (e)(1)(iii) by adding two new sentences in parentheses after the second sentence, to read as follows:

§ 3500.7 Good faith estimate.

* * * * *

(e) * * *

(1) * * *

(iii) * * * (The lender is not required to keep detailed records of the percentages of use. Similar language, such as "X was used [regularly] [frequently] in our settlements the past year" is also sufficient for the purposes of this paragraph.) * * *

* * * * *

Dated: July 18, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17886 Filed 7–21–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists primarily of changes to provisions of the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC) concerning the Small Operator Assistance Program (SOAP), the definition of "road" as referenced in the coal exploration performance standards, and authorization for individual civil and criminal penalties under the coal exploration program. The amendment is intended to revise the North Dakota program to be consistent with SMCRA and the Federal regulations.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated April 21, 1993 (administrative record No. ND–Q–01), North Dakota submitted a proposed amendment ("Amendment XVIII") to its permanent program pursuant to SMCRA. North Dakota proposed this

amendment in response to required program amendments at 30 CFR part 934.16 (l) and (y), published in the January 9, 1992, **Federal Register** (57 FR 827). In addition, North Dakota proposed State-initiated changes to the requirements for preblasting surveys and to NDCC chapter 38–14.1 reflecting 1992 changes to the Small Operator Assistance Program by the Energy Policy Act of 1992 (Pub. L. 102–486) (Energy Policy Act) at sections 507 (c) and (h) of SMCRA. (For a document relating to the regulatory provisions proposed by North Dakota for preblasting surveys and small operator assistance, see an additional final rule **Federal Register** notice for the State of North Dakota published elsewhere in this issue.) The Director notes that Federal implementing regulations were published in a final rule **Federal Register** notice dated May 31, 1994, addressing, in part, the changes to the Small Operator Assistance Program by the Energy Policy Act (59 FR 28136).

OSM published a proposed rule in the May 19, 1993, **Federla Register** (58 FR 29155) announcing receipt of the amendment and inviting public comment on its adequacy (administrative record No. ND–Q–7). The public comment period ended June 18, 1993. The public hearing, scheduled for June 14, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to: (1) The proposed provisions at NDCC 38–14.1–37(4), regarding SOAP requirements for reimbursement of training costs and NDCC 38–14.1–37(5), regarding the prohibition of SOAP assistance to operations not subject to payment of AML fees; (2) the requirement for North Dakota to revise its implementing rules at North Dakota Administrative Code (NDAC) 69–05.2–29 to be consistent with the proposed statutory revisions; and (3) the proposed revisions at NDCC 38–12.1–03(6), regarding the definition of "road" and NDCC 38–12.1–08, regarding the authorization for individual civil and criminal penalties under the coal exploration program. OSM notified North Dakota of these concerns by letter dated November 12, 1993 (administrative record No. ND–Q–14).

By letter dated December 3, 1993, North Dakota responded by submitting additional explanatory information and a revised amendment (administrative record No. ND–Q–15). Specifically, North Dakota: (1) Stated, with respect to NDCC 38–14.1–37(4), SOAP requirements for reimbursement of training costs, that it will propose the necessary statutory change in the next legislative session; (2) provided a statement of clarification regarding North Dakota's intent with respect to its implementing rules for the revised SOAP statutory provisions; and (3) proposed to revise its rules at NDAC 43–02–01–20.3(c)(2), regarding the definition of "road" and NDAC 43–02–01–05, regarding the authorization for individual civil and criminal penalties under the coal exploration program.

OSM announced receipt of the revised amendment in the December 28, 1993, **Federal Register** (58 FR 68617, administrative record No. ND–Q–16), and in the same notice, reopened and extended the public comment period on the adequacy of the amendment and the additional materials submitted. The comment period closed January 12, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed North Dakota program amendment as submitted on April 21, 1993, and revised on December 3, 1993.

1. NDCC 38–14.1–21(5), Permit Approval or Denial Standards

NDCC 38–14.1–21(5) currently provides:

> Where information available to the commission indicates that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of [NDCC Chapter 38–14.1], [SMCRA], or any law or rule of the United States or the state of North Dakota, or of any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application the permit may not be issued until the permit applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority with jurisdiction over the violation.

As noted by OSM in a final rule **Federal Register** notice dated January 9, 1992 (57 FR 807, 816–17), current NDCC 38–14.1–21(5) is similar to the Federal counterpart provision at section 510(c) of SMCRA, but the Federal provision, unlike the State counterpart, does not contain a temporal limitation upon the violations considered by the regulatory authority in making its decision to approve or deny a permit. The three-year temporal limitation in current NDCC 38–14.1–21(5) renders North Dakota's statutory provision less stringent than section 510(c) of SMCRA.

North Dakota has now proposed to delete the three-year temporal limitation from NDCC 38–14.1–21(5), thus rendering it no less stringent than section 510(c) of SMCRA. The Director notes that North Dakota's reference to SMCRA in revised NDCC 38–14.1–21(5) is interpreted to include SMCRA, its implementing rules, and all state and federal programs enacted pursuant to SMCRA. *See e.g.* 57 FR 807, 811–812, 816–818 (January 9, 1992).

The Director finds North Dakota's proposed statutory revision at NDCC 38–14.1–21(5) to be no less stringent than section 510(c) of SMCRA and is approving the proposed change.

2. NDCC 38–14.1–24(13)(e), Environmental Protection Performance Standards, Preblasting Survey Criteria.

North Dakota proposed to revise NDCC 38–14.1–24(13)(e) by requiring that a preblasting survey be conducted by the permittee when requested by the resident or owner of a man-made dwelling or structure within one mile [1.61 kilometers] of any portion of the permitted area. Currently, the North Dakota statutory provision requires such a preblasting survey when requested by the resident or owner of a man-made dwelling or structure within one-half mile [804.67 meters] of any portion of the permitted area.

Section 515(b)(15)(E) of SMCRA requires that a preblasting survey be conducted when requested by the resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area. North Dakota's proposed revision to NDCC 38–14.1–24(13)(e) thus allows a potentially larger group of residents or owners within the vicinity of a mine to request a preblasting survey than is provided for by SMCRA. In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for hich no Federal counterpart exists Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such State provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving the proposed statutory change at NDCC 38–14.1–24(13)(e).

3. NDCC 38–14.1–37, Small Operator Assistance Program (SOAP).

North Dakota proposed numerous revisions to NDCC 38–14.1–37, regarding the North Dakota Small Operator Assistance Program (SOAP).

a. NDCC 38–14.1–37(2), Introductory Text

In the introductory text of NDCC 38–14.1–37(2), North Dakota proposed to increase the amount of probable total annual production allowed for SOAP applicants from one hundred thousand tons [90,718.47 metric tons] to three hundred thousand tons [272,155.41 metric tons]. North Dakota also proposed, in the introductory text of NDCC 38–14.1–37(2), that the costs of certain activities specified at NDCC 38–14.1–37(2) (a) through (f) (discussed at findings 3 (b) through (g) below), which must be performed by a qualified public or private entity designated by the Commission, may be assumed by the Commission upon the written request of an operator in connection with a permit application.

North Dakota's proposed revision to increase the amount of probable total annual production allowed for SOAP applicants from one hundred thousand tons to three hundred thousand tons is consistent with and no less stringent than section 507(c)(1) of SMCRA.

North Dakota's proposal regarding the cost of certain activities that the Commission may assume upon written request of an operator in connection with a permit application would appear to grant discretion to the regulatory authority that is not granted in section 507(c)(1) of SMCRA. Section 507(c)(1) requires that the specified costs "shall" be assumed by the regulatory authority.

This SMCRA provision is implemented in the Federal regulations at 30 CFR 795.9(a), which require the payment of such costs for eligible applicants who request the assistance "[t]o the extent possible with available funds." Similarly, North Dakota's rules at NDAC 69–05.2–29–02 (introductory text) also require that the Commission pay costs for qualified applicants who request the assistance "[t]o the extent possible with available funds."

Therefore, the Director finds North Dakota's proposed revisions to the introductory text of NDCC 38–14.1–37(2), when read in light of the regulatory limitations at NDAC 69–05.2–29–02, to be no less stringent than section 507(c)(1) of SMCRA and no less effective in meeting SMCRA's requirements as set forth in the Federal regulations at 30 CFR 795.9(a).

Based on the discussion above, the Director is approving the proposed changes to the introductory text of NDCC 38–14.1–37(2).

b. NDCC 38–14.1–37(2)(a), Probable Hydrologic Consequences

North Dakota proposed to create new NDCC 38–14.1–37(2)(a) to incorporate a portion of original NDCC 38–14.1–37(2) allowing the commission's possible assumption, for qualified SOAP applicants, of the cost of the determination of probable hydrologic consequences (PHC determination) required by NDCC 38–14.1–14(1)(o) and to specify that such costs include the engineering analyses and designs necessary for the PHC determination.

Proposed NDCC 38–14.1–37(2)(a) is substantively similar to and is no less stringent than section 507(c)(1)(A) of SMCRA. Accordingly, the Director is approving proposed NDCC 38–14.1–37(2)(a).

c. NDCC 38–14.1–37(2)(b), Development of Cross Sections, Maps and Plans

North Dakota proposed to create new NDCC 38–14.1–37(2)(b) allowing the Commission's possible assumption, for qualified SOAP applicants, of the cost of the development of cross sections, maps, and plans required by NDCC 38–14.1–14(1)(r).

Proposed NDCC 38–14.1–37(2)(b) is substantively similar to and is no less stringent than section 507(c)(1)(B) of SMCRA. Accordingly, the Director is approving proposed NDCC 38–14.1–37(2)(b).

d. NDCC 38–14.1–37(2)(c), Geologic Drilling

North Dakota proposed to create new NDCC 38–14.1–37(2)(c) allowing the Commission's possible assumption, for qualified SOAP applicants, of the cost of the geologic drilling and the statement of the result of test borings and core samplings required by NDCC 38–14.1–14(1)(s).

Proposed NDCC 38–14.1–37(2)(c) is substantively similar to and no less stringent than section 507(c)(1)(C) of SMCRA. Accordingly, the Director is approving proposed NDCC 38–14.1–37(2)(c).

e. NDCC 38–14.1–37(2)(d), Cultural Resource Information

North Dakota proposed to create new NDCC 38–14.1–37(2)(d) allowing the Commission's possible assumption, for qualified SOAP applicants, of the cost of the collection of cultural resource information required by NDCC 38–14.1–14(1)(u), any other archaeological and historical information required by the superintendent of the state historical board, and the preparation of mitigation plans necessitated thereby.

Proposed NDCC 38–14.1–37(2)(d) is substantively similar to and no less stringent than section 507(c)(1)(D) of SMCRA. Accordingly, the Director is approving proposed NDCC 38–14.1–37(2)(d).

f. NDCC 38–14.1–37(2)(e), Preblast Surveys

North Dakota proposed to create new NDCC 38–14.1–37(2)(e) allowing the Commission's possible assumption, for qualified SOAP applicants, of the cost of preblast surveys required by NDCC 38–14.1–24(13)(e). In addition to this proposal, and as explained in the discussion in Finding No. 2 above, OSM is approving North Dakota's proposed revision to NDCC 38–14.1–24(13)(e), which requires a preblasting survey to be conducted by the permittee when requested by the resident or owner of a man-made dwelling or structure within one mile [1.61 kilometers] of any portion of the permitted area. Taken in conjunction with North Dakota's proposed revision to NDCC 38–14.1–24(13)(e), proposed NDCC 38–14.1–37(2)(e) would allow North Dakota's SOAP program to pay for preblast surveys conducted within one mile from the permit boundary.

Section 507(c)(1)(E) of SMCRA authorizes payment for preblast surveys only in accordance with section 515(b)(15)(E) of SMCRA. Section 515(b)(15)(E), in turn, requires the applicant or permittee to conduct a preblasting survey upon request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area.

Thus, taken together, proposed NDCC 38–14.1–24(13)(e) and 38–14.1–37(2)(e) effectively allow the Commission to use SOAP funds to cover potentially more costly preblast surveys than would be required under SMCRA. Since North Dakota has a preblast survey program requirement (1 mile) that is more stringent than SMCRA's preblast survey program requirement (½ mile), small operators in North Dakota must meet the more stringent State standard. Accordingly, the additional costs associated with North Dakota's requirements regarding preblasting surveys may be paid for with SOAP funds. Finally, section 505(b) of SMCRA and 30 CFR 730.11(b) provide that any State law or regulation that provides for more stringent land use and environmental controls and regulations for surface coal mining and reclamation operations than do SMCRA or the Federal regulations shall not be

construed to be inconsistent with SMCRA. Thus, based upon the discussion above, the Director finds that proposed NDCC 38–14.1–37(2)(d) is not inconsistent with section 507(c)(1)(E) of SMCRA and the Federal program and is approving it.

g. NDCC 38–14.1–37(2)(f), Fish and Wildlife Resource Information

North Dakota proposed to create new NDCC 38–14.1–37(2)(f) allowing the Commission's possible assumption, for qualified SOAP applicants, of the cost of "[t]he collection of site-specific resource information, and the development of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the commission in accordance with this chapter."

Proposed NDCC 38–14.1–37(2)(f) is substantively similar to and no less stringent than section 507(c)(1)(F) of SMCRA. Accordingly, the Director is approving proposed NDCC 38–14.1–37(2)(f).

h. NDCC 38–14.1–37(3), Training of Small Operators

North Dakota proposed to create new NDCC 38–14.1–37(3) to read as follows:

The commission may provide or assume the cost of training coal operators who meet the qualifications in subsection 2 concerning the preparation of permit applications and compliance with the regulatory program.

Section 507(c)(2) of SMCRA requires that the Secretary "shall" provide or assume the cost of training coal operators that meet the qualifications stated in section 507(c)(1) of SMCRA concerning the preparation of permit applications and compliance with the regulatory program. Moreover, section 507(c)(2) provides that the Secretary "shall" ensure that qualified coal operators are aware of the assistance available under section 507(c) of SMCRA.

Proposed NDCC 38–14.1–37(3) appears to grand discretion to the State regulatory authority regarding the provision of training assistance that is now allowed by section 507(c)(2) of SMCRA. However, section 507(c)(2) specifically references only "the Secretary." OSM currently interprets "the Secretary" to mean the Secretary of the Interior, and not State regulatory authorities. Therefore, North Dakota's proposed statutory language at NDCC 38–14.1–37(3) is acceptable and it is unnecessary for North Dakota to revise proposed NDCC 38–14.1–37(3) to be substantively identical to section 507(c)(2) of SMCRA. However, if North Dakota ultimately decides to adopt the responsibility to provide or assume the training costs and inform qualified coal operators of the availability of assistance under SOAP, NDCC 38–14.1–37(3), because of its discretionary nature, will be less stringent than section 507(c)(2) of SMCRA. North Dakota will then be required to amend its program to mandate that the Commission "shall" provide or assume the costs of training and inform qualified coal operators of the availability of assistance under SOAP.

Therefore, on the basis of the discussion above, proposed NDCC 38–14.1–37(3) is no less stringent than section 507(c)(2) of SMCRA. For the reasons discussed above, the Director is approving proposed NDCC 38–14.1–37(3).

i. NDCC 38–14.1–37(4), Reimbursement to the Commission of SOAP Assistance Funds

North Dakota proposed to create new NDCC 38–14.1–37(4) to read as follows:

An operator who has received assistance under [NDCC 38–14.1–37(2)] shall reimburse the commission for the cost of the services rendered if the commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons. * * * during the twelve months immediately following the date the operator is issued a surface coal mining and reclamation permit.

This North Dakota proposal is similar to section 507(h) of SMCRA with one exception. Since the North Dakota proposal only refers to services provided under NDCC 38–14.1–37(2), it does not encompass any training assistance that may have been provided under NDCC 38–14.1–37(3). By comparison, the Federal provision at section 507(h) of SMCRA requires operators, under such circumstances, to reimburse the regulatory authority for the cost of any training assistance provided by the regulatory authority, as well as for the cost of other services provided or funded by the regulatory authority under the SOAP program.

North Dakota, in a letter dated December 3, 1993 (administrative record No. ND–Q–15), acknowledged that proposed NDCC 38–14.1–37(4) does not require the reimbursement of training costs in accordance with section 507(h) of SMCRA, and stated that it will propose the necessary statutory change in the next North Dakota legislative session. Moreover, North Dakota stated that if proposed NDCC 38–14.1–37(4) were approved, as submitted, the State would not provide or assume the cost of training any small operator until such time as the statutory revisions are made. As discussed in Finding No. 3(h) above, OSM currently interprets section 507(c)(2) of SMCRA to require that the Secretary of the Interior, and not the State regulatory authority, provide or assume the cost of training coal operators and, in accordance with that interpretation, North Dakota is not obligated to do so. However, should North Dakota decide to provide training as a result of revising proposed NDCC 38–14.1–37(3) discussed above, and use SOAP funds to do so in accordance with 30 CFR 795.5, the failure of proposed NDCC 38–14.1–37(34) to require the reimbursement of training costs to the Commission will be less stringent than the requirements of section 507(h) of SMCRA. Nevertheless, since North Dakota has stated that it will not provide or assume the cost of such training until full reimbursement of the cost of all SOAP assistance is statutorily required, the Director finds that NDCC 38–14.1–37(4), as proposed, is no less stringent than section 507(h) of SMCRA, and is approving it.

j. NDCC 38–14.1–37(5), Prohibition of SOAP Assistance to Operations Not Subject to Payment of Reclamation Fees

North Dakota proposed to create new NDCC 38–14.1–37(5) to read as follows:

Proposed surface coal mining operation that will not be subject to payment of reclamation fees required by [SMCRA] are not eligible for the assistance to small operators provided by [NDCC 38–14.1–37 (2) and (3)].

There are certain mining operations in the State of North Dakota that are considered coal mining operations under the State program and thus are regulated in the State pursuant to the North Dakota program, but which are not subject to the payment of reclamation fees pursuant to section 402 of SMCRA.

For example, the North Dakota program encompasses operations extracting coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale (incidental coal mining operation). *See* 57 FR 37702, 37703–37704, (August 20, 1992). In contrast, the Federal definition of the term "surface coal mining operations" at 701(28)(A) of SMCRA and 30 CFR 700.5 specifically excludes incidental coal mining operations.

Similarly, North Dakota regulates leonardite operations under its coal regulatory program. In contrast, OSM has taken the position that leonardite is not "coal" as defined in 30 CFR 700.5, and thus leonardite operations are not subject to regulation or oversight by OSM under SMCRA. *See* December 14, 1982, letter from OSM to the North

Dakota Public Service Commission (administrative record No. ND–Q–17).

Section 507(c)(1) of SMCRA provides for SOAP assistance to a qualified "coal surface mining operator." Accordingly, since incidental coal and leonardite operations are not considered "surface coal mining operations" under the Federal program, such operations would not be regulated by OSM pursuant to SMCRA and thus would not qualify for SOAP assistance under SMCRA.

The operators who will be deemed ineligible for SOAP assistance under the North Dakota proposal would not qualify for such assistance under the Federal program. Accordingly, the Director finds that North Dakota's proposed statute at NDCC 38–14.1–37(5) is not inconsistent with SMCRA and the Director is approving it.

4. Coal Exploration

For purposes of clarification, the Director notes that in North Dakota, jurisdiction over surface coal mining and reclamation operations, including the Small Operator Assistance Program, is with the North Dakota Public Service Commission. However, jurisdiction over coal exploration, of which the following proposed revisions and findings pertain to, is with the North Dakota Industrial Commission, through the office of the Geological Survey. Thus, the surface coal mining and reclamation operation and coal exploration components of the North Dakota permanent program are administered by separate agencies.

a. NDCC 38–12.1–03(6) and NDAC 43–02–01–20.3(c)(2), Roads

North Dakota proposed to create new NDCC 38–12.1–03(6), which defines the term "road," as used in the coal exploration portions of the North Dakota program, to read as follows:

> "Road" means a surface or right of way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structure, ditches, and surface.

The Federal regulations at 30 CFR 701.5 defines "road," in part, as "[a] surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration." In a letter dated November 12, 1993 (administrative record No. ND–Q–14), OSM identified two concerns with North Dakota's proposed definition.

First, OSM stated that North Dakota's use of the word "or" in the first sentence of its proposed definition of "road" appeared to serve no useful purpose. Read literally, the proposed definition states that "[r]oad means a surface [for purposes of travel] * * * *or* a right-of-way for purposes of travel * * *" (emphasis added). OSM requested in its November 12, 1993, letter that North Dakota either: (1) Correct what appeared to be an editorial error in a subsequent rulemaking; or (2) clarify how the definition of "road" would be interpreted and applied.

In a letter dated December 3, 1993, North Dakota responded that during the course of coal exploration, roads may be temporarily altered to leave established easements or rights-of-way and that the proposed definition of "road" at proposed NDCC 38–12.1–03(6) includes those roads. North Dakota further stated that the "surface" used for purposes of travel by land vehicles used in coal exploration are subject to regulation, whether those vehicles are traveling within established rights-of-way or outside of them. Based upon the State's explanation, the Director finds that North Dakota's use of the word "or" in its proposed definition of "road" is not inconsistent with the Federal definition of "road" at 30 CFR 701.5.

Second, OSM requested that North Dakota clarify its intent regarding the differences between the proposed definition of "road" in the coal exploration portions of the State program and the already-approved definition of "road" in the surface coal mining and reclamation operations portions of the State program (NDAC 69–05.2–01–02(92)). Specifically, the approved definition of "road" at NDAC 69–05.2–01–02(92), like the Federal counterpart definition, explicitly includes access and haulroads constructed, reconstructed, improved, or maintained for use in operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. Proposed NDCC 38–12.1–03(6), however, does not contain a similar list of various types of roads encompassed by the definition.

By letter dated December 3, 1993, North Dakota responded by acknowledging that the proposed definition of "road" at NDCC 38–12.1–03(6) includes all rights-of-way used in coal exploration and was not intended to include exhaustive examples of all types of roads. North Dakota also submitted a proposed revision to its coal exploration regulations at NDAC 43–02–01–20.3(c)(2). The revised regulation would include a new clause clarifying that:

> A road is altered if it is constructed, reconstructed, improved, or maintained in any way that causes the changes described in this section.

The Federal regulation defining "road" at 30 CFR 701.5 insofar as it concerns coal exploration, also includes "[a]ccess and haul roads constructed, used, reconstructed, improved, or maintained for use in * * * coal exploration * * *." Thus, North Dakota's inclusion of the additional terms "constructed, reconstructed, improved, and maintained" into its coal exploration regulations at NDAC 43–02–01–20.3(c)(2), when read in conjunction with the discussion above regarding the proposed statutory definition of "road" at NDCC 38–12.1–03(6), effectively defines the term "road" to include all rights-of-way used in coal exploration as well as roads constructed, reconstructed, improved, or maintained in any way. The Director finds that North Dakota has clarified OSM's concerns with respect to North Dakota's interpretation of its proposed statutory definition of "road" at NDCC 38–12.1–03(6) to ensure that it is consistent with the interpretation of the Federal definition of "road" at 30 CFR 701.5.

For the reasons discussed above, the Director finds that proposed NDCC 38–12.1–03(6), defining the term "road," and proposed NDAC 43–02–01–20.3(c)(2), that includes the additional clarifying terms "constructed, reconstructed, improved, and maintained" into its coal exploration regulations, are in accordance and consistent with the Federal definition of "road" at 30 CFR 701.5. Accordingly, the Director is approving the proposed changes and is removing the required program amendment codified at 30 CFR 934.16(l).

b. NDCC 38–12.1–04(1)(a), Jurisdiction of the Industrial Commission

North Dakota proposed to revise NDCC 38–12.1–04(1)(a) to grant the Industrial Commission (Commission) the authority to require the furnishing of a reasonable bond amount sufficient to ensure the reclamation of roads used in coal exploration. Specifically, North Dakota proposed to revise NDCC 38–12.1–04(1)(a) to provide that the Commission, acting through the office of the state geologist, has the authority to require (italicized language to be added):

> The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and regulations of the commission prescribed to govern the exploration for coal on state and private lands *and roads used in coal exploration* within the state of North Dakota.

The Federal program does not require bonding for coal exploration. Thus, North Dakota's proposed revision

specifically referencing roads used in coal exploration with respect to the furnishing of a reasonable bond for reclamation goes beyond the requirements of the Federal program.

In accordance with section 505(b) of SMCRA and the Federal regulations at 30 CFR 739.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on coal exploration operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on coal exploration operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such provisions shall not be construed to be inconsistent with the Federal program. Accordingly, the Director is approving the proposed revision to NDCC 38–12.1–04(1)(a).

c. NDCC 38–12.1–08 and NDAC 43–02–01–05, Civil and Criminal Penalties

North Dakota proposed to revise its statutory provision at NDCC 38–12.1–08, regarding civil and criminal penalties in the coal exploration portions of the State program to read as follows (italicized language to be added):

1. Any person, *including a director, officer, or agent of a corporate permittee,* who violates this chapter, or any permit condition or regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars per day of such violation.

Any person, *including a director, officer, or agent of a corporate permittee,* who knowingly violates this chapter, or any permit condition or regulation implementing this chapter or who knowingly reports information required by this chapter falsely is subject, upon conviction, to a criminal penalty of not more than ten thousand dollars or by imprisonment for not more than one year.

In a letter dated November 12, 1993, OSM identified several concerns with North Dakota's proposed changes.

1. Statutory Authorization for Individual Penalties

OSM notified North Dakota that although its proposed revisions to NDCC 38–12.1–08 purported to subject an individual director, officer, or agent of a corporate permittee to civil and criminal penalties when that individual committed a violation, the proposed revisions did not indicate under what circumstances an individual director, officer, or agent will be deemed to have committed a violation. In contrast, section 518(f) of SMCRA specifically addresses the circumstances under which a corporate director, officer, or agent may be individually subject to either civil or criminal penalties in connection with a violation committed by a corporate permittee. Section 518(f) of SMCRA provides, in part, that:

Whenever a corporate permittee violates, a [law, rule, order, or permit condition] or fails or refuses to comply with an order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act * * * any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under [sections 518(a) and (e) of SMCRA].

OSM stated that in order to be no less stringent than section 518(f) of SMCRA, North Dakota must revise proposed NDCC 38–12.1–08 to clearly subject corporate directors, officers, or agents, to individual civil and criminal penalties in connection with violations committed by a corporate permittee, under the circumstances outlined in section 518(f) of SMCRA.

By letter dated December 3, 1993, North Dakota responded by submitting for OSM's approval the following proposed regulatory amendment to NDAC 43–02–01–05:

Whenever a corporate permittee violates NDCC 38–12.1 [statutory requirements addressing coal exploration] or any permit condition or rule or other regulation implemented thereunder, a director, officer or agent of the corporate permittee who knowingly causes such violation is subject to the criminal penalties imposed under NDCC 38–12.1–08(2). "Knowingly" is to be understood as defined by NDCC 12.1–02–02. In addition, whenever a director, officer, or agent of a corporate permittee willfully or negligently violates NDCC 38–12.1 or any permit condition or rule or regulation implemented thereunder, civil penalties may be imposed under NDCC 38–12.1–08(1). "Willfully" and "negligently" are to be understood as defined by NDCC 12.1–02–02.

North Dakota's proposed regulatory change addresses the circumstances under which a corporate director, officer or agent may be individually subject to criminal penalties in connection with a violation committed by a corporate permittee. However, the proposed regulatory change does not address the circumstances under which a corporate director, officer or agent may be individually subject to *civil* penalties in connection with a violation committed by a corporate permittee. Accordingly, the Director is approving proposed NDAC 43–02–01–05 to the extent that it specifically addresses the circumstances under which a corporate director, officer or agent may be individually subject to criminal penalties in connection with a violation committed by a corporate permittee. However, the Director is requiring North Dakota to further amend NDAC 43–02–01–05 to specifically address the circumstances under which a corporate director, officer, or agent may be individually subject to civil penalties in connection with a violation committed by a corporate permittee.

Moreover, because North Dakota's proposed statutory revisions do not address when a corporate director, officer or agent may be individually subject to either civil or criminal penalties in connection with a violation committed by a corporate permittee, proposed NDCC 38–12.1–08 remains deficient. Therefore, the Director is not approving NDCC 38–12.1–08 and is requiring North Dakota to amend NDCC 38–12.1–08 to specifically address the circumstances under which a corporate director, officer, or agent may be individually subject to either civil or criminal penalties in connection with a violation committed by a corporate permittee.

2. Nature of Violations That Subject Individuals to Penalties

In the November 12, 1993, letter, OSM notified North Dakota that NDCC 38–12.1–08(1) would subject an individual to civil penalties for *any* violation and would subject individuals to criminal penalties for any violation committed "knowingly." In contrast, section 518(f) of SMCRA subjects a corporate director, officer, or agent to penalties only when that individual "willfully and knowingly authorized, ordered, or carried out" the act or omission that constitutes the violation.

Thus, OSM noted that because proposed NDCC 38–12.1–08 would subject individuals to civil and criminal penalties for a wider, more inclusive, range of actions or omissions than are covered by SMCRA 518(f), it would be more stringent than SMCRA. However, OSM requested that North Dakota clarify its intent regarding these provisions and reaffirm that these provisions did not conflict with other State law requirements.

As discussed in Finding No. 4(c)(1) above, by letter dated December 3, 1993, North Dakota responded by submitting for OSM's approval proposed regulatory amendments to NDAC 43–02–01–05. Those proposed regulatory amendments provide for criminal penalties in connection with violations committed "knowingly" and civil penalties in connection with violations committed either "willfully" or "negligently."

North Dakota also attached a copy of the cross-referenced definitions of the

terms "knowingly," "willfully," and "negligently" at section 12.1–02–02 of the North Dakota Criminal Code. In accordance with that provision, a person engages in conduct:

a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.

b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.

c. "Recklessly" if he engages in the conduct in conscious and unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1–04–02, awareness of the risk is not required where its absence is due to self-induced intoxication.

d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.

North Dakota stated that the above-described standards are more stringent than the Federal standard. North Dakota also stated that it has been enforcing a similar standard in its environmental laws for a long time without any problems.

The Director has reviewed the State definitions of the terms "knowingly," "willfully," and "negligently" in connection with the review of proposed NDAC 43–02–01–05. The Director notes that the proposed State standards are substantively different from the Federal standards set forth at 30 CFR 846.5.

First, the Federal standard is the same for both individual civil and criminal penalties, while the State proposes two separate standards for individual civil and criminal penalties. Under the Federal rules, a corporate director, officer, or agent may be individually subject to either civil or criminal penalties if that individual both "knowingly" *and* "willfully" authorized, ordered, or carried out the act or omission that constitutes the violation. In contrast, the State has proposed two separate standards for individual civil and criminal penalties. Under the State proposal, a corporate director, officer, or agent may be individually subject to criminal penalties in connection with a violation committed by the corporate permittee if the individual knowingly caused the violation. In comparison, under the State proposal, a corporate director, officer, or agent is subject to individual civil penalties if that individual commits a violation "willfully" *or* "negligently."

Although North Dakota and OSM use some of the same terms in describing their standards for the imposition of individual civil and criminal penalties, the terms are not defined the same in the State program as they are in the Federal program. For example, the Federal definition of the term "knowingly" at 30 CFR 846.5 reads as follows:

"Knowingly" means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

In addition, the Federal definition of the term "willfully" at 30 CFR 846.5 reads as follows:

"Willfully" means that an individual acted (1) Either intentionally, voluntarily or consciously, and

(2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

After conducting an independent review and analysis, the Director agrees with North Dakota that its proposed standards for the imposition of individual civil and criminal penalties appear to be more stringent than the Federal standards. Pursuant to section 505(b) of SMCRA and the Federal regulations at 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on coal exploration operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on coal exploration operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such provisions shall not be construed to be inconsistent with the Federal program. Accordingly, the Director is approving North Dakota's proposed definitions of the terms "knowingly," "willfully," and "negligently" and that portion of North Dakota's Criminal Code at section 12.1–02–02 that contains those definitions, as incorporated at NDAC 43–02–01–05, as part of North Dakota's coal exploration program.

3. Listing of Actions, Failures, and Refusals That Subject Individuals to Penalties

Finally, OSM, in the November 12, 1993, letter, notified North Dakota that, unlike section 518(f) of SMCRA, proposed NDCC 38–12.1–08 does not explicitly include failure of refusal to comply with orders of the Commission as cause to subject individuals to penalties. In addition, OSM noted that the North Dakota coal exploration program does not explicitly address the issuance of orders by the Commission and that the program was approved by OSM on the basis of North Dakota's agreement to issue each coal exploration permit with a specific condition subjecting it to the requirements of 30 CFR 840, 842, 843, 845, and 43 CFR part 4 (see 45 FR 82214, 82226; December 15, 1980) Section 518(f) of SMCRA subjects individuals to penalties when corporate permittees fail or refuse to comply with enforcement orders or any order (with minor exceptions) incorporated in a final decision of the regulatory authority.

In the December 3, 1993, letter, North Dakota responded by acknowledging that its provisions at NDCC 38–12.1–08 regarding liability and penalties for failure to comply with orders of the Industrial Commission should be clearer, and expressed its willingness to approach the North Dakota Legislature in 1995 to request an amendment to NDCC 38–12.1–08 to include civil and criminal penalties for violations such orders.

The Director agrees that North Dakota must amend NDCC 38–12.1–08. Therefore, the Director is not approving proposed NDCC 38–12.1–08 and is requiring North Dakota to amend its program to require that, in addition to violations, failure or refusal to comply with such orders, as listed in section 518(f) of SMCRA and issued by the North Dakota Industrial Commission, serves as an additional basis for imposing individual civil and criminal penalties upon corporate officers, directors, and agents. The required program amendment placed on North Dakota's program at 30 CFR 934.16(y), as a result of a January 9, 1992, rulemaking action (57 FR 807, 823–24) will be modified to reflect this decision.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment.

No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Federal Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated May 19, 1993 (administrative record No. ND–Q–8), the Soil Conservation Service responded that it had no comment on the proposed amendment.

By letter dated May 25, 1993 (administrative record No. ND–Q–9), the U.S. Bureau of Mines responded that it had no specific comments on the proposed amendment.

By letter dated May 26, 1993 (administrative record No. ND–Q–10), the U.S. Fish and Wildlife Service responded that it had no substantive comments on the proposed amendment.

By letter dated June 28, 1993 (administrative record No. ND–Q–12), the Mine Safety and Health Administration responded that it had no comments on the proposed amendment.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the Administrator of EPA with respect to those aspects of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act, as amended, (42 U.S.C. 7401 *et seq.*). EPA gave its written concurrence with the proposed amendment by letter dated October 25, 1993 (administrative record No. ND–Q–13).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letter dated May 7, 1993, OSM solicited comments from these offices (administrative record No. ND–Q–6). Neither the SHPO nor the ACHP commented on the proposed amendment.

V. Director's Decision

Based on the above findings, the Director approves, with three exceptions, North Dakota's proposed amendment as submitted on April 21, 1993, and revised on December 3, 1993. As discussed in: Finding No. 1, North Dakota's proposed statutory revisions to NDCC 38–14.1–21(5) regarding permit approval or denial standards; Finding No. 2, the proposed statutory revisions to NDCC 38–14.1–24(13)(e) regarding preblasting survey criteria; Finding No. 3(a), the proposed statutory revisions to NDCC 38–14.1–37(2) regarding the probable total annual coal production and testing costs, as it applies to the North Dakota SOAP program; Finding No. 3(b), newly-created NDCC 38–14.1–37(2)(a) regarding probable hydrologic consequences and engineering designs, as they apply to the North Dakota SOAP program; Finding No. 3(c), newly-created NDCC 38–14.1–37(2)(b) regarding the development of cross sections, maps, and plans, as it applies to the North Dakota SOAP program; Finding No. 3(d), newly-created NDCC 38–14.1–37(2)(c) regarding geologic drilling and a statement of the results of test borings and core samplings, as it applies to the North Dakota SOAP program; Finding No. 3(e), newly-created NDCC 38–14.1–37(2)(d) regarding cultural resource information, as it applies to the North Dakota SOAP program; Finding No. 3(f), newly-created NDCC 38–14.1–37(2)(e) regarding the payment of costs for preblasting surveys, as it applies to the North Dakota SOAP program; Finding No. 3(g), newly-created NDCC 38–14.1–37(2)(f) regarding fish and wildlife habitat enhancement plans, as it applies to the North Dakota SOAP program; Finding No. 3(h), newly-created NDCC 38–14.1–37(3) regarding North Dakota's discretionary authority to provide or assume training costs for small operators; Finding No. 3(i), newly-created NDCC 38–14.1–37(4) regarding the requirements for small operator reimbursement to North Dakota for the cost of permit application materials and training; Finding No. 3(j), newly-created NDCC 38–14.1–37(5) regarding the prohibition of assistance to small operations not subject to payment of AML fees; Finding No. 4(a), the proposed definition of "road" at newly-created NDCC 38–12.1–03(6), the clarifying terminology proposed at revised NDAC 43–02–01–20.3(c)(2), and removal of the required program amendment at 30 CFR 934.16(1); Finding No. 4(b), the proposed statutory revision to NDCC 38–12.1–04(1)(a) regarding the Commission's authority to require a reasonable bond amount sufficient to ensure the reclamation of roads used in coal exploration; Finding No. 4(c)(1), newly-proposed NDAC 43–02–01–05, to the extent that it specifically addresses the circumstances under which a corporate director, officer or agent may be individually subject to criminal penalties in connection with a violation committee by a corporate permittee; and finally, as discussed in Finding No. 4(c)(2), North Dakota's newly-proposed standards for civil and criminal penalties, which use the proposed definitions of the terms "knowingly," "willfully," and "negligently," as set forth in North Dakota's Criminal Code at 12.1–02–02 and incorporated at NDAC 43–02–01–05, as part of North Dakota's coal exploration program.

However, as discussed in Finding Nos. 4 (c)(1) and (c)(3), the Director is not approving the proposed statutory revisions to NDCC 38–12.1–08 and is requiring North Dakota to amend its program to (1) specifically address the circumstances under which a corporate director, officer, or agent may be individually subject to either civil or criminal penalties in connection with a violation committed by a corporate permittee; and (2) require that, in addition to violations, failure or refusal to comply with orders, as listed in section 518(f) of SMCRA and issued by the North Dakota Industrial Commission, serves as an additional basis for imposing individual civil and criminal penalties upon corporate officers, directors, and agents. The required program amendment placed on North Dakota's program at 30 CFR 934.16(y) will be modified to reflect this decision. In addition, as discussed in Finding No. 4(c)(1), the Director is requiring North Dakota to further amend NDAC 43–02–01–05 to specifically address the circumstances under which a corporate director, officer or agent may be individually subject to civil penalties in connection with a violation committed by a corporate permittee. Except as noted, the Director is approving these proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 934.16 that, within 60 days of the publishing of this notice, North Dakota would have to either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative or legislative procedures.

The Federal regulations at 30 CFR part 934, which codify decisions concerning the North Dakota program, are being amended to implement this

decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the North Dakota program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by North Dakota of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 1994.

Richard E. Dawes,

Acting Assistant Director, Western Support Center.

VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended by adding paragraph (r) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(r) The following revisions to the North Dakota Century Code, as submitted to OSM on April 21, 1993, and as subsequently revised on December 3, 1993, are approved effective July 22, 1994.

NDCC 38–14.1–21(5), concerning permit approval or denial standards; NDCC 38–14.1–24(13)(e), concerning preblasting survey criteria; NDCC 38–14.1–37(2), concerning probable total annual coal production and testing costs as they apply to SOAP; NDCC 38–14.1–37(2)(a), concerning probable hydrologic consequences and engineering designs as they apply to SOAP; NDCC 38–14.1–37(2)(b), concerning the development of cross sections, maps and plans as they apply to SOAP; NDCC 38–14.1–37(2)(c), concerning geologic drilling and test results as they apply to SOAP; NDCC 38–14.1–37(2)(d), concerning cultural resource information as it applies to SOAP; NDCC 38–14.1–37(2)(e), concerning the payment of costs for preblast surveys as they apply to SOAP; NDCC 38–14.1–37(2)(f), concerning fish and wildlife habitat enhancement plans as they apply to SOAP; NDCC 38–14.1–37(3), concerning the discretionary authority to provide or assume training costs for small operators; NDCC 38–14.1–37(4), concerning the requirements for small operator reimbursement; NDCC 38–14.1–37(5), concerning the prohibition of small operator assistance to operations not subject to payment of AML fees; NDCC 38–12.1–03(6), concerning the definition of "Road" and the clarifying terminology proposed at NDAC 43–02–01–20.3(c)(2); NDCC 38–12.1–04(1)(a) regarding the Commission's authority to require a reasonable bond amount sufficient to ensure the reclamation of roads used in coal exploration; NDAC 43–02–01–05, to the extent that it specifically addresses the circumstances under which a corporate director, officer or agent may be held individually liable for criminal penalties in connection with a violation committed by a corporate permittee; and North Dakota's newly-proposed standards for civil and criminal penalties, which use the proposed definitions of the terms "knowingly," "willfully," and "negligently," as set forth in North Dakota's Criminal Code at 12.1–02–02 and incorporated at NDAC 43–02–01–05, as part of North Dakota's coal exploration program.

3. Section 934.16 is amended by adding an introductory paragraph, removing and reserving paragraph (l), revising paragraph (y), and adding paragraph (z) to read as follows:

§ 934.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17(f)(1), North Dakota is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of the amendments to be

proposed that meet the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative and legislative procedures.

* * * * *

(y) By September 20, 1994. North Dakota shall submit proposed revisions to NDCC 38–12.1–08 to (1) specifically address the circumstances under which a corporate director, officer, or agent may be individually subject to either civil or criminal penalties in connection with a violation committed by a corporate permittee; and (2) require that, in addition to violations, failure or refusal to comply with orders, as listed in section 518(f) of SMCRA and issued by the North Dakota Industrial Commission, serves as an additional basis for imposing individual civil and criminal penalties upon corporate officers, directors, and agents.

(z) By September 20, 1994. North Dakota shall submit proposed revisions to NDAC 43–02–01–05 to specifically address the circumstances under which a corporate director, officer or agent may be individually subject to civil penalties in connection with a violation committed by a corporate permittee.

[FR Doc. 17882 Filed 7–21–94; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to North Dakota's rules in the North Dakota Administrative Code (NDAC) pertaining to preblasting survey requirements and the State's small operator assistance program. The amendment is intended to revise the North Dakota program to be consistent with and incorporate the additional flexibility afforded by SMCRA and the Federal regulations.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Guy D. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the North Dakota Public Service Commission (Commission). General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Actions taken subsequent to approval of the North Dakota program are codified at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated October 22, 1993 (administrative record No. ND–T–01), North Dakota submitted a proposed amendment to its program pursuant to SMCRA. North Dakota submitted the proposed amendment at its own initiative. North Dakota proposed revisions to its performance standards pertaining to the use of explosives and preblasting survey requirements at NADC 69–05.2–17.02 (1) and (2). North Dakota also proposed revisions to its Small Operator Assistance Program (SOAP) at NDAC 69–05.2–29–01, responsibilities of the Commission; NDAC 69–05.2–29–02, program services; NDAC 69–05.2–29–03, eligibility for assistance; NDAC 69–05.2–29–04, filing for assistance; NDAC 69–05.2–29–05, application approval and notice of denial; NDAC 69–05.2–29–06, data requirements; NDAC 69–05.2–29–07, assistance funding; and NDAC 69–05.2–29–08, applicant liability.

The proposed changes to North Dakota's pre-blast survey and SOAP rules are meant to implement statutory changes to the State's regulatory program pertaining to the use of explosives and SOAP that were enacted by the State legislature in 1993. (For a document relating to the statutory revisions proposed by North Dakota for preblasting surveys and small operator assistance, see an additional final rule **Federal Register** notice for the State of North Dakota published elsewhere in this issue.) North Dakota proposed the statutory and regulatory amendments to its SOAP program in order to implement the changes to the Federal SOAP program at sections 507 (c) and (h) of SMCRA made by the Energy Policy Act of 1992 (Pub. L. 102–486).

OSM announced receipt of the proposed amendment in the November 23, 1993, **Federal Register** (58 FR 61857), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–T–08). The public comment period ended on December 23, 1993. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, finds that the proposed North Dakota program amendment as submitted by North Dakota on October 22, 1993, is not inconsistent with and is no less stringent than SMCRA. Thus, the Director approves the proposed amendment.

1. NDAC 69–05.2–17–02, Performance Standards—Use of Explosives—Preblasting Survey Requirements

North Dakota proposed to revise its rules at NDAC 69–05.2–17–02 (1) and (2) so that the rules will provide as follows:

1. Each operator shall notify in writing, at least thirty days before blasting, all residents and owners of manmade dwellings or structures located within one mile * * * of the permit area how to request a preblasting survey.

2. On request to the commission by a resident or owner of a dwelling or structure located within one mile * * * of any part of the permit area, the operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly submit a report of the survey to the commission and requestor. Any preblasting survey requested more than ten days before blasting must be completed before blasting is initiated. Additions or renovations to a surveyed structure must be surveyed upon request to the commission.

In this amendment, North Dakota proposed to increase from one-half mile [0.85 kilometers] to one mile [1.61 kilometers], the distance from the permit area within which dwellings or structures must be situated before the owners or residents of such dwellings and structures are entitled to the notice specified at NDAC 69–05.2–17–02(1) and can require the operator to conduct a pre-blast survey in accordance with NDAC 69–05.2–17–02(2). North Dakota proposed these regulatory revisions in order to implement the statutory changes proposed by the State in "Amendment XVIII" (administrative record No. ND–Q–1, April 21, 1993) pertaining to pre-blast surveys. (For a discussion of the proposed statutory provisions, see the additional final rule **Federal Register** notice for North Dakota published elsewhere in this issue.)

The distance standard in the counterpart Federal regulations at 30 CFR 816.62(a) and (b) regarding pre-blast surveys is one-half mile of the permit area. North Dakota's proposed revisions at NDAC 69–05.2–29–02 (1) and (2) would thus allow a potentially larger group of residents or owners within the vicinity of the mine to require the operator to conduct a preblasting survey than is provided for by the Federal regulations at 30 CFR 816.62(a) and (b).

In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such State provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving the revisions proposed by North Dakota at NDAC 69–05.2–17–02 (1) and (2).

2. NDAC 69–05.2–29–01 Through 69–05.2–29–08, Small Operator Assistance Program

In this amendment, North Dakota proposed several changes to its rules pertaining to its SOAP program in order to implement the statutory revisions the State proposed in a separate amendment. (For a discussion of the proposed statutory SOAP provisions, see the additional final rule notice for North Dakota published elsewhere in this issue.) North Dakota proposed these regulatory revisions in order to implement the statutory changes proposed by the State in "Amendment XVIII" (administrative record No. ND–Q–1, April 21, 1993).

a. NDAC 69–05.2–29–01(2), 69–05.2–29–02(1), 69–05.2–29–04(6)(b), 69–05.2–29–05(1)(b), 69–05.2–29–06(2) and 06(4), and 69–05.2–29–08(1)(b), Small Operator Assistance—Responsibilities of the Commission—Qualified Public and Private Entities

North Dakota proposed to revise NDAC 69–05.2–29–01(2) to provide that the Commission will develop and maintain a list of "qualified public or private entities" as required by 30 CFR 795.10 and pay them for services rendered. In this amendment, North Dakota proposed to substitute the phrase "qualified public or private entities" for the previous reference to "qualified laboratories." North Dakota also proposed to change the term "laboratory" (or "laboratories") to "public or private entity" (or "entities") in its rules at NDAC 69–05.2–29–02(1), 69–05.2–29–04(6)(b), 69–05.2–29–05(1)(b), 69–05.2–29–06 (2) and (4), and 69–05.2–29–08(1)(b).

North Dakota's proposed terminology change is not inconsistent with section 507(c)(1) of SMCRA which provides that the activities to be performed under SOAP shall be performed by a "qualified pubic or private laboratory or such other public or private qualified entity designated by the regulatory authority." Therefore, the Director finds that the proposed terminology change at NDAC 69–05.2–29–01(2), 69–05.2–29–02(1), 69–05.2–29–04(6)(b), 69–05.2–29–05(1)(b), 69–05.2–29–06 (2) and (4), and 69–05.2–29–08(1)(b) is not inconsistent with section 507(c)(1) of SMCRA or the Federal regulations regarding SOAP at 30 CFR Part 795, as recently revised (59 FR 28136, May 31, 1994), and the Director is approving the proposed rules.

b. NDAC 69–05.2–29–02(1) (a) and (b), Small Operator Assistance—Program Services

North Dakota proposed to expand its regulatory provisions governing SOAP program services at NDAC 69–05.2–29–02(1) (a) and (b) in accordance with the statutory changes at North Dakota Century Code (NDCC) 38–14.1–37 (2) through (5) proposed by the State in "Amendment XVIII" (administrative record No. ND–Q–1, April 21, 1993). (For a discussion of the proposed statutory provisions, see the additional final rule for North Dakota published elsewhere in this issue.) Specifically, North Dakota proposed to revise NDAC 69–05.2–29–02(1) so that it will provide as follows:

> To the extent possible with available funds, the commission will for qualified small operators who request assistance:
>
> 1. Select and pay a qualified public or private entity to perform the activities described under [NDCC 38–14.1–37(2)] including:
>
> a. A determination of the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area according to section 69–05.2–29–06.
>
> c. The preparation of a statement of the results of test borings or core samplings according to section 69–05.2–29–06.

Thus, as amended, NDAC 69–05.2–29–02(1) (a) and (b) will provide coverage of all program services detailed in North Dakota's statute at NDCC 38–14.1–37(2).

The State proposal is substantively similar to its Federal counterpart regulations at 30 CFR 795.9 (a), (b), (b)(1) and (b)(2), as revised on May 31, 1994 (59 FR 28136), with one exception. While the Federal regulations at 30 CFR 795.9 (b)(1) through (b)(6) specifically identify each activity that may be funded pursuant to SOAP, the State proposal specifically identifies only two activities that may be funded by SOAP. However, as noted above, the State proposal does encompass all activities described under proposed NDCC 38–14.1–37(2). The activities described under proposed NDCC 38–14.1–37(2), in turn, correspond to the activities described in the Federal program at sections 507 (c)(1)(A) through (c)(1)(F) of SMCRA and 30 CFR 795.9 (b)(1) through (b)(6). (For a discussion of the proposed statutory provision, see the additional final rule notice for North Dakota published elsewhere in this issue.)

Therefore, the Director finds that proposed NDAC 69–05.2–29–02(1) (a) and (b) are no less stringent than SMCRA and no less effective in meeting SMCRA's requirements than the corresponding Federal regulations. Accordingly, the Director approves the proposed rules.

c. NDAC 69–05.2–29–03(2), Small Operator Assistance—Eligibility for Assistance (Introductory Text)

North Dakota proposed to revise the introductory text of NDAC 69–05.2–29–03(2) by increasing the amount of probable total annual production allowed for SOAP applicants from one hundred thousand tons [90,718.47 metric tons] to three hundred thousand tons [272,155.41 metric tons]. The proposed change would make NDAC 69–05.2–29–03(2) consistent with proposed statutory changes to NDCC 38–14.1–37 (see "Amendment XVIII" dated April 21, 1993, administrative record No. ND–Q–1), as well as the requirements of SMCRA at section 507(c)(1) and the recently revised Federal counterpart regulation at 30 CFR 795.6(2). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.) Therefore, the Director is approving proposed NDAC 69–05.2–29–03(2) (introductory text).

d. NDAC 69–05.2–29–03(5), Small Operator Assistance—Eligibility for Assistance

North Dakota proposed to create new NDAC 69–05.2–29–03(5) to provide that

an applicant is eligible for SOAP assistance if, among other things:

[The applicant] will be required to pay reclamation fees under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87; 91 Stat. 445; U.S.C. 1201 *et seq*).

Proposed NDAC 69–05.2–29–03(5) is meant to implement the statutory provision of NDCC 38–14.1–37(5) (see "Amendment XVIII" dated April 21, 1993, administrative record No. ND–Q–1). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.)

North Dakota's proposed limitation of SOAP assistance to operators required to pay reclamation fees under SMCRA does not render NDAC 69–05.2–29–03(5) inconsistent with SMCRA because section 507(c)(1) of SMCRA only requires that SOAP assistance be made available to a qualified "coal surface mining operator." As discussed in the additional final rule for North Dakota published elsewhere in this issue, the operators who will be deemed ineligible for SOAP assistance under the North Dakota proposal would not qualify for such assistance under SMCRA.

The Director notes that there is a typographical error in the SMCRA citation given in proposed NDAC 69–05.2–29–03(5). That is, the reference to "U.S.C. 1201 *et seq.*" should be "*30* U.S.C. 1201 *et seq.*" North Dakota's Attorney General, in a legal opinion dated October 1, 1993, and included with this proposed amendment, noted the typographical error, but stated that the reference to the United States Code at NDAC 69–05.2–29–03(5) should read "30 U.S.C. 120*2* et seq." OSM notes that the correct reference to SMCRA should be "30 U.S.C. 120*1 et seq.*"

Accordingly, the Director finds North Dakota's proposed rule at NDAC 69–05.2–29–03(5) is not inconsistent with SMCRA and the Director is approving it with the understanding that North Dakota will revise the aforementioned typographical error so that the correct citation to SMCRA is referenced.

e. NDAC 69–05.2–29–06(1)(a), Small Operator Assistance—Data Requirements

North Dakota proposed to revise NDAC 69–05.2–29–06(1)(a) so that it will provide as follows:

The commission will determine the minimum data collection requirements for each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans. The data requirements will be based on:

a. The extent of currently available hydrologic, geologic, and other information described under [NDCC 38–14.1–37(2)].

b. The data collection and analysis guidelines developed and provided by the commission.

In this amendment, North Dakota proposed to expand the basis upon which the requirements will be based, as outlined at NDAC 69–05.2–29–06(1)(a). Specifically, as proposed, NDAC 69–05.2–29–06(1)(a) will now require that the data requirements be based upon all information described at proposed NDCC 38–14.1–37(2). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.)

Proposed NDAC 69–05.2–29–06(1)(a) is consistent with the recently revised Federal regulation at 30 CFR 795.9(b), which lists the specific technical services authorized for the SOAP and provides, among other things, that "[t]he program administrator shall determine the data needed for each applicant or group of applicants."

Accordingly, the Director finds that NDAC 69–05.2–29–06(1)(a) is consistent with and no less effective than the Federal regulations at 30 CFR 795.9(b) and is approving the proposed rule.

f. NDAC 69–05.2–29–07(1), Small Operator Assistance—Assistance Funding

North Dakota proposed to delete the portion of NDAC 69–05.2–29–07(1) that prohibits the use of SOAP funds to cover the costs of test boring or core sampling. The proposed revision is consistent with section 507(c)(1)(C) of SMCRA and the recently revised Federal counterpart regulation at 30 CFR 795.9(b)(2), which allow the use of SOAP funds to cover the cost of geologic drilling and statement of results of test borings and core samplings required by section 507(b)(15) of SMCRA. Accordingly, the Director is approving the proposed revision at NDAC 69–05.2–29–07(1).

g. NDAC 69–05.2–29–08(1)(a) Through (e), Small Operator Assistance—Applicant Liability

North Dakota proposed to revise NDAC 69–05.2–29–08(1)(a) through (e), the regulatory provisions that outline the circumstances under which an applicant must reimburse the commission for the cost of SOAP services.

1. NDAC 69–05.2–29–08, Introductory Text

The introductory text at NDAC 69–05.2–29–08(1) provides:

The applicant shall reimburse the commission for the cost of all services rendered under this chapter [i.e., NDAC 69–05.2–29] if * * *.

Section 507(h) of SMCRA and 30 CFR 795.12(a) require, under specified circumstances, that a small operator reimburse the regulatory authority for the cost of all SOAP services, which, in accordance with section 507(c)(2) of SMCRA, includes the cost of training assistance.

By comparison, North Dakota's proposed statutory change at NDCC 38–14.1–37(4), proposed by the State in "Amendment XVIII" did not include training costs as an obligation for reimbursement by the operator. (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue). Moreover, the proposed introductory text to NDAC 69–05.2–29–08 only refers to "services rendered under [NDAC 69–05.2–29]" which do not include training assistance.

However, as discussed in the additional final rule for North Dakota published elsewhere in this issue, section 507(c)(2) of SMCRA specifically references only "the Secretary." OSM currently interprets "the Secretary" to mean the Secretary of the Interior, and not State regulatory authorities. Therefore, at the current time North Dakota is not obligated to provide training under SOAP. Accordingly, North Dakota's proposed introductory text at NDAC 69–05.2–29–08 is no less stringent than section 507(h) of SMCRA and no less effective than the recently revised Federal regulations at 30 CFR 795.12(a)(2).

2. NDAC 69–05.2–29–08(1)(a), (b), and (c)

North Dakota proposed to revise NDAC 69–05.2–29–08(1)(a), (b), and (c) to require that the applicant shall reimburse the Commission for the cost of all SOAP services rendered under the NDAC 69–05.2–29 if the applicant submits false information, the applicant fails to submit a permit application within one year after receiving the approved report from the qualified public or private entity, or the applicant fails to mine after obtaining the permit. North Dakota's proposed revision of its rules at NDAC 69–05.2–29–08(1)(a), (b), and (c) are substantively similar to and no less effective in meeting SMCRA's requirements than the corresponding Federal provisions at 30 CFR 795.12(a)(1).

3. NDAC 69–05.2–29–08(1)(d)

North Dakota also proposed to revise NDAC 69–05.2–29–08(1)(d) to provide

that the applicant shall reimburse the Commission for the cost of all services provided under NDAC 69–05.2–29 if the Commission finds that the operator's actual and attributed annual coal production for all locations exceeds three hundred thousand tons during the 12 months immediately following the date the operator is issued a surface coal mining and reclamation permit. North Dakota proposed this revision of its rule in order to implement the proposed statutory provisions of NDCC 38–14.1–37(4) (see "Amendment XVIII" dated April 21, 1993, administrative record No. ND–Q–1). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.)

North Dakota's proposed revision of its rule at NDAC 69–05.2–29–08(1)(d) is substantively similar to section 507(h) of SMCRA and the recently revised Federal counterpart regulation at 30 CFR 795.12(a)(2).

4. NDAC 69–05.2–29–08(1)(e)

Finally, North Dakota proposed to revise NDAC 69–05.2–29–08(1)(e) to provide that the applicant shall reimburse the Commission for the cost of all services provided under NDAC 69–05.2–29 if the applicant sells, transfers, or assigns the permit to another person and the transferee's total actual and attributed production exceeds the three hundred thousand tons [272,155.41 metric tons] annual production limit during any consecutive twelve-month period of the remaining permit term, and that the applicant and successor are jointly and severally obligated to reimburse the Commission.

Proposed NDAC 69–05.2–29–08(1)(e) is more stringent than the recently revised corresponding Federal regulation at 30 CFR 795.12(a)(3). North Dakota's provision serves to impose reimbursement liability based upon the annual production rates for the entire term of the permit, whereas the Federal regulation only takes into account the production rate for the twelve months *immediately following* the date on which the permit was originally issued.

Therefore, the Director finds that NDAC 69–05.2–29–08(1)(e) is more stringent than the Federal regulation at 30 CFR 795.12(a)(3). In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such State provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Accordingly, the Director is approving proposed NDAC 69–05 2–29–08(1)(e).

5. Summary

Based upon the above discussion, the Director finds that North Dakota's proposed revisions at NDAC 69–05.2–29–08(1) (a) through (e) are not inconsistent with section 507(h) or SMCRA and no less effective in meeting SMCRA's requirements than the Federal regulations at 30 CFR 795.12(a) (1) through (3) and is approving the proposed rules.

h. NDAC 69–05.2–29–08(2), Small Operator Assistance—Applicant Liability—Good Faith Waiver of Liability for Reimbursement.

North Dakota proposed to revise NDAC 69–05.2–29–08(2) to limit the circumstances under which the Commission can waive the reimbursement obligation of an operator who receives SOAP assistance. Prior to this amendment, NDAC 69–05.2–29–08(2) allowed the Commission to waive a SOAP applicant's obligation to reimburse the Commission for assistance whenever it found that the applicant at all times acted in good faith. North Dakota now proposes to limit the Commission's discretion by revising NDAC 69–05.2–29–08(2) so that it provides as follows:

> The commission may waive the reimbursement obligation under the conditions described in [NDAC 69–05.2–08(1) (b) and (c)] if it finds that the applicant at all times acted in good faith.

The State regulations at NDAC 69–05.2–08(1) (b) and (c) describe the following two situations that can trigger an applicant's obligation for reimbursement of the cost of SOAP assistance:

> b. The applicant fails to submit a permit application within one year after receiving the approved report from the qualified public or private entity [performing SOAP services].
>
> c. The applicant fails to mine after obtaining a permit.

Thus, under the State proposal, the commission may allow a "good-faith waiver" of a SOAP applicant's reimbursement obligation only if the applicant's obligation was triggered by the situations described at NDAC 69–05.2–29–08(1) (b) or (c). No such good-faith waiver is allowed if the applicant's reimbursement obligation was triggered by something other than those specified situations.

The Federal regulation at 30 CFR 795.12(b) allows the program administrator [regulatory authority] to waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith. Since waiver of the applicant's reimbursement obligation is a matter left within the discretion of the State regulatory authority under the current Federal regulations, North Dakota's proposed change at NDAC 69–05.2–29–08(2) is not inconsistent with the Federal regulation at 30 CFR 795.12(b). Therefore, the Director is approving the proposed rule.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at the public hearing, no hearing was held.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), the Director solicited comments on North Dakota's proposed amendment from the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture, and various other Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated November 10, 1993, the Bureau of Reclamation stated it had no comments on the proposed amendment (administrative record No. ND–T–04).

By letter dated November 16, 1993, the Soil Conservation Service stated it had no specific comments pertaining to this amendment (administrative record No. ND–T–06).

By letter dated November 19, 1993, the Mine Safety and Health Administration (MSHA) stated that the amendment did not conflict with any of MSHA's current regulations (30 CFR parts 0–199), and therefore, it had no comments concerning the proposed changes (administrative record No. ND–T–07).

By undated letter received November 29, 1993, the Bureau of Indian Affairs stated it had no objections to the proposed amendment because it did not affect Indian lands (administrative record No. ND–T–09).

By letter dated November 30, 1993, the Bureau of Mines stated it had no comments (administrative record No. ND–T–10).

By letter dated December 1, 1993, the U.S. Fish and Wildlife Service stated it did not anticipate any significant impacts to fish and wildlife resources as

a result of the proposed amendment and, therefore, did not have any substantive comments to offer (administrative record No. ND–T–11).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that North Dakota proposed to make in its rules pertain to air or water quality standards. However, OSM still requested EPA's concurrence with the proposed amendment (administrative record No. ND–T–03).

By letter dated November 10, 1993, EPA responded that it had no comments on the proposed amendment. EPA also stated it did not believe that there would be any impacts to water quality standards promulgated under the authority of the Clean Water Act (administrative record No. ND–T–05).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and ACHP for comment. Neither SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by North Dakota on October 22, 1993. The Director approves the rules as proposed by North Dakota with the provision that they be promulgated in identical form to the rules submitted to and reviewed by OSM and the public. Approval of these rules by the Director does not prevent OSM from requiring North Dakota to make additional revisions to its program pending the promulgation of final Federal regulations at 30 CFR Part 795 to implement the changes to SMCRA, as amended, regarding the SOAP program.

The Federal regulations at 30 CFR part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 1994.

Richard E. Dawes,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended by adding paragraph (s) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(s) Revisions to the following provisions of the North Dakota Administrative Code, as submitted to OSM on October 22, 1993 [Amendment XIX], are approved effective July 22, 1994.

NDAC 69–05.2–17–02, Performance standards-use of explosives-pre-blasting survey requirements; NDAC 69–05.2–29–01(2), small operator assistance-responsibilities of the commission-qualified public and private entities; NDAC 69–05.2–29–02(1) (a) and (b), small operator assistance-program services; NDAC 69–05.2–29–03 (2) and (5), small operator assistance-eligibility for assistance; NDAC 69–05.2–29–04, small operator assistance-filing for assistance; NDAC 69–05.2–29–05, small operator assistance-application approval-notice of denial; NDAC 69–05.2–29–06(1)(a), small operator assistance-data requirements; NDAC 69–05.2–29–07(1), small operator assistance-assistance funding; NDAC 69–05.2–29–08(1) (a) through (e), small operator assistance-applicant liability; and NDAC 69–05.2–29–08(2), small operator assistance-applicant liability-

good faith waiver of liability for reimbursement.

[FR Doc. 94–17883 Filed 7–21–94; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 606, 610, 611, 612, 613, 614, 630, 640, 641, 650, 671, 672, and 689

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is amending various regulations to delete unneeded provisions, update titles of NSF officials and organizations, correct clerical errors, and incorporate a new address for the Foundation.

DATES: This rule is effective July 22, 1994.

Comments, however, are welcome at any time and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, Room 1265, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John Chester on (703) 306–1060 (voice) and (703) 306–0149 (facsimile)—those are not toll-free numbers—or by electronic mail as jchester@nsf through BITNET or jchester@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION: The National Science Foundation's nonprocurement regulations are contained in chapter VI of title 45 of the Code of Federal Regulations. This volume is republished as of October 1 each year. This rule makes clerical corrections, deletes unnecessary provisions, corrects nomenclature, reassigns internal responsibilities to reflect organizational and nomenclature changes, and changes addresses to reflect the Foundation's relocation so the 1994 volume will be correct.

The only change of any substance is deletion of two parts—"Procedures and criteria for resolving questions involving moral character or loyalty of applicants for and holders of National Science Foundation Fellowships" (Part 610) and "Fellowship Review Panel" (Part 630). These were adopted because prior to 1988 section 15(c) of the National Science Foundation Act NSF to obtain a loyalty oath and statement as to criminal convictions from persons receiving NSF Fellowships. Those requirements were repealed by section 105(b) of the National Science Foundation Authorization Act of 1988 (102 Stat. 2865, 2868) and implementing regulations are no longer needed.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, that none of the clerical corrections and nomenclature and address changes made by this rule will have a significant economic impact on any small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects

45 CFR Part 606

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

45 CFR Part 610

Administrative practice and procedure, Scholarships and fellowships, Science and technology.

45 CFR Part 611

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 612

Freedom of information.

45 CFR Part 613

Privacy.

45 CFR Part 614

Sunshine Act.

45 CFR Part 630

Administrative practice and procedure, Scholarships and fellowships, Science and technology.

45 CFR Part 640

Environmental impact statements.

45 CFR Part 641

Antarctica, Environmental protection.

45 CFR Part 650

Administrative practice and procedure, Government contracts, Grant programs-science and technology, Inventions and patents, Reporting and recordkeeping requirements, Science and technology.

45 CFR Part 671

Administrative practice and procedure, Antarctica.

45 CFR Part 672

Administrative practice and procedure, Antarctica, Penalties.

45 CFR Part 689

Administrative practice and procedure, Grant programs-science and technology, Investigations, Science and technology.

Dated: July 18, 1994.

National Science Foundation.

Lawrence Rudolph,

Acting General Counsel.

For the reasons set out in the preamble and under the authority of section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)), Chapter VI of title 45 of the Code of Federal Regulations, is amended as follows:

PART 606—[AMENDED]

1. By amending Part 606 as follows:

§ 606.70 [Amended]

a. Change "Office of Equal Opportunity (OEO)" to "Office of Equal Opportunity Programs (OEOP)" in §§ 606.70(c) and (f) introductory text.

b. Change "Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550" to "Office of Equal Opportunity Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 606.70(d).

PART 610—[REMOVED]

2. By removing Part 610.

PART 611—[AMENDED]

3. By amending Part 611 as follows:

§ 611.9 [Amended]

a. Change the site of hearings from "Washington, DC" to "Arlington, VA" in § 611.9(b).

PART 611, APPENDIX A [AMENDED]

b. Remove "Title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876 through 1879).", "The National Sea Grant College and Program Act of 1966 (80 Stat. 998).[1] ", and the footnote from Appendix A.

PART 612—[AMENDED]

4. By amending Part 612 as follows:

§ 612.2 [Amended]

a. Change the location given for the NSF library from "1800 G Street, NW.,

Washington, DC" to "4201 Wilson Boulevard, Arlington, VA" in § 612.2(b).

b. Change "Assistant Director for Administration (AD/A)" to "Director, Office of Information and Resource Management (D/IRM)" and "ADA" to "D/IRM" in § 612.2(c).

§ 612.3 [Amended]

c. Change "the NSF Mail and Distribution Unit" to "the NSF Forms and Publications Unit" in § 612.3(a).

d. Change "the Mail and Distribution Unit, National Science Foundation, Washington, DC 20550" to "Forms and Publications, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 612.3(a).

e. Change "National Science Foundation, Office of Legislative and Public Affairs, 1800 G Street, NW., Washington, DC 20550" to "Office of Legislative and Public Affairs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" both places the former appears in § 612.3(c).

f. Change "National Science Foundation, Office of Inspector General, 1800 G Street, NW, Washington, DC 20550" to "Office of the Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 612.3(c).

g. Change "Office of Inspector General" to "Office of the Inspector General" both places the former appears in § 612.3(c).

h. Change "Deputy Director, National Science Foundation, 1800 G Street, NW., Washington, DC 20550" to "Deputy Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 612.3(f).

PART 613—[AMENDED]

5. By amending Part 613 as follows:

§§ 613.2 and 613.3 [Amended]

a. Change "Division of Administrative Services at 1800 G Street, NW., Washington, DC 20550" to "Division of Administrative Services at 4201 Wilson Boulevard, Arlington, VA" in §§ 613.2(a) and 613.3(a).

b. Change "NSF Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, DC 20550" to "NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 613.2(a) .

c. Change "NSF Privacy Act Officer, Assistant Director for Administration, NSF, Washington, DC 20550" to "NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 613.3(a).

§ 613.4 [Amended]

d. Change "Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, DC 20550" to "NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 613.4(a).

PART 614—[AMENDED]

6. By amending Part 614 as follows:

§ 614.2 [Amended]

Change the address for requests in § 614.2(b) from "National Science Board, National Science Foundation, Washington, DC 20550" to "Executive Officer, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230".

PART 630—[REMOVED]

7. By removing Part 630.

PART 640—[AMENDED]

8. By amending Part 640 as follows:

Revise paragraph (a) of § 640.2 to read as follows:

§ 640.2 Committee on environmental matters.

(a) There is established an NSF Committee on Environmental Matters (hereafter referred to as the Committee) to consist of one representative from each directorate. The General Counsel, or his or her designee, shall serve as Chairman. At the discretion of the Chairman and with the concurrence of the Committee, additional members may be appointed.

* * * * *

PART 641—[AMENDED]

9. By amending Part 641 as follows:

§ 641.14 [Amended]

a. Change "Assistant Director for Geosciences" to "Director of the Office of Polar Programs" in § 641.14(m).

b. Change "designated by the Assistant Director" to "designated by the Director" in § 641.14(m).

§ 641.16 [Amended]

c. Remove "and the Office of the General Counsel" from § 641.16(d).

§ 641.20 [Amended]

d. Change "Division of Polar Programs" to "Office of Polar Programs" in § 641.20.

PART 650—[AMENDED]

10. By amending Part 650 as follows:

§ 650.4 [Amended]

a. Change "Patent Assistant, Office of the General Counsel, National Science Foundation, Washington, DC 20550" to "Patent Assistant, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in paragraph (l) of the clause in § 650.4(a).

§ 650.11 [Amended]

b. Change "650.14" to "650.13" in § 650.11.

PART 671—[AMENDED]

12. By amending Part 671 as follows:

§ 671.2 [Amended]

a. Change "potentially harmful" to "designated" in § 671.2.

§ 671.6 [Amended]

b. Change "Washington, D.C. 20550" to "4201 Wilson Boulevard, Arlington, VA 22230" in § 671.6(b).

PART 672—[AMENDED]

13. By amending Part 672 as follows:

§ 672.3 [Amended]

a–b. Change "Division of Polar Programs" in the heading of § 672.3 to "Office of Polar Programs."

c. Change "*Division of Polar Programs*" to "*Office of Polar Programs*" and "Division of Polar Programs (DPP)" to "Office of Polar Programs (OPP)" in the heading and text, respectively, of § 672.3(f).

d. Change "DPP" to "OPP" in § 672.3(f).

e. Change "NSF's Office of General Counsel" to "NSF's Office of the General Counsel" in § 672.3(f).

f. Change "Division of Polar Programs" to "Office of Polar Programs" in § 672.3(g).

g. Change "DPP" to "OPP" in § 672.3(g).

h. Change "Division of Polar Programs" to "Office of Polar Programs" in § 672.3(h).

i. Change "Office of General Counsel" to "Office of the General Counsel" in § 672.3(i).

j. Change "Division of Polar Programs" to "Office of Polar Programs" in § 672.3(i).

PART 689—[AMENDED]

14. By amending Part 689 as follows:

§ 689.6 [Amended]

a. Change "program and DGC officials" to "program, grant, and contracting officers" in § 689.6(a).

§ 689.7 [Amended]

b. Change "DGC, OGC," to "the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel," in § 689.7(a).

[FR Doc. 94–17779 Filed 7–21–94; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 93–1; FCC 94–183]

Radio Scanners That Receive Cellular Telephone Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This *Memorandum Opinion and Order* denies a petition for reconsideration of new regulations that deny equipment authorization to radio scanners capable of receiving transmissions in the Domestic Public Cellular Radio Telecommunications Service. This action is taken in response to a petition for reconsideration filed by Kenwood Communications Corporation. The intended effect of this action is to help ensure the privacy of cellular telephone conversations.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653–8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 93–1, FCC 94–183, adopted July 8, 1994, and released July 19, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services at (202) 857–3800 or 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. By this action, the Commission denies a request by Kenwood Communications Corporation (Kenwood) for reconsideration of portions of the rules adopted in the *Report and Order* in this proceeding. These rules were adopted in response to the Telephone Disclosure and Dispute Resolution Act (TDDRA), Pub. L. 102–556, and generally prohibit the manufacture and importation of radio scanners capable of receiving cellular telephone communications. *See Report and Order* in ET Docket No. 93–1, 58 FR 25574, April 27, 1993.

2. In its Petition for Reconsideration, Kenwood raises three issues. First, it argues that the deadlines for complying with the rules adopted in this proceeding should be extended. Second, it requests that scanners sold to Military Affiliate Radio Service (MARS) and Civil Air Patrol (CAP) licensees be exempt from the regulations adopted in this proceeding. Finally, it argues that the definition of "readily altered by the user" that was adopted in this proceeding should include only scanners that can be modified "quickly" by "non-technical" consumers. There were no comments filed in response to the Kenwood petition.

3. Implementation dates. Kenwood contends that the April 26, 1993, cutoff date for equipment authorization and the April 26, 1994, cutoff date for manufacture and importation of scanners that do not comply with the new rules do not provide sufficient time to design and build new products to replace those being prohibited. This short period of time is, however, mandated by the TDDRA and reflects the position of Congress that reception of cellular communications by means of scanning receivers is a serious problem that must be resolved expeditiously. Accordingly, we are denying Kenwood's request for an extension of the cutoff dates.

4. Exemption for equipment sold to MARS and CAP licensees. Kenwood states that it manufactures two-way transceivers that are generally set up to operate only on frequencies available within a particular radio service. Kenwood indicates that some of its transceivers are routinely modified at its factory to operate on additional frequencies, such as those used by MARS and CAP licensees, in order to accommodate the needs of its customers. Kenwood states that these factory modifications can result, incidentally, in the ability to scan cellular telephone frequencies.

5. We see no reason why it is not possible to manufacture equipment to operate on MARS and CAP frequencies without resulting in that equipment also having the capability to receive the cellular frequencies, since MARS and CAP frequencies are far removed from the cellular frequencies. Consequently, we find that there is no technical justification for exempting scanning equipment from the rules adopted in this proceeding based on its intended use by MARS or CAP licensees, and we are denying Kenwood's request.

6. The definition of "readily altered by the user." Kenwood requests that we modify the definition of "readily altered by the user" to include only devices that can be quickly modified by "non-technical consumers."

7. We believe that Kenwood's proposed definition would make it too easy to modify scanners. Most of the examples given in our definition of scanners that can be "readily altered by the user" are modifications that perhaps could not be done by "non-technical consumers." Yet, they are examples of precisely the kind of easy modifications that we believe the TDDRA was intended to prohibit.

Accordingly, we are rejecting Kenwood's request.

8. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 302 and 303 of the *Communications Act of 1934*, as amended, and the *Telephone Disclosure and Dispute Resolution Act*, it is ordered that the Petition for Reconsideration filed by Kenwood Communications Corporation is denied.

9. For further information on this proceeding, contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, at (202) 653–8138.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, wiretapping and electronic surveillance.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17846 Filed 7–21–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the Southern Rocky Mountain Population of the Boreal Toad as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the

southern Rocky Mountain population of the boreal toad (*Bufo boreas boreas*) to the List of Threatened and Endangered Wildlife. The Service finds the petition presents substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this notice was made on July 14, 1994. Comments and materials need to be submitted by September 20, 1994, to be considered in the 12-month finding.

ADDRESSES: Information, comments, or questions concerning this petition may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 730 Simms Street, Suite 290, Golden, Colorado 80401. The petition, finding, and supporting documents are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Ireland, U.S. Fish and Wildlife Service, Ecological Services, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506–3946, telephone, (303) 243–2778.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation presents substantial scientific and commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be promptly published in the **Federal Register**. If the finding is positive, the Service also is required to commence a review of the status of the petitioned species.

The Service announces a 90-day finding on a petition requesting the Service to list as endangered the southern Rocky Mountain population of the "western boreal toad" (*Bufo boreas boreas*) and initiates a status review.

A petition dated September 27, 1993, was received by the Service from the Biodiversity Legal Foundation and Dr. Peter Hovingh on September 30, 1993. The petition requested that the southern Rocky Mountain population of the "western boreal toad" be listed as endangered and that critical habitat be designated.

The Act allows the Service to list distinct population segments of vertebrate fish and wildlife. Physical and climatic characteristics of the Great Divide Basin separate boreal toads in the southern Rocky Mountains (New Mexico, Colorado, and southeastern Wyoming) from populations in the Wasatch and Uinta Mountains of Utah to the west and the Wind River and Salt River Ranges of Wyoming to the north. The Basin's hot, dry summers, lack of available water, and high desert vegetation provide unsuitable habitat for the toad. Movement of toads between the southern Rocky Mountains and populations in western Wyoming and eastern Utah is unlikely because of the great distance (>165 km (100 miles)) and harsh environment. Because of this geographic isolation, possible genetic differentiation exists between toads in the southern Rocky Mountains and the remainder of their range (Blair 1964, Hubbard 1972). Considering these factors, the Service believes the southern Rocky Mountain population of the boreal toad is a distinct population segment.

A status review was first initiated for the southern Rocky Mountain population of *B. b. boreas* by a notice of review published January 6, 1989 (54 FR 554). At that time the population was designated as a category 2 candidate, meaning that more information was needed before a decision could be made as to whether this population should be listed.

Boreal toads were once common throughout much of the higher elevations in Colorado (Burger and Bragg 1946, Smith et al. 1965, Hammerson 1989) and in the Snowy and Sierra Madre Ranges of southeastern Wyoming (Baxter and Stone 1985). Boreal toads were found at only three localities at the southern periphery of their range in the San Juan Mountains of New Mexico; Lagunitas, Canjilon, and Trout Lakes (Campbell and Degenhardt 1971, Jones 1978, New Mexico Department of Game and Fish 1988).

Declines in isolated demes were first documented in New Mexico in the mid-1980's (Woodward and Mitchell 1985, Carey 1987) and in Colorado and southern Wyoming from 1986 through 1988 (Corn et al. 1989). Boreal toads are listed as endangered by the State of New Mexico and are thought to be extirpated (New Mexico Department of Game and Fish 1988). Surveys conducted in 1989 and 1993 revealed no populations at the three previously known San Juan Mountain locations in Rio Arriba County, New Mexico (Charlie Painter, New Mexico Department of Game and Fish, pers. comm., 1993). Carey (1993) also documented the extirpation of 11 demes in the Elk and West Elk Mountains of west-central Colorado. Corn et al. (1989) found that boreal toads were absent from 83 percent of locations in Colorado previously known to contain toads. Subsequent surveys conducted by the Service and others in Colorado indicate that boreal toads continue to disappear from traditional localities or are absent from locations that contain suitable habitat (Steve Corn, National Biological Survey, unpubl. data, 1993; Hammerson 1989). No toad demes have been confirmed in Wyoming since 1987 (S. Corn, pers. comm., 1993).

No single factor known to cause direct loss of boreal toads in the southern Rocky Mountain population appears to be producing range-wide declines. Those factors that appear capable of affecting a population throughout all or most of its range cannot currently be linked to the decline of the southern Rocky Mountain population of the boreal toad. Low impact recreational activities such as hiking, camping, wildlife viewing, nonmotorized boating, and fishing may occasionally disrupt breeding pairs or trample recently metamorphosed juveniles along shorelines (Campbell 1970). High impact resource management strategies such as timber and grazing may alter or cause the destruction of boreal toad habitat. Other factors that may directly impact boreal toads are water retention projects, changes in water availability, competition and predation by native and nonnative species, and fishery management activities. State agencies have regulations to protect the southern Rocky Mountain population of the boreal toad from "take," but these measures in general do nothing to protect the toad's habitat from degradation or to protect the toads from other threats.

Factors that may cause indirect loss of toads include acid rain, pollution, and ultraviolet radiation. The potential effects of acid rain, pollution, ultraviolet radiation, and natural population fluctuations remain unknown and may be working synergistically with other environmental or anthropogenic factors to cause declines in toad populations. Carey (1987, 1993) indicated that the proximate cause of the widespread decline of boreal toads in northern New Mexico and west-central Colorado was a result of infection by *Aeromonas hydrophila* bacteria (red-leg disease). However, *A. hydrophila* is common in the microfauna carried by amphibians, and it does not cause infection or death in healthy individuals. As a result, toads likely were stressed by other adverse environmental factors, such as those

mentioned above, and later succumbed to *A. hydrophila* infection (Carey 1987).

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Diseases or predation;

D. The inadequacy of existing regulatory mechanisms; and

E. Other natural or manmade factors affecting its continued existence.

Because of the threats discussed above, the Service believes that factors A, C, D, and E may apply to the southern Rocky Mountain population of the boreal toad.

The Service has carefully assessed the best scientific and commercial information available regarding the threats faced by this population. After reviewing the petition, references cited in the petition, and other available information the Service finds that the petition presents substantial information indicating that listing the southern Rocky Mountain population of the boreal toad as endangered may be warranted. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by Section 4(b)(3)(B) of the Act.

The petitioners also requested that critical habitat be designated. If the 12-month finding determines that the petitioned action to list the boreal toad is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule. At that time the Service also would determine if it is appropriate to propose to list the population as endangered or threatened.

More detailed information regarding the above decisions may be obtained from the Service's Golden office (see **ADDRESSES** above).

References cited

A complete list of all references cited is available upon request from the Golden, Colorado, field office (See **ADDRESSES** Section).

Author

The primary author of this 90-day finding is Terry Ireland (See **FOR FURTHER INFORMATION CONTACT** above).

Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 14, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–17866 Filed 7–21–94; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 59, No. 140
Friday, July 22, 1994

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 372

[Docket No. 93–165–2]

RIN 0579–AA33

National Environmental Policy Act Implementing Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would establish procedures that set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 93–165–1 that are received on or before August 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–165–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Pizel, Branch Chief, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1994, we published in the **Federal Register** (59 FR 28814–28821, Docket No. 93–165–1) a proposed rule to establish procedures that set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act.

Comments on the proposed rule were required to be received on or before July 18, 1994. In response to a request to extend the period during which comments will be accepted, we are extending the comment period on Docket No. 93–165–1 for an additional 15 days. This action will allow the requestor and all other interested persons additional time to prepare and submit comments.

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR 1500–1508; 7 CFR 1b, 2.17, 2.51, 371.2, 371.2(m), 371.13(d), and 371.14(b).

Done in Washington, DC, this 18th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17823 Filed 7–21–94; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–16]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 20, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on July 15, 1994.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27749.
Petitioner: Aviall, Inc.
Regulations Affected: 14 CFR 145.51(d).
Description of Rulechange Sought: To allow a remote repair facility to exist as a permanent part of a repair station certificate.

Petitioner's Reason for the Request: The petitioner feels that granting this petition would contribute to the sale of U.S. products and services, a statutory public interest criterion cognizable by the FAA under § 103(b) of the Federal Aviation Act of 1958, as amended. Further, the continued integration and the FAA-approved procedures found in the Inspection Procedures Manual will assure that its McAllen facility meets the agency's exacting requirements.

[FR Doc. 94–17873 Filed 7–21–94; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–NM–19–AD]

Airworthiness Directives; Cessna Citation Model 500/501, 550/551, S550, 552, and 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Cessna Citation Model 500/501, 550/551, S550, 552, and 560 series airplanes. That action would have required modification of the landing light electrical circuit to eliminate failures of the left and right landing light switches due to heavy current at the switch contacts. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received additional data that confirm that failure of the subject switches does not pose an unsafe condition. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Cessna Citation Model 500/501, 550/551, S550, 552, and 560 series airplanes, was published in the **Federal Register** on April 12, 1993 (58 FR 19069). That action was prompted by a report of failures of the left and right landing light switches due to heavy current at the switch contacts.

The proposed rule would have required modification of the landing light electrical circuit. The intent of the modification was to preclude the possibility of failure of the landing light switches, which could lead to smoke and an electrical fire in the cockpit.

Since the issuance of that NPRM, the FAA has received additional data gathered from an analysis that was conducted of the switch failure scenarios and the landing light switch design itself. These data indicate that the switch can adequately carry the current associated with either incandescent or halogen landing light installations. Apparently, the landing light switches that were involved in the reported incidents were of poor quality and were produced in only a small limited batch. The failure scenario analysis indicates that the switches shorted internally, allowing an odor and a trace of smoke to be released in the cockpit. In each case, however, the amount of smoke that was produced neither created a hazard nor interfered in any way with the safe operation of the aircraft. Further, contrary to what was previously reported, no fire occurred during any of the incidents as a result of the switch failure; the only identified discrepancy in some of the incidents was the discoloration of the switch cases.

Additionally, further investigation of one of the reported incidents revealed that a wire connected to one of the failed switches had discolored due to overheating caused by an undersized wire splice. (The undersized wire splice may have been installed as a result of questionable maintenance.) This parictular problem is considered to be an isolated incident and independent of the switch problem.

There have been no further failures of these switches since the original incidents that were reported (in 1992). As the limited number of suspect switches have appeared to have been purged from aircraft service by attrition, no recent failures have occurred. In addition, the FAA has not received any recent Malfunction or Defect Reports concerning these switches. This reduction in such reports supports the premise that poor quality switches are no longer found in the operators' inventories.

Based on the recent analysis data and other evidence presented, the FAA concludes that the switch failures are internal to the switch itself and do not cause sufficient smoke or arcing in the cockpit to create a hazardous condition. The FAA has determined that failure of the subject switches does not present an unsafe condition. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 93–NM–19–AD, published in the **Federal Register** on April 12, 1993 (58 FR 19069), is withdrawn.

Issued in Renton, Washington, on July 18, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17859 Filed 7–21–94; 8:45 am]
BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–51–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, that currently requires inspection of the wing rear spar lower cap aft tang fastener and the wing trailing edge access door sill to detect fatigue cracking, and repair, if necessary. This action would require installation of a crack preventative modification of the wing rear spar lower cap, and follow-on inspections. This proposal is prompted by reports of additional cracking found in the current inspection area. The actions specified by the proposed AD are intended to prevent propagation of cracks in the subject area, which could compromise the structural integrity of the airplane.

DATES: Comments must be received by October 11, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98 . This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 25, 1991, the FAA issued AD 91–21–05, amendment 39–8052 (56 FR 50650, October 8, 1991), which is applicable to certain McDonnell Douglas Model DC–10 series airplanes. That AD requires repetitive inspections to detect fatigue cracking of the wing rear spar lower cap aft tang and the wing trailing edge access door sill, and repair of any cracking found. That action was prompted by reports of fatigue cracks found in the wing rear spar lower cap aft tang on four Model DC–10 series airplanes. This cracking was found during an inspection conducted in accordance with the Supplemental Inspection Document (SID) program; that program was required to be implemented by AD 89–22–10, amendment 39–6330 (54 FR 42291, October 16, 1989). The requirements of AD 91–21–05 are intended to prevent fatigue cracking in the subject area. Such cracking, if not detected and corrected in a timely manner, could compromise the structural integrity of the airplane.

Since the issuance of that AD, there have been 10 additional reports of fatigue cracks found in the wing rear spar lower cap aft tang. Such cracking presents the same unsafe condition as addressed by the existing AD 91–21–05.

Additionally, since the issuance of that AD, the manufacturer has developed a crack preventative modification of the wing rear spar lower cap aft tang and wing trailing edge access door sill that is intended to minimize the possibility of cracking in these areas.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57–123, Revision 1, dated June 8, 1993, which contains procedures for conducting various inspections to detect fatigue cracking of the wing rear spar lower cap aft tang fastener and the wing trailing edge access door sill, and procedures for repairing any cracking found. This revised service bulletin is essentially identical to the original version, which was referenced in AD 91–21–05 as the appropriate source of service information. The only relevant changes are a revised listing of current operators of affected airplanes, and the inclusion of additional repair options.

The FAA has also reviewed and approved McDonnell Douglas Service Bulletin 57–123, dated June 8, 1993, that describes procedures for installing a crack preventative modification of the wing rear spar lower cap aft tang and wing trailing edge access door sill. This modification entails replacing Taper-Lok fasteners with straight titanium fasteners, and cold working the holes in the wing rear spar lower cap forward and aft tangs between stations X_{ors}=430.000 and X_{ors}=410.000. Accomplishment of this modification will minimize the possibility of fatigue cracking in the subject areas.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–21–05 to continue to require repetitive inspections of the wing rear spar lower cap aft tang fastener and the wing trailing edge access door sill to detect fatigue cracking, and repair of any cracking found. These actions would be required to be accomplished in accordance with either the original or revised version of McDonnell Douglas Alert Service Bulletin A57–123.

This proposed AD would also require the eventual installation of the crack preventative modification. Once this modification is accomplished, repetitive post-modification inspections would be required after the accumulation of a certain number of landings. These actions would be required to be accomplished in accordance with McDonnell Douglas Service Bulletin 57–123.

There are approximately 282 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 175 airplanes of U.S. registry would be affected by this proposed AD.

The currently required inspections take approximately 8 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the current inspection requirements of this AD on U.S. operators is estimated to be $77,000, or $440 per airplane, per inspection.

The proposed modification would take approximately 12 work hours to accomplish, at an average labor rate of $55 per work hour. Required parts would cost between $3,730 and $6,730 per airplane, depending upon the airplane model. Based on these figures, the total cost impact of the proposed modification requirement of this AD on

U.S. operators is estimated to be between $4,390 and $7,390 per airplane.

The proposed post-modification inspections would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed post-modification inspection requirement of this AD on U.S. operators is estimated to be $115,500, or $660 per airplane, per inspection.

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

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8052 (56 FR 50650, October 8, 1991), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–51–AD. Supersedes AD 91–21–05, Amendment 39–8052.

Applicability: Model DC–10–10, –10F, and –15 series airplanes, fuselage numbers through 379, inclusive; and Model DC–10–30, –30F, and –40 series airplanes, fuselage numbers through 275, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of these airplanes, accomplish the following:

(a) Except as provided in paragraphs (b) through (e) of this AD, prior to the accumulation of 7,000 landings or within 30 days after October 23, 1991 (the effective date of AD 91–21–05, amendment 39–8051), which ever occurs later, conduct the initial inspections specified in either paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Conduct an eddy current inspection of the wing rear spar lower cap aft tang, and a dye penetrant inspection of the wing trailing edge access door sill located between X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option III of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. In addition, within 1,500 landings after performing the eddy current and dye penetrant inspections, conduct the inspections specified in either paragraph (a)(2) or (a)(3) of this AD, and repeat them thereafter as indicated. Or

(2) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 1,900 landings until the modification required by paragraph (g) of this AD is accomplished. Or

(3) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 3,300 landings until the modification required by paragraph (g) of this AD is accomplished.

(b) The requirements of paragraph (c) of this AD apply to airplanes on which both of the following actions have been accomplished:

(1) A dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=422.000 has been accomplished prior to October 23, 1991, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990; and

(2) An eddy current inspection of the wing rear spar lower cap aft tang has been accomplished prior to October 23, 1991, per DC–10 Supplemental Inspection Document, Principal Structural Element (PSE) 57.10.007 and 57.10.008, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990.

(c) For airplanes specified in paragraph (b) of this AD: Conduct the initial inspections specified in either paragraph (c)(1) or (c)(2) of this AD within 1,500 landings after accomplishing the inspections (dye penetrant and eddy current) specified in paragraph (b) of this AD, or within 30 days after October 23, 1991, whichever occurs later.

(1) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 1,900 landings until the modification required by paragraph (g) of this AD is accomplished. Or

(2) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 3,300 landings until the modification required by paragraph (g) of this AD is accomplished.

(d) The requirements of paragraph (e) of this AD apply to airplanes on which both of the following actions have been accomplished:

(1) A dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=422.000 has been accomplished prior to October 23, 1991, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990; and

(2) An eddy current inspection of the wing rear spar lower cap aft tang fastener holes located between stations X_{ors}=417.000 and X_{ors}=422.000 has been accomplished prior to October 23, 1991, per DPS 4.735–9, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990.

(e) For airplanes specified in paragraph (d) of this AD: Conduct the initial inspections specified in either paragraph (e)(1) or (e)(2) of this AD within 3,300 landings after the accomplishment of the inspection specified in paragraph (d)(1) of this AD, or within 30 days after October 23, 1991, whichever occurs later.

(1) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access

door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 1,900 landings until the modification required by paragraph (g) of this AD is accomplished. Or

(2) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 3,300 landings until the modification required by paragraph (g) of this AD is accomplished.

(f) If any crack(s) is found during any inspection conducted in accordance with paragraphs (a) through (e) of this AD, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(g) Prior to the accumulation of 10,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the crack preventative modification in accordance with McDonnell Douglas Service Bulletin 57–123, dated June 8, 1993. Accomplishment of this modification constitutes terminating action for the inspection requirements of paragraphs (a) through (e) of this AD.

(h) Prior to the accumulation of 10,000 landings after the accomplishment of the crack preventative modification required by paragraph (g) of this AD, conduct an inspection of the wing rear spar lower cap in accordance with McDonnell Douglas Service Bulletin 57–123, dated June 8, 1993. Repeat this inspection thereafter in accordance with the following schedule. Any crack(s) found during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(1) For Model DC–10–10, –10F, and –15 series airplanes: Repeat the inspection at intervals not to exceed 4,550 landings.

(2) For Model DC–10–30 and –30F series airplanes: Repeat the inspection at intervals not to exceed 2,810 landings.

(3) For Model DC–10–40 series airplanes: Repeat the inspection at intervals not to exceed 3,400 landings.

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

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

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 18, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17860 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing amendments to its rule governing ethics training for registrants to provide additional guidance relative to ethics training providers. The proposed amendments would: allow a person to provide ethics training if he certifies to a registered futures association that he is not subject to statutory disqualification from registration under the Commodity Exchange Act (Act), barred from service on self-regulatory organization (SRO) governing boards or committees, or subject to a pending proceeding or investigation with respect to possible violations of the Act or rules or orders promulgated thereunder; prohibit certain representations with respect to a person's status as an ethics training provider; prohibit an ethics training provider from using that fact to qualify as an expert witness in an adjudicatory proceeding before the Commission or from proffering evidence of that fact to qualify as an expert witness in any adjudicatory proceeding to which the Commission is a party; allow wider use of ethics training presentation by interactive means and videotape; and require ethics training providers to furnish records of attendees to a registered futures association upon request.

DATES: Comments must be received by September 20, 1994.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should refer to "Ethics Training for Registrants."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, at the above address. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Act mandating ethics training for registrants.[1] The Commission adopted Rule 3.34 to implement this Congressional mandate.[2] The Commission subsequently issued a notice to give further guidance with respect to information to be supplied in applications by persons seeking to provide ethics training to registrants.[3]

The Commission has reviewed several applications from persons seeking to provide ethics training to registrants and several other applications are currently pending with the Commission. In light of this experience, the Commission is now proposing amendments to Rule 3.34 regarding ethics training providers in an effort to enhance the operation of this program. Those provisions of the rule that relate to what must be covered in ethics training and specific requirements concerning attendance at such training by registrants would remain unchanged.

II. Proposed Amendments

A. Certification by Ethics Training Provider

Presently, there are three categories of persons that may provide ethics training to registrants under the Act: (1) an SRO, such as an exchange which may have a program for its member floor brokers (FBs) and floor traders (FTs); (2) an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or (3) any other person "if its program is approved by the Commission for this purpose."[4] The

[1] This provision of the Act is codified at 7 U.S.C. 6p(b) (Supp. IV 1992) and states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

[2] 58 FR 19575, 19584–19587, 19593–19594 (April 15, 1993).

[3] 58 FR 47890 (September 13, 1993).

[4] Rule 3.34(b)(3).

proposals set forth herein would maintain SROs and state-accredited continuing education programs as ethics providers. The Commission is also proposing, however, to permit any other person to provide ethics training if the person files a notice with a registered futures association certifying that the person, any principals thereof (as defined in Commission Rule 3.1(a))[5] and any individuals, on behalf of such person, who conduct in-person ethics training or who prepare ethics training videotape or electronic presentations, are not subject to: (1) statutory disqualification from registration under Sections 8a (2) or (3) or the Act;[6] (2) a bar from service on SRO governing boards or committees based on disciplinary histories, pursuant to Commission Rule 1.63[7] or any SRO rule adopted thereunder;[8] (3) a pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or Commission Rules 3.55, 3.56 or 3.60;[9] or (4) a pending investigation by the Commission's Division of Enforcement of which the subject has been notified.[10]

The Commission believes that it is appropriate for an ethics training provider to make such a certification.[11] The Congressional mandate for ethics training is intended "to ensure that registrants understand their responsibilities to the public under [the] Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rules of any appropriate contract market, registered futures association, or other self-regulatory organization or any other applicable Federal or State law, rule or regulation."[12] The Commission believes that it would be anomalous, inconsistent with the Congressional mandate and contrary to the public interest for a person to teach others about their responsibilities under those laws and rules if such person has a disciplinary history that would disqualify him from registration under the Act or service on SRO governing broads or committees, or is involved in an adjudicatory proceeding or the subject of an investigation pertaining to violations of such laws and rules. The Commission is also proposing that the certification requirement be a continuous one so that if circumstances change and the certification becomes inaccurate, the person must so inform the registered futures association, which shall then refuse to include such person on, or remove such person from, the list of ethics training providers.[13]

The purpose of this amendment is to permit National Futures Association (NFA), currently the only registered futures association, to maintain the list of eligible ethics training providers for purposes of Commission Rule 3.34 and to clarify that the specific content of an ethics training program is not being approved by the Commission or by NFA, as discussed more fully below. The Commission would delegate authority to NFA to establish guidance as to the required experience of ethics training providers and permit NFA to receive and evaluate complaints concerning such providers and make other appropriate review of providers' operations, subject to Commission oversight. NFA would also be delegated authority to develop appropriate procedures to verify certifications filed by a potential ethics training provider, for having such certifications updated periodically and for refusing to include persons on the list of ethics training providers.[14] NFA would submit its procedures to the Commission for review pursuant to Section 17(j) of the Act,[15] which governs approval of registered futures association rules.

B. Permissible Representations

When the Commission has granted applications to provide ethics training, it has stated in letters to the applicants, among other things, that it has not approved the specific content of the ethics training program proposed and expresses no opinion as to the program's quality or accuracy. Indeed, it would be impossible for the Commission to do so since it has normally been presented with only an outline of the training course from those who filed applications.[16] The Commission therefore believes that it is appropriate to clarify the effect of the blanket reference in Rule 3.34 to an SRO or state-accredited continuing education entity as ethics training providers, as well as the effect of a registered futures association's listing of other persons providing such training.

Accordingly, the Commission is proposing to provide in new paragraph (b)(5)(i) that no SRO, state-accredited continuing education entity or other person included on a list of ethics training providers "may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical issues, have in any respect been passed upon or endorsed, by the Commission or a registered futures association." Proposed new paragraph (b)(5)(i) would further provide that any promotional or instructional material used in connection with ethics training "must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training."[17]

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[5] 17 CFR 3.1(a) (1993).

[6] 7 U.S.C. 12a(2) and (3) (1988 and Supp. IV 1992). The Act specifies several grounds for disqualification including, among others, prior revocation of registration, felony convictions, and injunctions related to futures or securities activities.

[7] 17 CFR 1.63 (1993), *as amended by* 58 FR 37644 (July 13, 1993).

[8] Thus, if Mr. Jones sets up Jones, Inc. to offer ethics training and hires Ms. Smith to conduct the lectures, the certification must include Jones, Inc., Mr. Jones and Ms. Smith. Such certification must also cover any additional instructors who would be hired if necessary to handle the number of registrants enrolling in the ethics training program.

[9] A pending proceeding is a basis to bar a person whose registration has expired within the preceding sixty days from obtaining a temporary license upon mailing a new registration application to NFA (see 17 CFR 3.11(c)(1)(i)(B), 3.11(c)(1)(ii)(B), 3.12(d)(1)(iv), and 3.12(i)(1)(iv) (1993)), to bar a person from serving as a sponsor or special supervisor of a conditioned or restricted registrant (see 17 CFR 3.60(b)(2)(i)(A) (1993)), and to prevent withdrawal from registration (see 17 CFR 3.33(f)(1)(1993)).

[10] The Commission also notes that this has been used as a basis to prevent withdrawal from registration (*see* 17 CFR 3.33(f)(3) (1993)).

[11] The items discussed above would apply to a certification from any ethics training provider. If the ethics training provider will offer training via videotape or electronic presentation, the provider's certification would also be required to include a statement with respect to verification of the registrant's attendance. This is discussed below under Heading C. Videotape or Electronic Presentation.

[12] Section 4p(b) of the Act.

[13] However, if a firm is subject to a pending adjudicatory proceeding or investigation as described above, the Commission believes that it could submit a certification to a registered futures association with an explanation describing the circumstances of the proceeding or investigation, particularly with respect to the scope and nature of the proceeding or investigation in relation to the size of the firm. For example, an investigation limited to a single branch office of a firm that does not involve fraud or failure to supervise might be treated differently than a proceeding involving such allegations against the top management of a firm. The Commission would expect the registered futures association to consult the Commission as to any particular certification submitted or in cases where a firm on the list becomes subject to a proceeding or investigation.

[14] Misrepresentations contained in such certification would also constitute federal criminal violations. *See* 18 U.S.C. 1001 (1988).

[15] 7 U.S.C. 21(j)(1988).

[16] *See* Item B4 in the September 1993 notice, 58 FR 47890, 47891.

[17] Proposed paragraph (b)(5)(i) would also contain a proviso that it "shall not be construed to prohibit a statement that a person is included on a list of

Continued

The Commission believes that these clarifications with respect to representations that may be made as to the effect of providing ethics training, whether pursuant to self-executing provisions of the rule or to inclusion on a list maintained by a registered futures association, are appropriate, particularly in light of existing limitations upon the representations that may be made by registered commodity trading advisors (CTAs), commodity pool operators (CPOs) or associated persons (APs) of CTAs and CPOs as to the effect of registration under the Act, which encompasses a greater level of review than pertains to ethics providers.[18]

The Commission similarly believes that it is appropriate to limit the use an ethics training provider may make of that fact in certain adjudicatory proceedings. An ethics training provider should not be able to use that fact to qualify as an expert witness or to present expert testimony in an adjudicatory proceeding before the Commission under Sections 6(c), 6(d), 8a or 14 of the Act [19] or Commission Rules 3.55, 3.56 or 3.60.[20] Nor should an ethics training provider proffer evidence of that fact in order to demonstrate experience, competence or knowledge that would qualify the provider as an expert witness in any adjudicatory proceeding to which the Commission is a party, for example, a civil injunctive action brought by the Commission under Section 6c of the Act (7 U.S.C. 13c (Supp. IV 1992)). The Commission is therefore proposing new paragraphs (b)(5)(ii) and (b)(5)(iii) to so provide. The Commission believes that because the rule amendments proposed herein provide for a person to be included on a list of ethics providers based on a self-certification process, it would be inappropriate for any person included on such a list to use that fact to demonstrate credentials as an expert witness. The Commission would not consider evidence of a person's status as an ethics provider in any administrative proceeding before it, and would object to any such proffer in any adjudicatory proceeding to which it is a party.

C. Videotape or Electronic Presentation

When the Commission adopted Rule 3.34, it provided in paragraph (b)(3) that a program of ethics training could include a videotape or electronic presentation. The Commission stated that such training would be acceptable if the provider could substantiate the registrant's completion of the program. The Commission further stated that such substantiation contemplates, for example, an interactive computerized training program that requires and records the registrant's participation and return of such computer disk to the ethics training provider for verification of such participation and the provider's issuance of a certificate to that effect to the registrant.[21]

The Commission had originally proposed allowing the use of videotape or electronic presentation in recognition of the fact that it could be difficult for registrants located substantial distances from major metropolitan areas to attend in-person training sessions without incurring significant expense or business disruption.[22] One contract market commenter on the Commission's proposal stated that all registrants should have the opportunity to use an interactive computer program. Since all of the contract markets are located in major metropolitan areas, the Commission responded by expressing its belief that FTs and FBs will generally attend in-person training sessions sponsored by a contract market. The Commission also indicated, however, that it "may consider in its review of proposed ethics training courses whether a particular proposal that includes an interactive computer program would be appropriate for those whom attendance at an in-person session would not be unduly burdensome." [23]

Most of the persons authorized to provide ethics training to date currently do so by means of in-person presentation. Originally, a firm authorized to provide such training by means of videotape or electronic presentation was required to represent that videotape or electronic training would be limited to registrants who live in locations outside those metropolitan areas where in-person training will be given and for those registrants that can provide a valid excuse for their inability to attend sessions in those cities. The firm was further required to represent that it would review all excuses given by registrants for being unable to attend an in-person program in their metropolitan areas and would assure that each such registrant is unable to attend due to illness, vacation, business trips or other commitments that genuinely precluded his presence.

Subsequently, the Commission's staff received several inquiries, both from existing ethics training providers and potential new providers, concerning the offering of interactive training in lieu of in-person training where locational or other factors rendering in-person training less feasible did not exist. The Commission has reviewed this issue and believes that the previously required representations may be difficult to interpret and may prevent the most economic means of compliance for firms with multiple, dispersed branches. Given the numbers of registrants, it may also be more efficient and cost-effective to permit greater use of videotaped and interactive training, without sacrificing the usefulness of such training, subject to the verification procedures described below. Accordingly, the Commission is now of the view that any registrant may meet his ethics training requirement through in-person or through videotaped or electronic presentations.

The Commission also wishes to make clear, however, that if videotaped or electronic training is offered, the provider must be able to verify that the video has been viewed or the training completed by the registrant before the provider issues a certificate of attendance to the registrant. Accordingly, if a provider will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, the Commission is proposing that the provider's certification referred to above be supplemented to include a representation that the provider will maintain documentation reasonably designed to verify that registrants have properly completed ethics training for the minimum time required (one, two or four hours).

The Commission envisages that an appropriate verification regime for a provider would include procedures such as the following. The provider would maintain a list of the computer-based ethics program purchasers and match each completed program with a record of purchase. Registrants would be required to enter identifying information, such as name, firm's name, business address, telephone number, date of birth, NFA and/or Social Security number, on the control diskette and return a signed statement with the completed computer diskette certifying that he did in fact complete the ethics training course in the manner set out in the instructions.

With respect to the fulfillment of the minimum time requirements and verification of the registrants'

intended to be that such person is not precluded from providing ethics training by reason of "unfitness" as defined by the Act and the Commission's rules on statutory disqualification.

[18] *See* Section 4*o*(2) of the Act, 7 U.S.C. 6*o*(2) (1988).

[19] 7 U.S.C. 9, 13b, 12a or 18 (1988 & Supp. IV 1992).

[20] 17 CFR 3.55, 3.56 or 3.60 (1993).

[21] 58 FR 19575, 19586–19587.

[22] 58 FR 6748, 6756 (February 2, 1993).

[23] 58 FR 19575, 19587.

participation in the program, the ethics training provider could use a computer-based test to assure that the registrant has attained a minimum level of understanding of the materials covered, drawing upon matters covered in video and written materials, as well as the computer program, to the extent applicable. Registrants would be required to pass each section of the test prior to answering questions in later sections of the test to assure that each section of the program is completed. While those who fail the test would be required to retake it until it is successfully completed, only the time spent on the first test could be credited toward the ethics training time required by Rule 3.34. Registrants answering quickly would be given additional questions to answer, and the program would cease recording elapsed time for those slow to answer questions. Thus, registrants would be monitored both as to time spent and material covered.[24]

If a provider wished to follow a different verification regime, he could do so if such steps had been submitted to and not found objectionable by a registered futures association.

The Commission contemplates that an ethics training provider would be able to document that a registrant had undertaken various steps required for the provider to verify completion. The provider would be required under revised paragraph (b)(4) of Rule 3.34 to keep documentation to support its determination that ethics training has been properly completed by a registrant and to support its issuance of a certificate of attendance.[25]

D. Recordkeeping

Rule 3.34(b)(4) governs recordkeeping by an ethics training provider. The Commission is proposing to add a provision to the current recordkeeping requirements that would require providers of ethics training to furnish records of attendees at such training to a registered futures association in such format as the registered futures association may request. When the Commission adopted Rule 3.34, it required that providers of ethics training maintain records of attendees at such training in accordance with Commission Rule 1.31, *i.e.*, for a five-year period.[26] The Commission also stated that it would monitor the effectiveness of the requirement for maintaining a record of ethics training attendance and may reconsider the issue at a later date if appropriate.[27] The Commission understands that NFA is willing to compile information on ethics training attendance for inclusion in the registration database and believes that ethics training providers should cooperate with NFA requests for the information which providers are already required to maintain. This will allow for a central repository of such information which should benefit all registrants and facilitate oversight of compliance with the ethics training requirement. To facilitate NFA's incorporation of this data in the registration database, ethics training providers should include appropriate identifiers of registrants, such as NFA ID number, and follow other format conventions requested by NFA.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed rule amendments discussed herein will affect ethics training providers, which include SROs, entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, and any other person who complies with the requirements to be included on a list of ethics training providers. The SROs offering ethics training to their members are the contract markets and the Commission has previously determined that contract markets are not small entities under the RFA.[28] As to the impact of these proposals on other providers of ethics training or persons seeking to become providers of ethics training, the Commission believes that such impact will be minimal. The procedure for becoming an ethics training provider would be simplified. The permissible representations by ethics training providers which the Commission is proposing to codify are consistent with the statements set forth in Commission letters issued to date to ethics training providers. Finally, since ethics training providers are already required to maintain records of attendees, furnishing such information to NFA upon request should not cause an undue burden.

Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rules proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any person or entity which believes that these proposed rule amendments would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. While the amendments proposed herein have no burden, Rule 3.34 is a part of a group of rules which has the following burden:

Rules 3.16, 3.32 and 3.34 (3038–0023, approved June 2, 1993):	
Average Burden Hours Per Response.	1.13
Number of Respondents	60,980
Frequency of Response	On occasion and tri-ennially.

Persons wishing to comment on the information which would be required by these rules as amended should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K St. N.W., Washington, D.C. 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 3

Ethics training, Registration.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4d, 4e, 4g, 4m, 4p, 8a and 17 thereof (7 U.S.C. 1a, 6d, 6e, 6g, 6m, 6p, 12a and 21 (1988 &

[24] If an ethics training provider develops a computer-based ethics training program for use by a particular registered firm and its APs that in addition to the required subject matter also includes material tailored to that firm, such as the firm's specific professional conduct policies, the ethics training provider could verify completion by the APs by relying on the registered firm's representation as to its APs' attendance if the firm can verify the identity of participants through the firm's in-house computer communication system or through monitoring by the firm's supervisory or managerial staff. The ethics training provider should require registered firms using a tailored ethics training program to furnish periodic reports of specified identifying information for each AP accessing the training program.

[25] The Commission is also proposing under revised paragraph (b)(4) of Rule 3.34 that records of trainer evaluations be maintained.

[26] 17 CFR 1.31 (1993).

[27] 58 FR 19575, 19587.

[28] 47 FR 18618–18619 (April 30, 1982).

Supp. IV. 1992)), hereby proposes to amend Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23; 5 U.S.C. 552, 552b.

2. Section 3.34 is proposed to be amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 3.34 Mandatory ethics training for registrants.

* * * * *

(b) * * *

(3) The training required by this section must be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by:

(i) A self-regulatory organization;

(ii) An entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or,

(iii) A person included on a list maintained by a registered futures association who has filed a notice with the registered futures association certifying that:

(A) The person, any principals thereof (as defined in § 3.1(a)) and any individuals, on behalf of such person, who conduct in-person ethics training or who prepare an ethics training videotape or electronic presentation are not subject to:

(*1*) Statutory disqualification from registration under Sections 8a(2) or (3) of the Act;

(*2*) A bar from service on self-regulatory organization governing boards or committees based on disciplinary histories pursuant to § 1.63 of this chapter or any self-regulatory organization rule adopted thereunder;

(*3*) A pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act, or §§ 3.55, 3.56 or 3.60; or

(*4*) A pending investigation by the Commission's Division of Enforcement of which the subject has been notified; and

(B) If the person will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, he will maintain documentation reasonably designed to verify the attendance of registrants at such videotape or electronic presentation for the minimum time required.

(iv) The certification requirement under paragraph (b)(3)(iii) of this section is continuous and if circumstances change so that such certification becomes inaccurate, the person must so inform the registered futures association, which shall then refuse to include such person on or remove such person from the list referred to in paragraph (b)(3)(iii) of this section.

(4) Any person providing ethics training under this section must maintain records of materials used in such training, attendees at such training, documentation to verify completion by a registrant of training through videotape or electronic presentation and trainer evaluations in accordance with § 1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission. Records of attendees at such training shall be provided upon request to a registered futures association in such format as specified by the registered futures association.

(5) No person referred to in paragraph (b)(3) of this section may:

(i) Represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical issues, have in any respect been passed upon or endorsed, by the Commission, a registered futures association, or any representative thereof. Any promotional or instructional material used in connection with the training required by this section must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training: *Provided, however*, that this paragraph shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented;

(ii) Use in any manner whatsoever the fact that he is offering training required by this section to qualify as an expert witness or to present expert testimony in an adjudicatory proceeding before the Commission or one of its Administrative Law Judges under Sections 6(c), 6(d), 8a or 14 of the Act, or §§ 3.55, 3.56 or 3.60; or

(iii) Proffer evidence that he is offering training required by this section to demonstrate experience, competence or knowledge that would qualify him as an expert witness in any adjudicatory proceeding to which the Commission is a party.

* * * * *

Issued in Washington, DC on July 19, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–17880 Filed 7–21–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[PS–79–93]

RIN 1545–AN77

Grantor Trust Reporting Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the method of reporting for trusts which are treated as owned by grantors or other persons under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. The proposed regulations are intended to reduce the current filing burden on trustees, to provide necessary information to grantors or other persons treated as the owners of trusts, to reduce any cases of duplicate filing, and to provide more meaningful information to the IRS. The proposed regulations would affect grantors and trustees of trusts that are treated as owned by grantors or other persons, as well as persons who are required to file information returns with respect to payments to these trusts.

DATES: Written comments must be received by August 31, 1994. Requests to speak (with outlines of oral comments) at a public hearing scheduled for September 21, 1994, at 1 p.m., must be received by August 31, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–79–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered

between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–79–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the IRS Auditorium, 7th floor, 7400 corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Robert Rio, 202–622–3060; concerning submissions and the hearing, Carol Savage, 202–622–8452. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is required by §§ 1.671–4 and 1.6012–3 of the proposed Income Tax Regulations and § 301.6109–1 of the proposed Regulations on Procedure and Administration. This information is required by the IRS to insure the proper reporting of income and proceeds paid to a trust any portion of which is treated as owned by the grantor or another person. The likely respondents are individuals, trusts, businesses and other for-profit institutions, and small businesses.

Estimated total annual reporting burden: 920,000 hours.

The estimated annual burden per respondent: 30 minutes.

Estimated number of respondents: 1,840,000.

Estimated annual frequency of responses: once.

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under sections 671 and 6012 of the Internal Revenue Code (Code), and to the Regulations on Procedure and Administration (26 CFR part 301) under section 6109 of the Code. The proposed amendments are to be issued under the authority of section 7805 of the Code.

Explanation of Provisions

Reporting Requirements Under the Current Regulations

In general, every fiduciary (which includes a trustee of a trust) must make a return of income on Form 1041. Under the current regulations, items of income, loss, deduction, and credit attributable to any portion of a trust which is treated as owned by the grantor or another person generally must be shown by the trustee on a separate statement attached to a Form 1041, rather than on the form itself. There are two exceptions to this rule. The first exception applies when the same individual is both grantor and trustee (or co-trustee) of the trust, and that individual is treated for the taxable year as the owner of the entire trust under section 676 of the Code. The second exception applies when a husband and wife are the grantors of certain revocable trusts.

Section 301.6109–1(a)(2) of the current Regulations on Procedure and Administration provides that a grantor trust reporting under one of these two exceptions shall not obtain an employer identification number until such time as the reporting exceptions no longer apply to the trust. Instead, the grantor of such a trust must furnish his or her social security number (or, when applicable, his or her employer identification number) to payors of income, and payors must report income as if paid to the grantor, not the trust.

Reporting Requirements Under the Proposed Regulations

The proposed regulations will reduce the reporting burden on certain trustees by expanding the current exceptions to the requirement of filing a Form 1041 to other trusts all of which are treated as owned by one or more grantors or other persons. Thus, considerably more trustees will not be required to file a Form 1041.

The proposed regulations retain the general rule of the current regulations that items of income, deduction, and credit attributable to any portion of a trust which is treated as owned by the grantor or another person must be reported by the trustee on a separate statement attached to a Form 1041.

The proposed regulations, however, provide alternative methods of reporting for a trust *all* of which is treated as owned by one or more grantors or other persons, including a trust treated as owned by a person other than an individual and a trust with a third-party trustee. Under these alternative methods, the trustee does not file a Form 1041 with an attached statement.

If the trust is treated as owned by *one* grantor or other person, the trustee may choose between two alternative methods of reporting. The trustee must furnish to all payors of income and proceeds during the taxable year either: (i) the name and taxpayer identification number (TIN) of the grantor or other person, and the address of the trust; or (ii) the name, TIN, and address of the trust. If the trust is treated as owned by *more than one* grantor or other person, the trustee must furnish the name, TIN, and address of the trust to all payors of income and proceeds during the taxable year.

If the trustee furnishes the name and TIN of the grantor or other person and the address of the trust to all payors, the trustee is not required to file any type of return with the IRS.

If the trustee furnishes the name, TIN, and address of the trust to all payors, the trustee must file with the IRS appropriate Forms 1099 which: (1) report each type of income and each item of gross proceeds paid to the trust; (2) show the trust as the payor; and (3) show each grantor or other person treated as an owner of the trust as the payee.

Under all of the alternative methods of reporting, unless the trustee or co-trustee is also the only grantor or other person treated as an owner of the trust, the trustee must furnish each grantor or other person with a statement that: (1) shows all items of income, deduction, and credit of the trust attributable to the grantor or other person for the taxable year; (2) provides the grantor or other person with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and (3) states that all items of income or gross proceeds that are required to be reported to the IRS have been included on the statement.

The statement furnished by the trustee is not subject to the requirements set forth in Internal Revenue Service Publication 1179 (Specifications for Paper Document Reporting and Paper Substitutes for Forms 1096, 1098, 1099 Series, 5498, and W–2G) for furnishing substitute statements to form recipients. When these proposed regulations are issued as final, a conforming change will be made to Publication 1179.

Regardless of which TIN the trustee furnishes to payors, the payors will furnish statements to recipients to the trustee of the trust, and not to the grantors or other persons.

Conforming changes to the current regulations under sections 6012 and 6109 of the Code are also proposed.

Effective Date and Transition Rule

The proposed regulations are effective for taxable years beginning on or after the first day of the first calendar year after the date of publication of the final regulations in the **Federal Register**, subject to a requirement that certain trustees file a final Form 1041 before adopting one of the alternative methods of reporting.

In addition, the proposed regulations provide that, for taxable years beginning prior to the effective date of the proposed regulations, the IRS will not challenge the manner of reporting of certain trustees of trusts all of which are treated as owned by one or more grantors or other persons who did not report in accordance with § 1.671–4(a) of the current regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, September 21, 1994, at 1 p.m., in the IRS Auditorium, 7th floor, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by August 31, 1994, and wish to present oral comments at the hearing must submit, not later than August 31, 1994, an outline of the topics to be discussed (preferably a signed original and eight (8) copies) and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Robert Rio of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR parts 1 and 301 are as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.671–4 is revised to read as follows:

§ 1.671–4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, but are shown on a separate statement to be attached to that form.

(b) *A trust all of which is treated as owned by one or more grantors or other persons.* In the case of a trust all of which is treated as owned by one or more grantors or other persons, the trustee has the option of reporting by one of the methods described in this paragraph (b) rather than by the method described in paragraph (a) of this section. However, if the trustee reports by one of the methods described in this paragraph (b) for a taxable year of the trust, the trustee must continue to report by that method until the first taxable year that the trust is no longer a trust described in this paragraph (b).

(1) *A trust all of which is treated as owned by one grantor or by one other person*—(i) *In general.* In the case of a trust all of which is treated as owned by one grantor or one other person, the trustee reporting under this paragraph must—

(A) Furnish the name and taxpayer identification number (TIN) of the grantor or other person treated as the owner of the trust, and the address of the trust, to all payors of income and proceeds during the taxable year, and comply with the additional requirements described in paragraph (b)(1)(ii) of this section; or

(B) Furnish the name, TIN, and address of the trust to all payors of income and proceeds during the taxable year, and comply with the additional requirements described in paragraph (b)(1)(iii) of this section.

(ii) *Additional obligations of the trustee when name and TIN of the grantor or other person and the address of the trust are furnished to payors.* (A) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must furnish the grantor or other person with a statement that—

(*1*) Shows all items of income, deduction, and credit of the trust for the taxable year;

(*2*) Identifies the payor of each item of income;

(*3*) Provides the grantor or other person with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*4*) States that all items of income or gross proceeds that the payors reported to the Internal Revenue Service on Form 1099 have been included on the statement.

(B) The trustee, however, is not required to file any type of return with the Internal Revenue Service reporting those payments.

(iii) *Additional obligations of the trustee when name, TIN, and address of the trust are furnished to payors*—(A) *Obligation to file Forms 1099.* The trustee reporting under this paragraph must file with the Internal Revenue Service the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year, and showing the trust as the payor and the grantor or other person as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable

payments directly to the grantor or other person, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately.

(B) *Obligation to furnish statement.* (*1*) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee reporting under this paragraph must also furnish the grantor or other person with a statement that—

(*i*) shows all items of income, deduction, and credit of the trust for the taxable year;

(*ii*) provides the grantor or other person with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*iii*) states that all items of income or gross proceeds that the trustee is required to report to the Internal Revenue Service on Form 1099 have been included on the statement.

(*2*) By furnishing the statement, the trustee is treated as having satisfied any obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(iv) *Examples.* The following examples illustrate the provisions of this paragraph (b)(1).

Example 1. G creates an irrevocable trust which provides that the ordinary income is to be payable to him for life and that on his death the corpus shall be distributed to B, an unrelated person. Except for the right to receive income, G retains no right or power which would cause him to be treated as an owner under sections 671 through 677. Under the applicable local law, capital gains must be added to corpus. Since G has a right to receive income, he is treated as an owner of a portion of the trust under section 677. The tax consequences of any items of capital gain of the trust are governed by the provisions of subparts A, B, C, and D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. Because not all of the trust is treated as owned by the grantor, the trustee may not report by the methods described in paragraph (b)(1) of this section.

Example 2. (i)(A) On January 1, 1995, G, a United States citizen, creates a revocable trust all of which is treated as owned by G. The trustee of the trust is T. During the 1995 taxable year the trust has the following items of income and gross proceeds:

Interest	$2,500
Dividends	3,205
Proceeds from sale of B stock	2,000

(B) The trust has no items of deduction or credit.

(ii)(A)(*1*) The payors of the interest paid to the trust are X ($2,000), Y ($300), and Z ($200). The payors of the dividends paid to the trust are A ($3,200) and B ($5). The payor of the gross proceeds from the sale of B stock is S ($2,000). The B stock was purchased by T for $1,500 on January 2, 1995, and sold by T on November 30, 1995. T furnishes the name, TIN, and address of the trust to X, Y, Z, A, B, and S. T timely files a Form 1099–INT with the Internal Revenue Service on which T reports interest attributable to G, as the owner of the trust, of $2,500; a Form 1099–DIV on which T reports dividends attributable to G, as the owner of the trust, of $3,205; and a Form 1099–B on which T reports proceeds from the sale of B stock attributable to G, as the owner of the trust, of $2,000. On or before the date specified in section 6034A(a), T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest	$2,500
Dividends	3,205
Gain from sale of B stock	500
Information regarding sale of B stock:	
Proceeds	$2,000
Basis	1,500
Date acquired	1/02/95
Date sold	11/30/95

(*2*) In addition, the statement furnished to G states that all items of income or gross proceeds that T is required to report to the Internal Revenue Service are included on the statement.

(B) T has complied fully with T's obligations under paragraph (b)(1)(iii)(B) of this section.

(iii)(A)(*1*) Same facts as paragraph (ii) of this *Example 2*, except that G owned the B stock and contributed it to the trust on January 1, 1995. On or before the date specified in section 6034A(a), T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest	$2,500
Dividends	3,205
Information regarding sale of B stock:	
Proceeds	$2,000
Date sold	11/30/95

(*2*) In addition, the statement furnished to G states that all items of income or gross proceeds that T is required to report to the Internal Revenue Service are included on the statement.

(B) T has complied fully with T's obligations under paragraph (b)(1)(iii)(B) of this section.

(2) *A trust all of which is treated as owned by two or more grantors or other persons*—(i) *In general.* In the case of a trust all of which is treated as owned by two or more grantors or other persons, the trustee reporting under this paragraph must furnish the name, TIN, and address of the trust to all payors of income and proceeds during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(ii) of this section.

(ii) *Additional obligations of trustee*—(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year attributable to the portion of the trust treated as owned by each grantor or other person, and showing the trust as the payor and each grantor or other person as a payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments directly to the grantor or other person, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately.

(B) *Obligation to furnish statement.* (*1*) The trustee must also furnish to each grantor or other person a statement that—

(*i*) Shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor or other person;

(*ii*) Provides the grantor or other person with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*iii*) States that all items of income or gross proceeds that the trustee is required to report to the Internal Revenue Service on Form 1099 have been included on the statement.

(*2*) By furnishing the statement, the trustee is treated as having satisfied any obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(3) *Common Trust Funds.* This paragraph (b) does not apply to a common trust fund as defined in section 584.

(4) *Trusts with foreign situs or assets.* This paragraph (b) does not apply to a trust if its situs or any of its assets are located outside the United States.

(c) *Due date for Forms 1099 required to be filed by trustee.* The due date otherwise in effect for filing Forms 1099 applies in the case of any Forms 1099 required to be filed with the Internal Revenue Service by a trustee pursuant to paragraph (b) of this section.

(d) *Due date and other requirements with respect to statement required to be furnished by trustee.* The due date for the statement required to be furnished by a trustee to the grantor or other person pursuant to paragraph (b) of this section is the date specified in section 6034A(a). The trustee must maintain in its records a copy of the statement furnished to the grantor or other person for a period of three years from the due date for furnishing such statement specified in this paragraph.

(e) *Application to brokers and customers.* For purposes of this section, a broker within the meaning of section 6045 is considered a payor, and a

customer within the meaning of section 6045 is considered a payee.

(f) *Effective date and transition rule*—(1) *In general.* The trustee of a trust any portion of which is treated as owned by the grantor or another person must report pursuant to this section for taxable years beginning on or after the first day of the first calendar year after the date of publication of the final regulations in the **Federal Register**. However, if the trustee has filed a Form 1041 for any taxable year ending before that date (and has not filed a final Form 1041 pursuant to § 1.671–4(b)(3) in the 26 CFR part 1 edition revised as of April 1, 1994), or files a Form 1041 for any taxable year thereafter, the trustee must file a final Form 1041 for the taxable year which ends after the date of publication of the final regulations in the **Federal Register** and which immediately precedes the first taxable year for which the trustee reports pursuant to paragraph (b) (1) or (2) of this section, on the front of which form the trustee must write: "Pursuant to § 1.671–4(f), this is the final Form 1041 for this grantor trust.".

(2) *Transition rule.* For taxable years beginning prior to the first day of the first calendar year following the date of publication of the final regulations in the **Federal Register**, the Internal Revenue Service will not challenge the manner of reporting of—

(i) A trustee of a trust all of which is treated as owned by one or more grantors or other persons who did not report in accordance with § 1.671–4(a) (26 CFR part 1 revised as of April 1, 1994) as in effect for taxable years beginning prior to the first day of the first calendar year following the date of publication of the final regulations in the **Federal Register**, but did report in a manner substantially similar to one of the reporting methods described in paragraph (b) of this section; or

(ii) A trustee of two or more trusts all of which are treated as owned by grantors or other persons who filed a single Form 1041 for all of the trusts, rather than a separate Form 1041 for each trust, provided that the items of income, deduction, and credit of each trust were shown on a statement attached to the single Form 1041.

(g) *Cross-references.* For special rules relating to backup withholding requirements, see section 3406 and the regulations thereunder. For rules relating to employer identification numbers, and to the obligation of a payor of income or proceeds to the trust to furnish to the payee a statement to recipients with respect to the information return filed by the payor, see § 301.6109–1(a)(2) of this chapter.

Par. 3. Section 1.6012–3 is amended by revising paragraph (a)(9) to read as follows:

§ 1.6012–3 Returns by fiduciaries.

(a) * * *

(9) *A trust any portion of which is treated as owned by the grantor or another person pursuant to section 671 and following.* In the case of a trust any part of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code, see § 1.671–4.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 301.6109–1 is amended by revising paragraph (a)(2) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) * * *

(2) *A trust all of which is treated as owned by the grantor or another person pursuant to section 671 and following*—(i) *Obtaining an employer identification number.*

If the trustee furnishes the name and taxpayer identification number of the grantor or other person and the address of the trust to all payors pursuant to § 1.671- 4(b)(1)(i)(A) of this chapter, the trustee need not obtain an employer identification number for the trust until the first taxable year of the trust in which the trust is no longer described in § 1.671–4(b) of this chapter. If the trustee furnishes the name, taxpayer identification number, and address of the trust to all payors pursuant to § 1.671–4 (b)(1)(i)(B) or (b)(2)(i) of this chapter, and the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain an employer identification number for the trust as provided in paragraph (d)(2) of this section.

(ii) *Obligations of persons who make payments of income or proceeds to certain trusts.* Any payors of income or proceeds that are required to file an information return with respect to payments of income or proceeds to a trust must show the name and taxpayer identification number that the trustee has furnished to the payor on the return. Regardless of whether the trustee furnishes to the payor the name and taxpayer identification number of the grantor or other person, or the name and taxpayer identification number of the trust, the payor must furnish a statement to recipients to the trustee of the trust, rather than to the grantor or other person. Under these circumstances, the payor is considered to have satisfied any obligation to show the name and taxpayer identification number of the payee on the information return and to furnish to the person whose taxpayer identification number is required to be shown on the form a statement to recipients.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–17567 Filed 7–21–94; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–5017–7]

Control of Air Pollution; Emission Standards for New Nonroad Spark-Ignition Engines At or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking, reopening of comment period.

SUMMARY: EPA announces a reopening of the comment period for the proposed nonroad engines at or below 19 kilowatts (25 horsepower) emission standards rulemaking. The Agency has decided to extend the comment period in response to engine and equipment manufacturers' requests that EPA allow a longer period to enable sufficient development of comments.

DATES: Written comments relating to the proposed rule must be submitted on or before August 5, 1994.

ADDRESSES: Interested parties may submit written comments (in triplicate if possible) for EPA consideration by addressing them as follows: EPA Air and Radiation Docket, Attention: Docket Number A–93–25, 401 M Street SW, Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed at this location from 8:00 a.m. until 4:00 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Lucie Audette, Office of Mobile Sources, Certification Division, (313) 741–7878.

SUPPLEMENTARY INFORMATION: Authority for the proposed new spark-ignition

engine emission standards is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act (CAA) as amended. The notice of proposed rulemaking (NPRM) was published in the **Federal Register** on Monday, May 16, 1994 (59 FR 25399). The original close of the comment period was July 15, 1994. The Engine Manufacturers Association (EMA) and the Outdoor Power Equipment Institute (OPEI) approached EPA with requests for an extension of the comment period in order to allow additional time to submit comments.

The Agency has an interest in examining comprehensive information from interested parties that may be useful in drafting a more effective final rule, and therefore has extended the comment period until August 5, 1994.

Dated: July 11, 1994.

Mary Nichols,

Assistant Administrator.

[FR Doc. 94–17917 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5016–5]

40 CFR Part 281

South Dakota; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of State of South Dakota for final approval, public hearing and public comment period.

SUMMARY: The State of South Dakota has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the South Dakota application and has made the tentative decision that South Dakota's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. EPA intends to grant final approval to the State to operate its program in lieu of the Federal program. The State of South Dakota's application for final approval is available for public review and comment. EPA has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing to EPA or calling the contact within 30 days of the date of publication of this notice, EPA will hold a hearing on the date given below in the "DATES" section. EPA will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "Contacts" section below.

DATES: All comments on South Dakota's final approval application must be received by the close of business on August 22, 1994. The public hearing is tentatively scheduled for September 12, 1994.

ADDRESSES: Written comments should be sent to U.S. EPA, Attn: Leslie Zawacki, mail code (8HWM–WM), Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202.

The public hearing is tentatively scheduled for 1 p.m. at the Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

Copies of South Dakota's final approval application are available during normal working days at the following addresses for inspection and copying: from 8 a.m.–5 p.m. at the South Dakota Department of Environment and Natural Resources, Underground Storage Tank Program, 523 East Capitol, Pierre, South Dakota 57501, phone: (605) 773–3296; from 9 a.m.–4 p.m. at the U.S. EPA Headquarters, Office of Underground Storage Tanks, Docket Clerk, 401 M Street, SW., Room 2616, Washington, DC 20460, phone: (202) 260–9720; and from 8 a.m.–4 p.m. at the U.S. EPA Region 8, Library, Suite 144, 999 18th Street, Denver, Colorado 80202, phone: (303) 293–1665.

FOR FURTHER INFORMATION CONTACT: Leslie Zawacki, Underground Storage Tank Program Section, U.S. EPA, Region 8, 8HWM–WM, 999 18th Street, Denver, Colorado 80202, phone: (303) 293–1665.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) is "no less stringent" than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (Section 9004(a), 42 U.S.C. 6991c(a)).

B. State of South Dakota

The State of South Dakota established authority through South Dakota Codified Law 34A–2–98 and 34A–2–99 to implement an underground storage tank program. The State developed and approved rules in the Administrative Rules of South Dakota that became effective November 30, 1987.

On July 9, 1992, South Dakota submitted an official application for final approval. EPA reviewed and commented on the application and requested additional information to be included in the final application. Prior to its submission, South Dakota provided an opportunity for public notice and comment in the development of its underground storage tank program as required under § 281.50(b). EPA has reviewed South Dakota's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. Consequently, EPA intends to grant final approval to South Dakota to operate its program in lieu of the Federal program.

This tentative determination to approve the South Dakota UST program does not extend to "Indian Country," as defined in 18 U.S.C. Section 1151, including the following "existing or former" Indian reservations in the State of South Dakota:

1. Cheyenne River
2. Crow Creek
3. Flandreau
4. Lake Traverse (Sisseton-Wahpeton)
5. Lower Brule
6. Pine Ridge
7. Rosebud
8. Standing Rock
9. Yankton.

Before EPA would be able to approve the State of South Dakota UST program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a state to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it had authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian Law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not satisfied that South Dakota has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of South

Dakota choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the South Dakota program for "Indian Country," to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

On May 2, 1994, the State of South Dakota submitted to EPA an amendment to its UST program application. The amendment requests that South Dakota UST program approval be expanded to include UST activities on non-Indian lands for the former lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and parts of the Rosebud and Pine Ridge reservations. This amendment is presently being reviewed by EPA and will be treated as a revision to the South Dakota UST program proposed for approval today. A notice of the proposed EPA decision on this amendment will be published in the **Federal Register** for public comment at a later date.

In accordance with Section 9004 of RCRA 42 U.S.C. 6991c and 40 CFR 281.50(e), the Agency will accept written comments on EPA's tentative determination until August 21, 1994. Copies of South Dakota's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to South Dakota. EPA expects to make a final decision on whether or not to approve South Dakota's program by October 20, 1994 and will give notice of it in the **Federal Register**. At this time, EPA and the State will enter into a memorandum of agreement to set forth the manner in which the State and EPA will coordinate the State's administration of the State program. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State.

It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, and Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6991c.

Dated: July 5, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–17555 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–75; RM–8483]

Radio Broadcasting Services; Casper, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bruce L. Erickson proposing the allotment of Channel 247A at Casper, Wyoming, as that community's fifth local commercial FM transmission service. Channel 247A can be allotted to Casper in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 247A at Casper are North Latitude 42–50–48 and West Longitude 106–18–48.

DATES: Comments must be filed on or before September 12, 1994 and reply comments on or before September 27, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bryan Cave, Esq., 700 13th Street NW., Suite 600, Washington, DC 20005–3960 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 94–75, adopted June 21, 1994, and released July 19, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–17848 Filed 7–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–33; RM–8160; RM–8233]

Radio Broadcasting Services; Oakhurst, Firebaugh, and June Lake, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Don Stewart requesting

the allotment of FM Channel 226A to June Lake, California, as that locality's first local aural service, based on petitioner's failure to file comments to establish June Lake's status as a community for allotment purposes. *See* 59 FR 6230, February 10, 1994. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 93–33, adopted June 28, 1994, and released July 19, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–17847 Filed 7–21–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 140
Friday, July 22, 1994

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

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of a New Privacy Act System of Records; Request for Comments.

SUMMARY: The Forest Service (FS) is proposing to establish a new system of records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). This system of records, entitled Electronic Corpsmember Information System (ELCID), USDA/FS–51, is necessary to monitor individual Job Corps Enrollees' educational progress as well as to provide cumulative results of training programs at each individual Forest Service Job Corps Center. The data could be used to counsel enrollees as well as to adjust a Center's training program to more effectively meet enrollee needs.

EFFECTIVE DATE: This notice will be adopted without further notice, on September 20, 1994, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act only requires "routine uses" of the system to be published for comment, USDA invites comment on all portions of this notice. Comments must be received on or before August 22, 1994.

ADDRESSES: Send written comments to the Director, Human Resource Programs, FS, USDA, PO Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this notice in the office of the Director of Human Resource Programs, 10th floor, Room 1010, 1621 North Kent Street, Rosslyn Plaza East, Arlington, Virginia 22209, between the hours of 8 am and 4 pm. Individuals wishing to inspect comments are encouraged to call (703) 235–8844 to make arrangements.

FOR FURTHER INFORMATION: Melvyn J. Loftus, FS Education Specialist, Human Resource Staff, (703) 235–8844

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is proposing to create a new system of records to be maintained by FS. The purpose of the system of records, entitled ELCID, would be to track administrative information on Job Corps students so that training for the students may be presented in a most efficient and effective manner. The information compiled on Job Corps students would include: Name, social security number, address, phone number, date of birth, date of entry, race, legal guardian, recruiter, test scores from the Test of Adult Basic Education, educational progress, vocational progress, Job Corps Center progress, behavioral reports, leave record, dormitory assignment, and pay status. The Forest Service Job Corps Center frequently require such data to be updated and reviewed to train Job Corps students more effectively. Some of this information (name, address, social security number, date of birth, date of entry, test scores, educational progress, vocational progress, overall program progress, and pay status) also would be shared with the Department of Labor's Student Pay Allowance and Management Information System (SPAMIS) date base, which is located in San Marcos, Texas, at Gary Job Corps Center. SPAMIS is the system that provides the students with their monthly living allowance. The information that ELCID will compile is currently recorded in the administrative record of each enrollee. Currently, these records must be reviewed manually for the purpose of discerning trends in educational progress of enrollees or in the effectiveness of a particular training course. Data would originate and be maintained at each individual Center.

Dated: July 12, 1994.

Mike Espy,

Secretary.

USDA/FS–51

SYSTEM NAME:

USDA/FS–51 Electronic Corpsmember Information System (ELCID).

SYSTEM LOCATION:

The records in this system are maintained at the 18 United States Department of Agriculture (USDA), Forest Service (FS), Job Corps Centers:

Anaconda Job Corps Center, 1407 Foster Creek Road, Anaconda, Montana 59711

Angell Job Corps Center, 335 NE Blodgett Road, Yachats, Oregon 97498

Blackwell Job Corps Center, Route 1 Box 233A, Laona, Wisconsin 54541

Boxelder Job Corps Center, PO Box 110, Nemo, South Dakota 57759

Cass Job Corps Center, HC 63 Box 219, Ozark, Arkansas 72949

Curlew Job Corps Center, 3090–100 Bamber Creek Road, Waconda, Washington 98859

Flatwoods Job Corps Center, Route 1 Box 211, Coeburn, Virginia 24220

Frenchburg Job Corps Center, HCR 68 Box 935, Mariba, Kentucky 40345

Golconda Job Corps Center, Route 1 Box 104A, Golconda, Illinois 62938

Jacobs Creek Job Corps Center, 984 Denton Valley Road, Bristol, Tennessee 37620–1430

Lyndon B. Johnson Job Corps Center, 466 Job Corps Road, Franklin, North Carolina 28734

Ouachita Job Corps Center, Route 1, Royal, Arkansas 71968

Pine Knot Job Corps Center, Pine Knot, Kentucky 42635

Pine Ridge Job Corps Center, HC 75 Box 39–F, Chadron, Nebraska 69337

Schenck Job Corps Center, 98 Schenck Drive, Pisgah Forest, North Carolina 28768

Timber Lake Job Corps Center, 59868 East Hwy 224, Estacada, Oregon 97023

Trapper Creek Job Corps Center, 5139 West Fork Road, Darby, Montana 59829

Wolf Creek Job Corps Center, 2010 Opportunity Lane, Glide, Oregon 97443

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers students who are enrolled in FS Job Corps Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of the name, social security number, address, phone number, date of birth, date of entry, race, legal guardian, recruiter, test scores from the Test of Adult Basic Education, educational progress, vocational progress, Job Corps Center progress, behavioral reports, leave record, dormitory assignment, and pay status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Title IV–B of and the Job Training Partnership Act, as amended, 29 U.S.C. 1691, *et seq.*

PURPOSES:

The FS Job Corps Centers will use the information in this system of records to design more effective and efficient training for students enrolled in FS Job Corps Centers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USE:

(1) USDA may disclose information in this system of records to the United States Department of Justice (DOJ) for use in litigation, if USDA, or any component thereof, determines that the use of such records by DOJ is relevant and necessary to the conduct of the litigation and that disclosure of the information to DOJ is compatible with the purpose(s) for which the records were collected where any of the following are parties to the litigation or have an interest that would be affected by the litigation:

(a) USDA, or any component thereof;

(b) Any USDA employee acting in an official capacity;

(c) Any USDA employee acting in an individual capacity whom DOJ has agreed to represent; or

(d) The United States, if USDA determines that the litigation is likely to affect USDA or any of its components.

(2) USDA may disclose information in this system of records in a proceeding before a court or other adjudicative body before which USDA is authorized to appear, if USDA or any component thereof determines that disclosure of the records to the court or other adjudicative body is a use that is compatible with the purpose(s) for which the records were collected, where USDA determines that the information is relevant and necessary to the conduct of the litigation and any of the following are parties to the litigation or have an interest that would be affected by the litigation:

(a) USDA, or any component thereof;

(b) Any USDA employee acting in an official capacity;

(c) Any USDA employee acting in an individual capacity whom DOJ has agreed to represent; or

(d) The United States, if USDA determines that the litigation is likely to affect USDA or any of its components.

(3) When available information indicates a violation or potential violation of civil, criminal, or administrative law arising by statute or rule, regulation, or order, USDA may refer any record within this system to the appropriate Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting a violation of law or of enforcing a statute, or rule, regulation or order issued thereto.

(4) USDA may disclose information from the record of an individual contained in this system in response to an inquiry from a congressional office made at the request of that individual.

(5) USDA may disclose information (name, address, social security number, date of birth, date of entry, education progress, vocational progress, test scores, and pay status) from this system of records to the appropriate officials of the United States Department of Labor (DOL) who maintain the Student Pay Allowance and Management Information Data Base (SPAMIS) in San Marcos, Texas, for the purpose of paying students their living allowances and incentive bonuses.

POLICY AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be maintained on computer magnetic tapes, disk, or other electronic format, as well as in file folders.

RETRIEVABILITY:

Records will be indexed and retrieved by names and social security numbers.

SAFEGUARDS:

All records containing personal information will be maintained in secured file cabinets and secured computer rooms or tape libraries which can only be accessed by authorized personnel. Electronic access to records is controlled through a system of computer access identification and authorization utilizing passwords. Access to the data is controlled by the data base management system.

RETENTION AND DISPOSAL:

Records will be retained or disposed of in accordance with the retention periods contained in the DOL Policy and Requirements Handbook Chapter 8, Section 5.3. whose standards the Forest Service has agreed to adopt. The records are maintained at the FS Job Corps Center for 3 years after the students complete their stay at the Center.

SYSTEM MANAGER(S) AND ADDRESS:

The FS Washington Office Job Corps Branch Chief will be the system manager. The address is: Job Corps Branch Chief, Human Resource Programs, USDA Forest Service, PO Box 96090, Washington, DC 20090.

NOTIFICATION PROCEDURE:

Individuals will be able to request information regarding them contained in this system of records, or information as to whether the system contains records pertaining to them from the Center Director of the appropriate Center. Center addresses are listed in the previous section called System Location. A request for information should contain the name, address, social security number, and approximate dates the student was enrolled at the Center, and any details that aid in defining the desired information.

RECORD ACCESS PROCEDURES:

Individuals will be able to obtain information on the procedures for gaining access to records in the system which pertain to them by contacting the Center Director at the appropriate Center. The envelope and letter should be marked "PRIVACY ACT REQUEST."

CONTESTING RECORDS PROCEDURES:

The same procedures will be used as for record access.

RECORD SOURCE CATEGORIES:

Information in this system will come primarily from interviews with the students who enrolled in a FS Job Corps Center. Information will also be obtained from test results and from measurements made against vocational accomplishment criteria and from other progress measuring devices that a Center uses.

[FR Doc. 94–17822 Filed 7–21–94; 8:45 am]
BILLING CODE 3410–11–M

Forms Under Review by Office of Management and Budget

July 15, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency

person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

• Food and Nutrition Service
7 CFR Part 220 School Breakfast Program
Recordkeeping; Monthly; Quarterly; Semi-annually; Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,001,652
Responses; 6,317,971 hours
Angella Love (703) 305–2607
• Forest Service
Employment Interest Survey R–5–6100–135
On occasion
Individuals or households; Federal agencies or employees; 5,000
Responses; 1,250 hours
Janet Brandt Jackson (415) 705–2539
• Agricultural Marketing Service
Avocados Grown in South Florida—M.O. 915
FV–96; FV–97–1; FV–98
On occasion; Weekly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 1,571
Responses; 147 hours
Gary Rasmussen (202) 720–5331

Revision

• Farmers Home Administration
7 CFR 1942–J, Technical Assistance and Training Grants
On occasion; Monthly; Quarterly
Non-profit institutions; 1,640
Responses; 5,160 hours
Jack Holston (202) 720–9736

Reinstatement

• Federal Crop Insurance Corporation
Late Planting Agreement
FCI–9
On occasion
Individuals or households; Farms; 80,000
Responses; 20,000 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Contract Price Election Agreement Option For Non-Quota (Additional) Peanuts
On occasion
Individuals or households; Farms; 575
Responses; 259 years
Bonnie L. Hart (202) 254–8393

New Collection

• Food and Nutrition Service
EAvaluation of the EBT Demonstration in Wyoming
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; 1,161
Responses; 1,076 hours
Julie Kresge (703) 305–2118
• Food Safety and Inspection Service
Ante Mortem and Post Mortem Inspection—Addendum 1 Enhanced Poultry Inspection
FSIS Form 65001–1, FSIS Form 6000–16
Recorkdeeping; On occasion; Hourly; Daily
Businesses or other for-profit; 906,381
Responses; 66,756 hours
Lee Puricelli (202) 720–7163

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 94–17820 Filed 7–21–94; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 94–067–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 17 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT:

Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94–054–05	AgrEvo	6–06–94	Wheat plants genetically engineered to express tolerance to phosphinothricin herbicides.	Illinois, North Dakota.
94–054–03, renewal of permit 93–165–02, issued on 08–12–93.	Upjohn Company	6–09–94	Squash plants genetically engineered to express resistance to watermelon mosaic virus 2 and zucchini yellow mosaic virus.	North Carolina.
94–105–01	Frito-Lay Incorporated	6–09–94	Potato plants genetically engineered to express resistance to the fungus *Verticillium dahliae*.	Wisconsin.
94–116–01, renewal of permit 93–118–01, issued on 07–12–93.	New York State Agricultural Experiment Station.	6–09–94	Squash plants genetically engineered to express resistance to watermelon mosaic virus 2 and zucchini yellow mosaic virus.	New York.
94–090–06, renewal of permit 92–037–07, issued on 05–18–92.	Upjohn Company	6–13–94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Texas.
94–055–02	Upjohn Company	6–16–94	Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Michigan.
94–081–01	R.J. Reynolds Tobacco Company.	6–21–94	Tobacco plants containing tobacco mosaic virus genetically engineered to express a carotenoid biosynthesis gene.	North Carolina.
94–090–05	Upjohn Company	6–21–94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, zucchini yellow mosaic virus, papaya ringspot virus, and squash mosaic virus.	California, Georgia, Michigan.
94–110–01	University of Florida	6–21–94	Lettuce plants genetically engineered to express tolerance to the herbicide glyphosate.	Florida.
94–116–02	New York State Agricultural Experiment Station.	6–21–94	Squash (*Cucurbita texana*) plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2.	New York.
94–126–01	DNA Plant Technology Corporation.	6–21–94	Pepper plants genetically engineered to express reduced levels of the enzyme B–1, 4 endoglucanase.	California.
94–091–03	New York State Agricultural Experiment Station.	6–24–94	Squash plants genetically engineered to express resistance to squash mosaic virus.	New York.
94–167–01, renewal of permit 92–037–07, issued on 05–18–92.	Upjohn Company	6–24–94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Arizona, California.
94–090–03	U.S. Department of Agriculture, Agricultural Research Service.	06–30–94	Gladiolus plants genetically engineered to express resistance to plant viruses, including bean yellow mosaic virus, and tolerance to phosphinothricin herbicides, as a marker.	Maryland.
94–090–04	Upjohn Company	06–30–94	Cucumber plants genetically Michigan engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Georgia, Michigan.

Permit No.	Permittee	Date issued	Organisms	Field test location
94–091–02	New York State Agricultural Experiment Station.	06–30–94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	New York.
94–129–01	Rutgers University	07–01–94	Eggplant plants genetically engineered to express a gene from *Bacillus thuringiensis* (Bt) for resistance to coleopteran insects.	New Jersey.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 18th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17824 Filed 7–21–94; 8:45 am]

BILLING CODE 3410–34–P

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Agency Information Collection Activities Under OMB Review

AGENCY: Barry Goldwater Scholarship and Excellence in Education Foundation.

ACTION: Notice.

SUMMARY: The Barry Goldwater Scholarship and Excellence in Education Foundation has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act for review and approval on a expedited basis by August 1, 1994.

DATES: Comments on this information must be submitted on or before July 29, 1994.

ADDRESSES: Send comments to Mr. Gerald J. Smith, Executive Secretary, Barry Goldwater Scholarship and Excellence in Education Foundation, Springfield Corporate Center, 6225 Brandon Avenue, Suite 315, Springfield, VA 22150–2519 (703/756–6012) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW, Room 10012, Washington, DC 20503 (202/395–7316).

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Smith, Executive Secretary, Barry Goldwater Scholarship and Excellence in Education Foundation, Springfield Corporate Center, 6225 Brandon Avenue, Suite 315, Springfield, VA 22150–2159, (703) 756–6012.

SUPPLEMENTARY INFORMATION: This Information Collection Form will be used by the Barry Goldwater Scholarship and Excellence in Education Foundation to verify a Goldwater Scholarship recipient's academic standing and to authorize the disbursement of the financial award to the Scholar.

BURDEN STATEMENT: The estimated public reporting burden for this collection of information is 45 minutes per respondent semiannually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining and reviewing the collection of information.

Respondents: Goldwater Scholarship recipients.

Estimated Number of Respondents: 350.

Responses: 2 per school year.

Total Burden Hours: 525 per year.

RECORDING BURDEN: Recordkeepers: 1.

Total Burden Hours: 105.

Gerald J. Smith,

Executive Secretary.

BILLING CODE 4738–91–M

GOLDWATER PAYMENT REQUEST

Part 1 ▸ *To be completed by the Goldwater Scholar* *(Type or print in black ink.)*

1. Name *(last, first, middle initial)* _____ _____
2. University/College you will be attending during the term for which this payment is requested:
   (name & state) _____
3. Year Goldwater Scholarship received: 19_____ 4. Payment for academic year: 19_____ — 19_____
5. College operates on: ☐ Semesters ☐ Trimesters ☐ Quarters ☐ Other *(specify)* _____
6. Payment Request number: _____ of _____ *(see instructions)* 7. Starting date of term: _____ / _____ / 19_____
8. Your home address _____
   City/State/ZIP _____ Phone (____) _____
9. Your address at school _____
   City/State/ZIP _____ Phone (____) _____
10. Send payments to *(check one)*: ☐ Home address ☐ School address

11. List Expenses for NEXT TERM on each line below *(see instructions)*	Amount	12. Foundation Adjustments	Code	13. Foundation Approved Adjustments
a. Tuition	$	$		$
b. Fees	$	$		$
c. Books	$	$		$
d. Room & Board	$	$		$
e. Additional Expenses	$	$		NOT covered by BGSF
f. TOTAL	$	$		$

14. Scholar will live: ☐ In private housing ☐ In college/university housing ☐ At home with parents
15. If you do not expect to receive any awards other than the Goldwater Award, initial here: _____
    Otherwise, complete sections of table that are not shaded. *(see instructions)*

Code	Source	Purpose of Award	Amount	Amount Deductible
A			$	$
B			$	$
C			$	$
D			$	$
E			$	$

Audited By	Payment Summary	Payment Approval
Initials:	*Payment Request:* $	*Appro: 891.x/T1191110/*
Date:	*Total payments to date:* $	*Document number:* PS
		Amount approved: $

Approved by Gerald J. Smith, Exec. Sec. Signature _____ Date _____

16. I certify that the cost figures in item 11 for my NEXT TERM are correct, and funds received will be utilized for the purposes specified in accordance with the provisions of the Goldwater Scholarship. I understand that benefits payable by the Foundation are limited to the four categories listed in Item 11 a-b-c-d above. I certify that the figures given in Item 15 are true amounts paid for NEXT TERM on my behalf by other organizations, and any differences in payments will be reported immediately to the Goldwater Foundation. I agree to refund the payment if I withdraw from school before the end of the term.

Signature of Goldwater Scholar _____ Date _____

Part 2 ▸ *For Financial Aid Officer*—I certify that the figures given in item 11 and item 15 are correct.

Title and Signature of Financial Aid Officer _____ Date _____

Part 3 ▸ *For Academic Officer*—I certify that the Scholar is a full-time student taking a course of study appropriate for a career in math, science, or engineering; is not engaged in employment interfering with study; is in good academic standing; and is maintaining satisfactory progress toward that career.

Title and Signature of Academic Officer _____ Date _____

[FR Doc. 94–17901 Filed 7–21–94; 8:45 am]
BILLING CODE 4738–91–C

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Establishment of a Foreign Trade Zone, Los Angeles, CA; Grant of Authority, Order No. 693

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of Authority

Establishment of a Foreign-Trade Zone, Los Angeles, California

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Board of Harbor Commissioners of the City of Los Angeles, California (the Grantee), has made application (FTZ Docket 42–93, 58 FR 44491, 8/23/93) to the Board, requesting the establishment of a foreign-trade zone at sites in Los Angeles and Kern County, California, within and adjacent to the Los Angeles/Long Beach Customs port of entry; and,

WHEREAS, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

NOW, THEREFORE, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 202, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 14th day of July 1994.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 94–17924 Filed 7–21–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071594E]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Ad Hoc Red Snapper Advisory Panel on August 8, 1994, from 1:00 p.m until 5:00 p.m and August 9, 1994, from 8:00 a.m. until 4:00 p.m. to review a preliminary draft of Reef Fish Amendment 8 which contains alternatives for limited access systems for the commercial red snapper fishery, including Individual Transferable Quotas.

The meeting will be held at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by August 1, 1994

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17836 Filed 7–21–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071394C]

Endangered Species; Permits

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

ACTION: Issuance of Permit 930 (P567).

On May 3, 1994, notice was published (59 FR 22824) that an application had been filed by Peter Lutz of Florida Atlantic University (P567) to take listed green sea turtles for the attachment of sonic and satellite transmitters as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on July 6, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 930 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813-893-3141).

Dated: July 18, 1994.

Herb W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–17922 Filed 7–21–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 22, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41

U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Janitorial/Custodial for the following Hilo, Hawaii locations:
Federal Building & U.S. Post Office, 154 Waianuenue Avenue
U.S. Customs Warehouse, 29 Kuhio Street
NPA: Hilo Association for Retarded Citizens, Hilo, Hawaii.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–17894 Filed 7–21–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 22, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Curtain, Smoke
4120–01–306–7826
NPA: BOST Human Development Services, Fort Smith, Arkansas
Tool Box, Portable
5140–01–010–4861
NPA: Custom Manufacturing Services, Inc., Louisville, Kentucky
Pen, Rubberized, Retractable with Refills
7520–01–368–7771
7520–01–368–7772
7520–01–368–7773
7520–01–352–7309
7520–01–352–7310
7520–01–352–7311
7510–01–368–3500 (Refill)
7510–01–368–3501 (Refill)
7510–01–368–3502 (Refill)
7510–01–381–7997 (Refill)
7510–01–381–7998 (Refill)
7510–01–381–8014 (Refill)
NPA: Industries of the Blind, Inc., Greensboro, North Carolina Industries for the Blind, Inc., Milwaukee, Wisconsin
Stamp, Rubber
7520–00–NSH–0084 (Hand Stamps)
7520–00–NSH–0085 ("IDEAL" Self-Inking Stamps)
7520–00–NSH–0086 ("Kwik Stamp Plus" Self-Inking Stamps)
(Requirements for Mountain Home Air Force Base, Idaho)
NPA: The ARC, Inc., Boise, Idaho at its facility in Mountain Home, Idaho

Services

Janitorial/Custodial, E.C. Gathings Federal Building and U.S. Courthouse, 600 S. Main Street, Jonesboro, Georgia
NPA: Abilities Unlimited of Jonesboro, Inc., Jonesboro, Arkansas
Janitorial/Custodial, General Services Administration, 18th & F Streets, NW, Washington, DC
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland
Janitorial/Custodial, U.S. Coast Guard Air Station Miami, Opa Locka, Florida
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida
Janitorial/Custodial, Findley Federal Building, 600 E. Monroe Street, Springfield, Illinois
NPA: Land of Lincoln Goodwill Industries, Inc., Springfield, Illinois
Janitorial/Custodial, Eisenhower Library Complex, 200 S.E. 4th Street, Abilene, Kansas
NPA: Occupational Center of Central Kansas, Inc., Salina, Kansas
Janitorial/Custodial, U.S. Post Office and Courthouse, 801 Broadway, Hannibal, Missouri
NPA: Missouri Goodwill Industries, St. Louis, Missouri
Janitorial/Custodial, Federal Building, 811 Grand, Kansas City, Missouri
NPA: The Helping Hand of Goodwill Industries Extended Employment SWS, Inc., Kansas City, Missouri
Janitorial/Custodial, U.S. Army Publication Center, 1655 Woodson Road, Overland, Missouri
NPA: Missouri Goodwill Industries, St. Louis, Missouri

Janitorial/Custodial, U.S. Courthouse and Customhouse, 1114 Market Street, St. Louis, Missouri
NPA: Missouri Goodwill Industries, St. Louis, Missouri
Janitorial/Custodial, Federal Building, 517 Gold Avenue, Albuquerque, New Mexico
NPA: The Rehabilitation Center, Inc., Albuquerque, New Mexico
Janitorial/Custodial, Border Station, Alexandria Bay, New York
NPA: St. Lawrence County Chapter, NYSARC, Canton, New York
Janitorial/Custodial, Border Station, Fort Covington, New York
NPA: Citizen Advocates, Inc., Malone, New York
Janitorial/Custodial, Inspection Building, Mooers, New York
NPA: Clinton County Chapter, NYSARC—Champlain Valley Industries, Plattsburgh, New York
Janitorial/Custodial, Border Station, Overton's Corner, Rouses Point, New York
NPA: Citizen Advocates, Inc., Malone, New York
Janitorial/Custodial, Border Station, Saint John's Highway Point, Rouses Point, New York
NPA: Citizen Advocates, Inc., Malone, New York
Janitorial/Custodial, Border Station, Trout River, New York
NPA: Citizen Advocates, Inc., Malone, New York
Janitorial/Custodial, Carl Albert Federal Building and U.S. Courthouse, 301 E. Carl Albert Parkway, McAlester, Oklahoma
NPA: Kibois Community Action Foundation, Inc., Stigler, Oklahoma
Janitorial/Custodial, Federal Building, 224 S. Boulder, Tulsa, Oklahoma
NPA: Goodwill Industries of Tulsa, Inc., Tulsa, Oklahoma
Janitorial/Custodial, Ward P. Burk Courthouse, 3rd and Lufkin Avenue, Lufkin, Texas
NPA: Deep East Texas Regional Mental Health/Mental Retardation Center, Lufkin, Texas
Janitorial/Custodial, Federal Building and U.S. Courthouse, 500 S. Barstow Commons, Eau Claire, Wisconsin
NPA: L.E. Phillips Career Development Center, Eau Claire, Wisconsin

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–17893 Filed 7–21–94; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to the NYFE NYSE Composite Index Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The New York Futures Exchange (NYFE) has submitted proposed rule amendments to its NYSE Composite Index (Index) futures contract to base the final settlement price on the closing level of the Index on the third Friday of the contract month, rather than on the special opening quotation on the third Friday, and change the last day of trading in the Index futures and futures option contracts to the third Friday of the contract month from the day preceding the third Friday.

In accordance with Section 5a(a)(12) of the Commodity Exchange Act, the Commission has determined that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the NYFE NYSE Composite Index futures contract.

FOR FURTHER INFORMATION CONTACT: Contact Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: In April 1987, the Commission approved rule amendments to the NYFE's NYSE Composite Index futures contract providing that the final settlement price of the futures contract would be based on the special opening quotation of the Index, rather than on the closing level of the Index, on the third Friday of the contract month. These amendments first went into effect for the June 1987 contract month.[1]

The effect of the proposed amendments would be that the final settlement price determination and last trading day provisions would be identical to the previous rules of the subject contracts, as noted above. Current rules would continue to apply to contracts expiring prior to June 1995.[2]

In its submission, the NYFE noted that the use of the special opening quotation as a basis of cash settlement has caused confusion among public customers. The level of the Index is disseminated based on the last transaction price of each of the over 2,400 component stocks. However, the special opening quotation is calculated based on the opening price of each component stock. Such opening stock prices typically are not determined contemporaneously. Thus, the level of the special opening quotation may vary from the range of the cash Index level on the expiration Friday. The NYFE noted such variations have resulted in numerous complaints from public customers.

The Commission notes that the final settlement prices for certain other broad-based stock index futures contracts also are based on the closing levels of the relevant indices.[3] Further, the final settlement prices for certain broad-based stock index option contracts traded on national securities exchanges also are based on the closing levels of the relevant indices.[4]

In support of its proposed change, the NYFE noted its belief that the proposed amendments would have no detrimental impact on the underlying market. According to NYFE staff, there is not significant futures trading volume associated with direct arbitrage between the subject futures contract and the equities comprising the Index.

The Commission is requesting comment on the proposed amendments, considering the appropriateness of the revised procedures relative to the requirements of Commission Guideline No. 1. for cash settled futures contracts. Also, the Commission requests comment as to whether there are any issues, in addition to the relative extent of cash/futures arbitrage in this Index, that should be considered by the Commission in its review of the proposal.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

[1] Under the implementation plan, during the transition period from June 1987 through March 1988 the NYFE listed concurrently in each contract month two NYSE Composite Index futures contracts. The final settlement price for one contract was based on the closing level of the Index while the final settlement price for the other contract was based on the special opening quotation of the Index.

[2] The NYFE informed its members of the proposed amendments prior to listing the June 1995 contract month.

[3] For example, the final settlement prices of the Value Line Average Stock Index futures contract of the Kansas City Board of Trade and the Major Market Index futures contract of the Chicago Mercantile Exchange are based on the closing level of those indices.

[4] For example, options on the Major Market Index of the American Stock Exchange settle to the closing level of that Index.

Copies of the proposed rule amendments can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the NYFE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 19, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–17881 Filed 7–21–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of the Availability of the Environmental Assessment and Negative Declaration Regarding the Consolidation of the Defense Mapping Agency (DMA) Printing and Distribution Functions to St. Louis, MO

AGENCY: Defense Mapping Agency.

ACTION: Notice.

SUMMARY: In July 1993, in response to a tasking by Major General Raymund E. O'Mara, U.S. Air Force, the Director, DEFENSE MAPPING AGENCY (DMA), 8613 Lee Highway, Fairfax, VA 22031–2137, and following the disruption to DMA's operations in the St. Louis, MO area as a result of the floods, a Study Team was established to consider the future of DMA's printing and distribution operations. On 4 January 1994, the Study Team reported to the Director, DMA, and made certain recommendations calling for the streamlining of those operations to the end of improving customer service, making better use of resources, and realizing recurring cost savings. Among other things, the Study Team recommended that a plan to consolidate the management of the DMA printing and distribution operations and a detailed action plan for the collocation of DMA's printing and distribution operations in a new facility to be built in the St. Louis, MO area by 1998 be developed. In an announcement made 7 January 1994, the Director approved the Study Team's recommendations, including the recommendations to develop a plan to consolidate the DMA printing and distribution operations and to develop an action plan for the collocation of those operations in St. Louis, MO. As part of that action plan, the U.S. Army Corps of Engineers, Kansas City District, acting on behalf of the DMA, contracted for an Environmental Assessment of the DMA proposal to consolidate and collocate printing and distribution. The Environmental Assessment was prepared to evaluate the relocation of a new site in the St. Louis metropolitan area of certain elements of the DMA Aerospace Center's printing operations conducted at 8900 South Broadway, St. Louis, MO prior to the flooding and the consolidation to this proposed new St. Louis location of current DMA printing and distribution activities located at Philadelphia, PA, Bethesda, MD, and Riverdale, MD.

Notice is hereby given, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 Code of Federal Regulations (C.F.R.) Part 1500) and Department of Defense Regulation "Environmental Effects in the United States of DoD Actions" (32 C.F.R. Part 188) that an Environmental Impact Statement is not being prepared for the proposed consolidation of the DMA printing and distribution operations and their collocation in the St. Louis, MO area at the Richardson Road site located near I–55 in northeast Jefferson County, MO. The Environmental Assessment of this proposed action indicates that the proposed action will not create any significant adverse impact on the physical environment and that no significant controversy related to the natural environment is associated therewith. As a result of these findings, the Chief, Safety and Health Division, Human Resources Directorate, DMA, has determined that the preparation of an Environmental Impact Statement is not required in this case.

It is anticipated that approximately 250 positions Agency-wide will be reduced as a result of this proposed action. Retraining, relocation and retirement incentives will be used to minimize the impact of this consolidation; however, pending a final agency decision, the specifics of any such incentives have yet to be developed.

The Environmental Assessment and the Finding of No Significant Impact are on file and may be reviewed by interested parties.

DATE: Administrative action on implementation of the decision will be deferred for thirty (30) days from the date of publication, at which time implementation will begin unless comments are received which result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara B. Engel, DMA HQ, Office of Human Resources, Safety & Health Division, 8613 Lee Highway, Fairfax, VA 22031–2137, phone number (703) 285–9161.

Dated: July 18, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17884 Filed 7–21–94; 8:45 am]

BILLING CODE 5000–04–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved a potential conflict of interest situation related to its contractor, Mr. Nicholas P. Armenis. This Notice satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the **Federal Register**. Under the Board's Organizational and Consultant Conflict of Interests Regulations, 10 CFR Part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present, or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The Board's mission is to provide advice and recommendations to the Department of Energy (DOE) regarding public health and safety matters related to DOE's defense nuclear facilities. This

includes the review and evaluation of the content and implementation of health and safety standards including DOE orders, rules, and other safety requirements, relating to the design, construction, operation and decommissioning of DOE defense nuclear facilities. In late 1991, Congress amended the Board's enabling Act, broadening the Board's jurisdiction over defense nuclear facilities to include the assembly, disassembly, and the testing of nuclear weapons. With this increase in responsibility, the Board revised its priorities to include reviews of additional facilities, including, principally the Pantex Plant (Pantex), Nevada Test Site (NTS), and additional facilities at Oak Ridge Y–12 Plant. The Board also recognized the need to direct its attention to the activities of the weapons design laboratories such as Los Alamos National Laboratory (LANL), Lawrence Livermore National Laboratory (LLNL), and Sandia National Laboratory (Sandia).

Two matters of immediate concern to the Board are the safety of ongoing weapons disassembly operations and maintenance of the capability to safely conduct nuclear testing operations. While the DOE had been engaged in these activities for decades, significant changes in the national security posture resulted in shifts in emphasis within DOE. Unprecedented numbers of simultaneous nuclear weapon retirements strained DOE's capabilities to develop and implement safe and well-engineered procedures. A Congressionally-mandated and Presidentially-extended nuclear testing moratorium removed the primary mechanism (i.e., an active, ongoing testing program) by which the capability to execute tests safely was exercised and ensured. At the same time, the weapons programs at the nuclear weapons laboratories were losing skilled and experienced personnel due to retirement, downsizing, and reassignments. This combination of issues required the Board to increase its attention, and with it the number of associated reviews, at both Pantex and the NTS. Further, the Board recognized that it needed individuals with expertise in multiple technical disciplines, not previously required, to effectively meet the challenges and responsibilities of its new authority. These technical disciplines included conventional and nuclear explosive technology and safety, nuclear materials handling and storage, criticality safety, and nuclear weapons assembly, disassembly, storage and testing.

While the Board initiated an employee recruitment effort for individuals with formal training and experience in weapons related disciplines, it also recognized a need for technical assistance from outside experts who have direct relevant experience in this area. The Board identified Mr. Nicholas P. Armenis as an individual with the requisite knowledge and experience needed to provide the Board with immediate assistance in the weapons area and entered into an agreement with him for support services. Under this arrangement, Mr. Armenis provides technical expertise with respect to the design of nuclear weapons currently being returned to Pantex for dismantlement, including historical insight related to specific design and test details of the weapons systems. In particular, his expertise related to the mechanical aspects of weapons physics packages is being utilized to ensure the safe disassembly, handling, and storage of these nuclear weapons systems. Through the Board's direction, he has participated in reviews of various weapon dismantlement procedures, observed the complete dismantlement of selected weapons, and provided valuable insight into DOE developed operating and inspection standards for these activities. The Board believes that its activities, supported by Mr. Armenis, have contributed to the following achievements at Pantex; institution of a practice whereby the responsible DOE laboratories (LANL, LLNL, Sandia) review procedures for disassembly of nuclear weapons for identification of potential safety questions; and improved conduct of operations in disassembly of nuclear weapons.

The Board has subsequently learned that Mr. Armenis is providing consulting services to LANL that may create a potential conflict of interest with his work for the Board. Specifically, Mr. Armenis assists the LANL staff in compiling complete development reports for weapons that are presently in the stockpile and in preparing final documentation for NTS tests that have been executed since none of the weapons have been thoroughly documented and final NTS device data has not been compiled. His efforts involve working with LANL engineers in the proper compilation of data to assure consistency in methods and to prevent the exclusion of critical details of this historical reconstruction of information.

The Board reviewed this situation and concluded that, even if the circumstances could give rise to a potential conflict of interest situation, it is nonetheless in the best interest of the Government to have Mr. Armenis continue to provide support to the Board for the reasons described below. Mr. Armenis possesses a comprehensive understanding of nuclear weapons assembly and dismantlement procedures based on his approximately forty years of direct involvement in these activities. He spent thirty years working at LANL as a design engineer and supervisor involved in the design and assembly of nuclear devices from 1948 through 1977. He also assisted in the technical management and administration of a LANL unit which was responsible for nuclear design, nuclear device assembly, production specifications liaison with DOE contractors, and feasibility studies for various weapon programs. Further, since his departure from LANL, Mr. Armenis has worked as a consultant for his former employer in this technical area. His efforts included reviews of NTS test device records to determine document retention issues and the research of weapon development records. This research has resulted in written histories of the development of various stockpile weapons. Therefore, Mr. Armenis's unparalleled blend of hands-on expertise in the development of assembly and disassembly procedures of nuclear weapons, coupled with his more recent work in research and recreation of these activities, makes him uniquely qualified to assist the Board in its health and safety reviews of current DOE weapons disassembly efforts.

The Board also examined Mr. Armenis's current financial relationship with LANL, which includes a vested pension program and approximately twelve weeks a year of the consulting work described above, and considered the potential effect it may have on his objectivity in performing the Board's work. Based on this review, the Board determined that these relationships should not interfere with his work for the Board since the pension, and any future increases, is calculated according to fixed formulas and prior contributions, and the relative value of his LANL consulting effort is low compared to the number of hours actually worked by Mr. Armenis each year.

Further, the continued use of Mr. Armenis by the Board is consistent with the spirit and intent of Board Recommendation 93–6 to the Secretary of Energy dated December 10, 1993. This recommendation highlights the need for DOE to retain access to capability and capture the unique knowledge of individuals who have been engaged for many years in certain critical defense nuclear activities in order to avoid future safety problems in

these and related areas. The Board's concern is that while documentation essential to DOE's current weapons dismantlement program exists on the design and safety aspects of nuclear weapons, it is also important, for safety reasons, to involve individuals from the design laboratories of LANL, LLNL, and Sandia. These individuals should participate in reviews of detailed dismantlement procedures and specialized procedures and should respond to problems encountered in the course of weapon dismantlement. The design individuals from the laboratories most needed in connection with dismantlement of a specific weapon are those who had been active in the original design of that weapon.These individuals are believed to possess information not recorded in documentation, such as reasons for specific design features and personal knowledge of any problems that have arisen during design, fabrication, and stockpile life. Therefore, while the Board believes that DOE must retain and utilize certain expertise in the weapons area, it also recognizes the value of acquiring specialized technical support from Mr. Armenis in the fulfillment of its health and safety responsibilities.

The Board also recognized that it is unlikely that the work being performed by Mr. Armenis could be satisfactorily performed by anyone else whose experience and affiliations would not give rise to a conflict of interest question. That is because the individuals who have the requisite expertise in this area could only have obtained such expertise through previous or current employment or consulting relationship with one or more of the weapons design laboratories. The pertinent experience of other qualified individuals would therefore likely raise similar conflicting questions.

Finally, as the Board is required under its OCI Regulations, where reasonably possible, to initiate measures which attempt to mitigate an OCI, Mr. Armenis and the Board agreed to the following during contract performance. Should the effort Mr. Armenis is currently performing for LANL change from only providing assistance in the historical recreation of past weapons activities to one of assessing the adequacy or safety of current weapons disassembly procedures or some other task which would directly conflict with work he performs for the Board, he will immediately notify the Board, which then will take further action as appropriate. Also, the efforts of Mr. Armenis will be overseen by experienced technical staff of the Board who are able to ensure that all of his resultant work products are impartial and contain full support for any findings and recommendations issued thereunder.

Accordingly, on the basis of the determination described above and pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted a waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the Board's contract with Mr. Nicholas P. Armenis that might arise out of his existing relationship with LANL.

Dated: July 18, 1994.

Joe Neubeiser,

Acting General Manager.

[FR Doc. 94–17807 Filed 7–21–94; 8:45 am]

BILLING CODE 6802–KD–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on March 22, 1991, an arbitration panel rendered a decision in the matter of *David Terry, Vendor,* v. *State of Tennessee, Department of Human Services (Docket No. R–S/89–4).* This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by petitioner David Terry.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue SW., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: 202–205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at 202–205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

David Terry, complainant, is a blind vendor licensed by the respondent, the Tennessee Department of Human Services (TDHS). Mr. Terry signed an agreement with TDHS to operate vending facility #249 located in the Safety Building in Knoxville, Tennessee. He began operation in July 1986. TDHS was given the right to establish and maintain a food concession at the Public Safety Building by entering into an agreement with the City of Knoxville, Tennessee, on March 21, 1972.

The State Licensing Agency (SLA), through its Department of Rehabilitation, operates the Tennessee Vending Facility Program for blind vendors. The purpose of the program is to establish and support blind vendors operating vending facilities on State, local, and Federal property. As the agency designated in Tennessee to carry out and manage the vending facility program established by the Act, the SLA duly promulgated rules and regulations to govern the State vending facility program. These rules and regulations are comprehensive in scope. Based on the State's Randolph-Sheppard rules and regulations governing its program, Mr. Terry was required to make monthly income reports, paying a set-aside fee based upon those monthly reports, and to maintain personal liability and product liability insurance.

Mr. Terry, as noted previously, began his operation in July 1986. The major part of his sales came from persons employed in the building and from trustees and inmates of the City Jail located on the second floor. In December 1986, only five months after Mr. Terry started his operation, the City of Knoxville transferred operation of the City Jail to the Knox County Sheriff's Department. The Sheriff's Department established on the second floor its own food commissary operated by a sighted person and placed a cigarette machine on that floor as well. In January 1987, Mr. Terry complained to his business enterprise counselor regarding the new commissary and vending machine possibly violating the priority provided by the State rules and regulations to licensed blind persons. As a result of Mr. Terry's complaint, the cigarette machine was removed in February 1987. However, the commissary remained. Mr. Terry then complained to the Committee of Blind Vendors, the State representative body for all blind vendors. In July, the Sheriff agreed to allow Mr. Terry to operate a concession booth in the Jail Intake Center, but, within a week, the Sheriff reversed this decision due to alleged safety and security reasons.

During the operation of his vending facility, Mr. Terry was warned about his poor performance in failing to file the required monthly reports and to pay the set-aside fees. Due to these reasons, the

agency terminated Mr. Terry's license in March 1988.

Mr. Terry filed a grievance on April 26, 1988, regarding the termination of his license. He also sought financial relief for the period prior to his termination during which the Sheriff permitted operations that competed with his facility. The Hearing Officer and the TDHS Commissioner denied the complaint. The TDHS Commissioner found that the evidence did not establish that Mr. Terry sustained damages because of the Sheriff's actions.

Mr. Terry then filed a complaint with the U.S. Department of Education on January 6, 1989, requesting arbitration. The arbitration panel was convened, and the hearing was held in Knoxville, Tennessee, on September 21, 1990.

Arbitration Panel Decision

In the substantive issues in this case, the panel agreed that Mr. Terry was harmed by the competing commissary and cigarette machine established by the Sheriff, thereby diverting sales previously enjoyed by Mr. Terry. The panel also concluded that Mr. Terry was partly responsible for the circumstances leading to his license termination because he was consistently delinquent in filing his reports and in paying his fees. This conduct began prior to the Sheriff's actions. The panel found that the adverse impact on Mr. Terry's facility was relevant to his inability to pay set-aside fees and to some extent to the quality of his operations. Because of this adverse impact, the panel found that there was good cause for the failure of Mr. Terry to pay the required set-aside fees. In determining damages due Mr. Terry, the panel took into consideration the fact that Mr. Terry contributed to the circumstances that led to the termination of his license.

Mr. Terry claimed he was due damages in the amount of $400.00 per month from January 1987 through April 1988 (the month of the termination of his license) or $6,400, and $1,500 for each month since the termination of his license or $49,500. Because Mr. Terry's losses were caused in part by his own delinquencies, the panel ordered the SLA to pay Mr. Terry the sum of $30,000, less set-aside fees he owes the agency in full and less his interim earnings in full. The arbitration panel also ordered that Mr. Terry be reinstated in the program at a facility reasonably equivalent to the Public Safety Building. The panel concluded that attorney's fees were allowable.

The panel member selected by the SLA filed a dissenting opinion in which he maintained that the State was entitled to the sovereign immunity embodied in the Eleventh Amendment to the United States Constitution. In his opinion, the State did not waive this immunity by participating in the Randolph-Sheppard program and did not have to pay monetary damages.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 18, 1994.

Thomas Hehir,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–17837 Filed 7–21–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Proposed K–901 Operable Unit, Remedial Investigation Activities at the K–25 Site, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed K–901 Operating Unit (OU) remedial investigation activities at the Oak Ridge K–25 Site, prepared in accordance with 10 CFR 1022. DOE proposes to conduct remedial investigation activities in the 100-year floodplain of the Clinch River located in Roane County, Tennessee. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action, including maps of potentially disturbed floodplain area, is available from: Mr. Robert C. Sleeman, Director, Environmental Restoration Division, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–0715.

Further information on general DOE floodplain environmental review requirements is available from: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed remedial investigation activities on the K–901 OU at K–25, prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain/Wetlands Involvement was published in the **Federal Register** [58 Fed Reg 51624 (October 4, 1993)] and a floodplain assessment was completed; no wetlands are involved in the proposed action. DOE is proposing to conduct remedial investigation activities in characterize the site as to ground-water quality, movement, and interaction with surface water and the types and levels of contaminants present and being released from the OU. Surface water and sediment investigations would provide information to evaluate migration pathway and contaminant load transported by the pathway. Soil investigation activities would focus on delineating contamination within the OU and defining specific contaminant sources.

The proposed action employs various sampling techniques including: (1) installation of ground-water monitoring wells; (2) drilling boreholes with a hollow-stem auger drilling rig; and (3) using hand augers and other manual sampling methods. Some of the sampling activities associated with K–901 OU would be located in the 100-year floodplain of the Clinch River. None of these activities would adversely impact the floodplain or measurably change flood levels. Rather, implementation of the proposed action would have an overall positive effect on the environment and human health by providing information to delineate contamination within the OU in order that remedial actions can be taken to reduce the amount of contaminants entering the environment.

Drilling equipment access to some sampling sites may require some new gravel roads and the removal of some trees; however, use of existing roadways and clearings would be optimized to reduce tree and vegetation removal. While most roadways would be reclaimed and revegetated, some would be left in place to provide access to monitoring wells. In addition, approximately 5 to 10 temporary drilling pads (25 ft × 25 ft × 1 ft) would be required; the land under these pads would be reclaimed and revegetated at the conclusion of the action. Site access road construction and pad installation activities would not measurably reduce the flood storage capacity of the floodplain, interfere with stream flow, or produce hazardous flood velocities; therefore, no special mitigative measures would be required. Best management practices, such as the placement of seals on the monitoring wells to prevent infiltration of surface

water and the mixing of ground water, would be implemented to ensure that only minimal amounts of disturbance to the floodplain would occur.

Two alternatives to the proposed action were considered—no action and the relocation of sampling locations outside of the floodplain. Both alternatives would ensure no disturbance of the floodplain but would seriously impact efforts to characterize the site, result in an unacceptable remedial action plan, and would not be protective of human health or the environment because the nature and extent of contamination would not be fully known.

The proposed action has been designed to avoid or minimize impacts to the 100-year floodplain and no adverse impacts to the floodplain are expected to occur. The proposed action does confirm to applicable State floodplain standards. DOE will endeavor to allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

Issued in Washington, D.C., on July 12, 1994.

James W. Wagoner,

Acting Director, Office of Eastern Area Programs, Office of Environmental Restoration.

[FR Doc. 94–17896 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–P–M

Golden Field Office; Notice of Financial Assistance Award to Geothermal Resources Council

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention make a financial assistance award to the Geothermal Resources Council to distribute educational material and to provide a service to the geothermal community.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401, Attention: Ruth E. Adams, Contract Specialist or at (303) 275–4722. The Contracting Officer for this action is John W. Meeker, and the Project Officer is Jeffrey L. Hahn.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The Geothermal Resource Council, with headquarters in Davis, California, is a non-profit organization incorporated in the state of California, has been funded in the past by the DOE-Geothermal Program Office through a contract with Sandia National Laboratory. However, the Department believes that since this effort is intended to benefit the United States public, that a grant mechanism is a more appropriate method of providing funding. Competition for this effort would have an adverse effect on continuity and completion of the activities.

The programmatic evaluation [see 10 CFC 600.7(b)(2)(ii)(D)] completed for this proposal resulted in a recommendation to fund this application for the following reasons:

The proposed project will contribute to the DOE mission of "* * * providing the scientific and educational foundation and technology * * * necessary to achieve efficiency in energy use, diversity in energy sources, and access to technical information * * *" (quotation from the Energy Mission Statement). The Geothermal Resources Council (GRC) will do this by providing services to support the geothermal industry through various activities and projects that are described below.

Through this financial assistance the GRC (a non-profit organization) will be able to continue to act as a focal point for the geothermal industry. The objectives for this grant are as follows:

(1) Develop Geothermal Poster—The poster will show the major components of geothermal resource development: history occurrence, exploration, production, utilization, potential and its environmental advantageous. The poster will be distributed to Junior and Senior high school and college students.

(2) GRC Annual Meeting—The DOE would be a sponsor for the annual GRC meeting where papers are presented and discussed. At the 1993 annual GRC meeting, there were approximately 600 registered attendees and 60 vendors.

(3) Drilling School—Well Control Course—This course will certify regulators in well control, thereby helping to ensure geothermal drilling operations are conducted in an environmentally sound manner.

(4) Expansion of the GRC On-line Library—The current database will be enlarged by adding new citations and increasing the keywords that can be searched for. The library will be a valuable tool for the geothermal community.

(5) Geothermal Heat Pump Training Center—Provide the seed money to design and construct a heat pump training center. The training center would be used to train dealers, architects, engineers, students, etc. on topics such as Heating Ventilation and Air Conditioning (HVAC) basics of heat pumps, HVAC heat pump installation and service and ground loop installation. The Geothermal Heat Pump Training Center would only be used for training purposes, no research will be conducted at this site. The majority of the funding will be provided by utilities and heat pump manufacturers.

(6) World Solar Summit—Two GRC representatives will attend the World Solar Summit in Barcelona, Spain with the purpose of establishing and maintaining foreign governmental and industrial contacts that are critical for the U.S. geothermal export program.

The probability of meeting the objectives listed below are very high, given that the GRC has been successful in the past for similar endeavors.

The staff of the Geothermal Resources Council is uniquely qualified to provide this service. The GRC Staff is well known and respected throughout the geothermal industry.

The GRC's base of operations is in an office that is fully capable of meeting their needs.

The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate.

The major public benefit to be derived from the projects and activities are providing educational material to various stakeholders (i.e., students, teachers, utilities, industry, and the public), and a technology transfer service to the geothermal community. The services that are being provided through this grant are: Forums for presentation and discussion of topics of general interest to the geothermal community; an educational program to keep well regulators updated and certified, expansion of an on-line library which provides access to publications on geothermal energy, as well as a list of geothermal power plants worldwide and a list of vendors of U.S. geothermal goods and services, assistance in providing a training center for geothermal heat pumps which is a very efficient method of heating and cooling buildings, and help in promoting the exportation of U.S. goods and services.

The services provided through the proposed grant are vital and strongly support the geothermal program's direction and objectives. The Geothermal Resources Council, a Section 501 (c)(3) organization, is uniquely qualified and positioned to perform the above mentioned tasks since the GRC is an accepted and respected industry organization. The GRC has established an information

network which is continually growing. The effort is a continuation of work which has been funded by DOE and competition for this effort would have a significant adverse impact on the continuity of the proposed activities.

Issued in Golden, Colorado on: July 12, 1994.

John W. Meeker,

Procurement Chief, Golden Field Office.

[FR Doc. 94–17903 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Regional Support Office; Non-Competitive Financial Assistance Award to the Oregon State University

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), San Francisco Regional Support Office, announces, pursuant to the DOE Financial assistance Rules 10 CFR 600.7(b)(2)(i)(B) that it intends to award a Cooperative Agreement to the Oregon State University (OSU). The financial assistance is for carrying out program development, production and broadcasting activities to support the Motor Challenge Video Conference' 1995.

SUPPLEMENTARY INFORMATION: The proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(2)(i)(B) in that the activities are being or would be conducted by the applicant using its own resources of those provided by third parties. This award will further the objectives of the DOE, Industrial Electric Motor Systems Program to promote the use of efficient electric motor systems. The application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

PROJECT PERIOD: The project period for this award is for two years and is expected to begin September 1994. DOE plans to provide funding in the amount of approximately $60,000.

FOR FURTHER INFORMATION CONTACT: Julia Oliver, Technology Marketing Division, U.S. Department of Energy, San Francisco Regional Support Office, 1301 Clay Street—Rm 1060 N, Oakland, CA 94612–5219. (510) 637–1952.

Dated: July 6, 1994.

John W. Meeker,

Chief, Procurement.

[FR Doc. 94–17905 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office

Acceptance of an Unsolicited Application, University of Maryland

AGENCY: Department of Energy.

ACTION: Notice of Acceptance of an Unsolicited Application.

SUMMARY: The Department of Energy (DOE), DOE Chicago Operations Office, announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.14(f), it intends to award a grant based on the acceptance of an unsolicited application to the University of Maryland at College Park. The objective of the work provided by this grant is to quantify the potential Electrohydrodynamic (EHD) technique for heat transfer enhancement of in-tube condensation and in-tube evaporation processes of selected ozone-safe refrigerants and refrigerant mixtures.

FOR FURTHER INFORMATION CONTACT: William Noel, EE–422, Department of Energy, Office of Building Technologies, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 586–9130.

SUPPLEMENTARY INFORMATION: The University of Maryland at College Park has the necessary personnel, facilities, and other resources to fully perform the work set forth in the grant. Currently, this university is the only known group that has ongoing research especially in the EHD augmentation of heat transfer in heat exchanger. Within the last six years the university has maintained a comprehensive computer search of EHD-enhancement technology world-wide and the state-of-the-art equipment for use in EHD and Chlorofluorocarbons (CFC) substitute research. This University also developed a unique and innovative theoretical computer models to analyze the effects of new EHD configuration and effects. This application is meritorious based on the general evaluation that it will support a DOE mission for the research and development of highly efficient alternatives to, and substitutes for, environmentally harmful CFC and CFC-dependent euipment used in refrigeration application and that it is relevant to the general public purpose of support in the areas of reducing the effects of stratospheric ozone depletion. This application represents unique and innovative idea, method and approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and, DOE has determined that, a competitive solicitation would be inappropriate. The project period for this grant renewal is for a twenty-four month period expected to begin August 1, 1994. DOE plans to provide funding in the amount of $206,000.00 for this project period.

Issued in Chicago, Illinois, on July 1, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–17895 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearing and Appeals

Cases Filed the Week of May 20 Through May 27, 1994

During the Week of May 20 through May 27, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 18, 1994

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of May 20 through May 27, 1994]

Date	Name and location of applicant	Case No.	Type of subcommission
May 23, 1994	Cowles Publishing Company, Spokane, WA	LFA–0381	Appeal of an information request denial. If granted: The May 4, 1994 Freedom of Information Request issued by the Office of Communications would be rescinded, and Cowles Publishing Company would receive access to records pertaining to the names of prisoners who participated in radiation experiments at the Washington State Penitentiary in Walla Walla funded and supervised by the U.S. Atomic Energy Commission.
May 24, 1994	Ivan J. Broussard, Idaho Falls, ID	LFA–0383	Appeal of an information request denial. If granted: The May 18, 1994 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and Ivan J. Broussard would receive access to an alleged complaint made by Lens Master (DOE subcontractor) to DOE-Idaho sometime in March 1994.
Do	Keci Corporation, Walnut Creek, CA	LFA–0382	Appeal of an information request denial. If granted: The April 25, 1994 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded and Keci Corporation would receive access to all documents including any attachments submitted by George Lengas to the DOE in reference to Kaiser Engineers Hanford Company's compliance with Washington State Regulations for corporations performing engineering in the State of Washington.
Do	Texpar Energy, Inc., Waukesha, WI	LEE–0119	Exception to the reporting requirements. If granted: Texpar Energy, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report" and EIA–782C, "Monthly Report of Petroleum Products Sold Into States for Consumption."
Do	Williams & Trine, P C	LFA–0384	Appeal of an information request denial. If granted: Williams & Trine, P.C. would receive access to all files records, documents, data, materials, charts, bills, statements, correspondence, contracts, and any other information in any form in DOE custody or control pertaining to the transportation of hazardous waste materials from Rocky Flats to the Cotter Corporation facility in Can City, Colorado from 1970 to the present.
May 26, 1994	Billy Bridewell, William J. Cobb, et al., Washington, DC.	LEF–0126	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the February 14, 1987 Compromise Settlement Agreement with The Department of Justice entered into with Billy Bridewell, William J. Cobb et al.
Do	King Petroleum, Inc. et al., Washington, DC	LEF–0125	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the July 29, 1988 Remedial Order issued to King Petroleum, Inc. et al.
Do	Keci Corporation, Walnut Creek, CA	LFA–0385	Appeal of an information request denial. If granted: Keci Corporation would receive access to DOE information regarding any violation of Federal or DOE regulations by Lawrence Livermore National Laboratory from 1988 to present.
Do	Keci Corporation, Walnut Creek, CA	LFA–0386	Appeal of an information request denial. If granted: Keci Corporation would receive access to DOE information, regarding an Inspector General Investigation of small business contracting issues at Lawrence Livermore National Laboratories.

Refund Applications Received

Week of May 20, 1994 through May 27, 1994

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/23/94	John Eggers Fuel Inc.	RF300–21791
5/25/94	Transamerica Airlines, Inc.	RF344–7
5/25/94	Delta Air Lines, Inc.	RF344–8
5/25/94	Jorge R. Ruiz	RF349–8
5/27/94	Bob Foy Dealer	RF342–326

REFUND APPLICATIONS RECEIVED—Continued

Week of May 20, 1994 through May 27, 1994

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/27/94	American Airlines, Inc.	RF344–9
5/20/94 thru 5/27/94	Crude Oil Refund, Applications Received	RF272–95737 thru RF272–96094
5/20/94 thru 5/27/94	Texaco Oil Refund, Applications Received	RF321–20985 thru RF321–20999

[FR Doc. 94–17897 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed the Week of May 27 Through June 3, 1994

Office of Hearings and Appeals

During the Week of May 27 through June 3, 1994, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

July 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 27 through June 3, 1994]

Date	Name and location of applicant	Case No.	Type of Submission
May 31, 1994	A. Victorian, Nottingham, England	LFA–0387	Appeal of an information request denial. If granted: The April 6, 1994 Freedom of Information Request Denial issued by the Office of Declassification would be rescinded, and Dr. A. Victorian would receive access to certain DOE information.
Do	Premier Industrial Corporation, Washington, DC.	RR272–131	Request for modification/rescission in the crude oil refund proceeding. If granted: The August 26, 1992 Decision and Order (Case No. RF272–75856) issued to Premier Industries Corporation would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.
June 2, 1994	John Gilmore, Berkeley, CA	LFA–0388	Appeal of an information request denial. If granted: The May 2, 1994 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and John Gilmore would receive access to all agency records which pertain to the Clerver conferencing technology created by the Sandia National Laboratories.

REFUND APPLICATIONS RECEIVED

[Week of May 27 to June 3, 1994]

Date	Name of firm	Case No.
5/27/94 thru 6/3/94	Crude Oil Refund, Applications Received	RF272–96095 thru RF272–96179
5/31/94	Farmland Industries	RF248–8
5/31/94	Amoco Corporation	RF248–9
5/31/94	Redigas, Inc	RF248–10
5/31/94	North Central Public Service	RF248–11
5/31/94	Pyramid Distributing Co., Inc	RF248–12
5/31/94	Great Plains Gas	RF248–13
6/2/94	Ray & Eddie's Gulf	RF300–96174

[FR Doc. 94–17898 Filed 7–21–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearing and Appeals

Cases Filed the Week of June 3 Through June 10, 1994

During the Week of June 3 through June 10, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: July 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 3 Through June 10, 1994]

Date	Name and location of applicant	Case No.	Type of submission
June 9, 1994 ..	Johnson Oil Company, Gaston, IN	LEE–0121	Exception to the reporting requirements. If granted: Johnson Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
June 7, 1994 ..	Teresa R. Longstreet, Thomasville, GA	LFA–0389	Appeal of an information requst denial. If granted: The May 23, 1994 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and Teresa R. Longstreet would receive access to information concerning medical records of her grandfather, Baldwin Cribb.
June 6, 1994 ..	The OutpostStation/Outpost Country Store, Phelan, CA.	LEE–0120	Exception to the reporting requirements. If granted: The Outpost Station/Outpost Country Store would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
6/3/94 thru 6/10/04	Crude Oil Refund, Applications Received	RF272–96180 thru RF272–96517
6/8/94	Kern Oil & Refining Company	RF345–26
6/8/94	American Synthetic Rubber Corp	RF351–17
6/8/94	Bellamy Brothers, Inc	RF351–18
6/8/94	Schnee-Morehead, Inc	RF351–19
6/8/94	Delta Airlines/Western Airline	RF344–10
6/8/94	Western Asphalt, Inc	RA272–59
6/8/94	Warren Transportation	RC272–237

[FR Doc. 94–17902 Filed 7–21–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders the Week of May 2 Through May 6, 1994

During the Week of May 2 through May 6, 1994, the proposed decisions and orders summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception mater.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

Dated: July 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Reporting Requirements

Woodman-Iannetti Oil Company, Great Bend, KS, LEE–0104

Woodman-Iannetti Oil Company filed an Application for Exception requesting exception relief from the requirement that the firm file the Energy Information Administration (EIA) Form EIA–23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering the Application for Exception, the DOE tentatively found that the firm was not adversely affected by the reporting requirement in a way that was significantly different than the burden by similar reporting firms. Accordingly, on May 3, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Hunt Oil Co., Pierce, ID, LEE–0086

Hunt Oil Co. filed an Application for Exception to relieve it from the requirement to prepare and file Form EIA–782B with the DOE Energy Information Administration. On May 3, 1994, the Department of Energy issued a Proposed Decision and Order which tentatively concluded that the exception request should be granted in part and Hunt be relieved of its reporting requirement until August 1, 1994.

[FR Doc. 94–17904 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders the Week of May 16 Through May 20, 1994

During the week of May 16 through May 20, 1994, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Supplemental Order

341 Tract Unit of the Citronelle Field, 5/18/94, LFX–0008

The DOE issued a Decision and Order concerning the disbursement of an escrow fund made available as a result of the termination of exception relief issued to The 341 Tract Unit of the Citronelle Field. The escrow fund, which is continuing to accrue interest, totals approximately $131 million. OHA decided that refiners as a group absorbed 5.4 percent of the cost of that exception relief. Each refiner listed on the Entitlements List for November 1980 will receive an allocable share of the escrow fund based on its percentage of runs to stills during that month. Refiners' final refunds will be based on the 5.4 percent absorption rate.

Refund Applications

Enron Corporation/Odessa L.P.G. Transport, Inc., 5/17/94, RF340–95

Odessa L.P.G. Transport, Inc. (Odessa) submitted an Application for Refund in the Enron Corporation refund proceeding. The DOE found that Odessa had proved that it was injured with respect to Enron propane that it purchased and resold during the period June 1974 through January 1981. Accordingly, the DOE granted Odessa a principal refund of $116,781 for this product and accrued interest of $47,635. The total refund granted to Odessa was $164,416.

The Goodyear Tire & Rubber Company, 5/18/94, RF272–89582, RR272–92

Goodyear Tire & Rubber Company (Goodyear), a major manufacturer and retailer of tires and industrial rubber products, filed a Motion for Reconsideration of a Decision and Order that denied in part a crude oil refund application it had filed. In its reconsideration request, Goodyear argued that the DOE had erroneously denied it a refund with respect to its purchases of specified products. The DOE rejected Goodyear's arguments with respect to all the products except isoprene. Although the DOE determined that isoprene was not an eligible product, the DOE further determined that, for certain purchases, Goodyear had rebutted the end-user presumption of injury, i.e., the presumption that the isoprene supplier, as the end-user of eligible products used to make isoprene, is presumed injured by crude oil overcharges. The DOE based the latter determination on Goodyear's showing that for a portion of the refund period, one of Goodyear's isoprene suppliers had increased isoprene prices to Goodyear based on a dollar for dollar increase in its crude oil costs and, therefore, that for those purchases Goodyear bore the impact of overcharges attributable to isoprene feedstocks. The DOE, therefore, granted Goodyear an additional crude oil refund in the amount of $3,554.

The DOE also considered two other products for which Goodyear had previously sought a crude oil refund but which the DOE elected to defer in its earlier decision pending the submission of additional evidence by Goodyear. The two products at issue were butadiene and petroleum wax. After reviewing the evidence and/or arguments Goodyear had presented, the DOE determined that Goodyear had failed to demonstrate that the products in question had been produced in a crude oil refinery. Accordingly, the DOE concluded that those products were not eligible for a crude oil refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Service Center Supply, Inc.	RF304–14009	05/16/94
Dallas Carriers Corp. et al	RF272–67828	05/17/94
Enron Corp./Concho Butane Company	RF340–135	05/17/94
Saxon Oil Company	RF340–147	
Faulkner Concrete Pipe Co. et al	RF272–93827	05/20/94
Gulf Oil Corp./Charles Niblett Gulf #1	RF300–15561	05/17/94
Charles Niblett Gulf #2	RF300–15562	
Charles Niblett Gulf #3	RF300–15563	
Charles Niblett Gulf #4	RF300–15564	
Gulf Oil Corp./Franklin Limestone Co. et al	RF300–20754	05/20/94
Gulf Oil Corp./Oklahoma Refining Company	RF300–20005	05/18/94
Mitchell Welding Supply Co.	RC272–230	05/18/94
Taylor & Anderson Towing	RF272–77180	05/20/94
Texaco Inc./Highway 69 Texaco et al	RF321–6919	05/20/94
Texaco Inc./Murph's Texaco	RF321–20472	05/17/94
Kael's Sunset Texaco	RF321–20979	
Union Carbide Industrial Gases Inc. et al	RF272–92548	05/17/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Andre's Beacon	RF238–143
Arlen & Eunice Rude	RR272–105
Comont Texaco	RF321–18935
Consumer Co-Op Association	RF321–20023
Creed's Texaco	RF321–18980
Criswell's Texaco Service	RF304–15078
Farmers Co-Op Elevator of Wanda.	RF272–95161
Farmers Cooperative Society #1.	RF272–95185
Farmers Elevator Cooperative Co.	RF272–95093
Farmers Elevator Cooperative	RF272–95061
Frederick's Arco	RF304–15147
Gressett's Texaco #3	RF304–15077
Interstate Texaco	RF321–18936
J.W. Drilling	RF321–20978
Johnson's Texaco Service	RF321–18975
Keen Inc.	RF304–13315
LaClede Gas Company	RF321–20025
OMI Corp.	RF321–19912
Prima Asphalt, Inc.	RF321–20022
Ray Baranoski's Texaco	RF321–19840
Stan's Texaco	RF321–19463
Utility Board—City of Key West.	RF321–20031

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 19, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–17900 Filed 7–21–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders the Week of May 23 through May 27, 1994

During the week of May 23 through May 27, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Akin, Gump, Strauss, Hauer & Feld, 5/26/94, LFA–0368

Akin Gump, Strauss, Hauer & Feld (Akin Gump) filed an Appeal from a determination issued by the FOI and Privacy Acts Branch, Reference and Information Management Division of the Department of Energy (DOE Headquarters) in response to a request from Akin Gump under the Freedom of Information Act (FOIA). Akin Gump sought the U.S.Russia Highly Enriched Uranium Purchase Agreement signed by President Bill Clinton and Russian President Boris Yeltsin (Purchase Agreement). In considering the Appeal, the Office of Hearings and Appeals found that DOE Headquarters performed an adequate search for the Purchase Agreement. Accordingly, the Appeal was denied.

Introductory Order

Westinghouse Hanford Company, 5/26/94, LWZ-0031

Westinghouse Hanford Company (WHC) filed a Motion to Dismiss the underlying complaint and hearing request filed by Helen "Gai" Oglesbee under the Department of Energy's Contractor Employee Protection Program, 10 C.F.R. Part 708. On August 24, 1992, Oglesbee filed a complaint under Part 708 with the DOE Richland Field Office (DOE/RL) which was forwarded to the Office of Contractor Employee Protection on October 2, 1992. In his Decision, the Hearing Officer found that: (1) the OCEP Director did not abuse her discretion in accepting Oglesbee's complaint as timely filed; (2) it was unnecessary to determine whether Oglesbee's complaint specifically met each of the criteria outlined in 10 C.F.R. § 708.6, since the decision to accept a complaint is clearly within the discretion of the OCEP; (3) WHC was not prejudiced by the OCEP's acceptance of the complaint. Accordingly, WHC's Motion was denied.

Implementation of Special Refund Procedures

County Fuel Company, INC., 5/24/94, LEF–0015

The DOE issued a Decision and Order implementing procedures for the distribution of $38,214.98, plus accrued interest, in alleged overcharges obtained from County Fuel Company, Inc. These funds were remitted to settle possible pricing violations in its sales of motor gasoline during portions of 1979 and 1980. The DOE determined that these funds will be distributed in accordance with the DOE Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Accordingly, Applications for Refund will be accepted from any party who purchased refined petroleum products during the specified periods, March 1, 1979 through March 18, 1980. The specific information to be included in Applications for Refund is included in the Decision.

Refund Application

National Railroad Passenger Corporation, 5/27/94, RF272–21241

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of the National Railroad Passenger Corporation (Amtrak) in the crude oil overcharge special refund proceeding being conducted by the DOE under 10 C.F.R. Part 205, Subpart V The DOE determined that the refund claim was meritorious and granted a refund of $535,554. The DOE denied the Objections filed by a group of States, finding that the econometric data submitted by the States did not rebut the presumption that the Applicant was injured by the crude oil overcharges. In addition, the DOE denied the Objections filed by a group of Utilities, Transporters, and Manufacturers, finding that (1) Even if Amtrak were a government authority, it would still be eligible for a refund for its own purchases of refined petroleum products and (2) because Amtrak was specifically excluded from the Settlement Agreement does not exclude it from the DOE's crude oil refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Company/H.H. Irwin Dist. Co. et al	RF304–13577	05/24/94
City of Denham Springs, Louisiana et al	RF272–88624	05/24/94
Dunlop Tire Corporation	RF272–16583	05/23/94
Dunlop Tire Corporation	RD272–16583	
Eau Claire Public Schools et al	RF272–82458	05/25/94
General Trailer Company et al	RF272–90523	05/23/94

Name	Case No.	Date
Gulf Oil Corp./Holiday West Gulf	RF300–14381	05/25/94
Gulf Oil Corp./Keylock (Howard Jackson Gulf)	RF300–13466	05/24/94
Gulf Oil Corp./Mr. B'S	RF300–20922	05/24/94
Morwall Trucking Inc.	RF272–79581	05/27/94
Shell Oil Company/Oceana Terminal Corporation	RF315–7195	05/26/94
Oceana Terminal Corporation	RF315–7228	
St. Lucie BD. of Cnty. Commissn. et al	RF272–86676	05/27/94
Texaco Inc./Heber Valley Texaco et al	RF321–19223	05/27/94
Texaco Inc./Robert R. Wiese et al	RF321–7680	05/23/94
Robert R. Wiese	RF321–7682	
Texaco Inc./Shipley Oil Company et al	RF321–9293	05/23/94
Texaco Inc./Stuckey's of Centerville et al	RF321–7160	05/26/94

Dismissals

The following submissions were dismissed:

Name	Case No.
California Nevada Golden Tours.	RF272–89109
Chelsea Airlift	RF272–89113
City of High Point	RF272–94027
Emporia Motor Freight, Inc	RF272–89177
Fowler & Williams, Inc	RF272–89121
Fruit Growers Express Company.	RF272–89124
George Appel, Inc	RF272–89126
Hudson County News Co	RF272–81313
Key Line Air Freight, Inc	RF272–89183
Mary Jane Disney	LFA–0369
Nevada Central Motor Lines.	RF272–89132
Nevada Transit, Inc	RF272–89133
R.H. Prentiss Co	RF272–89227
Robert Crocket	RF272–89224
Sevier Valley AVC	RF272–80462
Siva Truck Leasing, Inc	RF272–90643
W.H. Hanna & Sons	RF272–89172

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–17899 Filed 7–21–94; 8:45 a.m.]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project Nos. 1417–001, 1835–013]

Central Nebraska Public Power and Irrigation District Nebraska Public Power District; Notice Extending Time to Comment on Revised Draft Environmental Impact Statement

July 18, 1994.

On April 1, 1994, the Commission issued a revised draft environmental impact statement (RDEIS) on applications for relicensing the Kingsley Dam Project No. 1417 and the North Plate/Keystone Diversion Dam No. 1835. These two hydropower projects are located on the North Platte, South Platte, and Platte Rivers in Nebraska. Comments on the RDEIS are currently due on July 25, 1994.

Several parties have filed motions requesting or supporting an extension of time to comment on the RDEIS. Interior seeks an extension until August 12, 1994, to submit comments on the RDEIS that will incorporate pulse flow recommendations to be included in its revised recommendations under Section 10(j) of the Federal Power Act. EPA requests a conference on water quality issues pursuant to its EIS review authority, and seeks a further extension of the comment period on the RDEIS to September 8, 1994, to permit the conference to be held.

Interior states that the pulse flow recommendations are its highest priority and, together with its other Section 10(j) recommendations, will form the basis for formal consultation with the Commission under Section 7 of the Endangered Species Act. In view of the potential significance of Interior's recommendations in these proceedings, the extension is reasonable and will be granted.[1]

EPA states that a conference is needed to assist the parties in evaluating the RDEIS and to discuss issues related to water quality, such as minimum flows to meet water quality temperature standards and the Commission's role under Section 401 of the Clean Water Act. However, by letter dated July 12, 1994, Governor Nelson of Nebraska questioned the need for a conference and informed the Commission that the State has no plans to change or reconsider its Section 401 certifications for these projects. In view of the general nature of EPA's request, the advanced stage of these proceedings, and the information presented in Governor Nelson's letter, the Commission staff has determined that there is no need for a conference on water quality issues as part of the EIS process.

The comment period on the RDEIS is extended to August 12, 1994. Anyone wishing to comment in writing on the RDEIS must do so by that date. Comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should clearly reference the Kingsley Dam Project No. 1417 and the North Platte/Keystone Diversion Dam Project No. 1835 on the first page.

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17287 Filed 7–21–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Because all parties will benefit from a prompt ruling and it appears that no prejudice will result, this notice is being issued in advance of the usual 15-day period for answers to Interior's motion. *See* 18 CFR § 385.213(d). After reviewing the parties' comments on the RDEIS and Interior's revised Section 10(j) recommendations, the Commission staff will determine how Interior's revised recommendations should be incorporated into the EIS process and will provide an additional opportunity for comment, if appropriate.

[Docket No. ER94–1153.000, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 14, 1994.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Company

[Docket No. ER94–1153–000]

Take notice that on July 1, 1994, Central Maine Power Company (CMP), tendered for filing a Second Amended Transmission Service Agreement between CMP and Maine Public Service Company, Inc. (MPS), dated as of April 18, 1994 (Second Amended Agreement). CMP will provide MPS with non-firm transmission service over the CMP transmission system for the purpose of transmitting Maine Yankee and/or MPS system non-firm energy in accordance with the rates, terms and conditions of the Second Amended Agreement.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER94–1415–000]

Take notice that on June 30, 1994, Puget Sound Power & Light Company (Puget), tendered for filing proposed changes in its Rate Schedule FERC No. 78 relating to the Centralia Transmission Agreement executed on September 22, 1980 between Puget and the City of Seattle (Seattle). The proposed changes would increase revenues for service provided under this schedule by $7,900 per year based on a 12-month period ending June 1995. A copy of the filing was served upon Seattle.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER94–1416–000]

Take notice that on June 30, 1994, Entergy Services, Inc. (Entergy Services) tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and AES Power, Inc. (AES). Entergy Services states that the TSA sets out the transmission arrangements under the Entergy Operating Companies' Transmission Service Tariff over their transmission system for certain sales by AES to East Kentucky Power Cooperative, Inc.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. PSI Energy, Inc.

[Docket No. ER94–1418–000]

Take notice that on June 30, 1994, PSI Energy, Inc. (PSI), tendered for filing pursuant to The Service Agreement between the Town of South Whitley and PSI a revised Exhibit A (Service Specifications).

Said Exhibit A provides for revised service characteristics at the Municipal's delivery point(s).

Copies of the filing were served on the Town of South Whitley and the Indiana Utility Regulatory Commission.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1419–000]

Take notice that on July 1, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to sixteen of its Rate Schedules:

Rate schedule No.	Supplement No.	Person receiving service
55	12	Philadelphia Electric Company (PECO).
56	12	Public Service Electric and Gas Company (Public Service).
57	12	Northeast Utilities (NU).
62	13	Orange & Rockland Utilities, Inc. (O&R).
69	9	NU.
70	7	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L).
71	7	New England Power Co. (NEP).
74	11	PP&L.
75	11	GPU Service Corporation (GPU).
78	16	Power Authority of the State of New York (the Power Authority).
82	8	Baltimore Gas & Electric Company (BG&E).
83	8	Atlantic City Electric Company (Atlantic).
84	8	Connecticut Municipal Electric Energy Cooperative (CMEEC).
88	7	Boston Edison Company (BE).
95	5	Long Island Lighting Company (LILCO).
103	4	United Illuminating Company (UL).
118	2	Potomac Electric Power (Potomac).
119	1	O&R.
120	1	O&R.
121	1	O&R.

The Supplements provide for an increase in rate from $2.51 to $4.40 per megawatthour of interruptible transmission of power and energy over Con Edison's transmission facilities.

Con Edison states that copies of this filing have been served by mail upon PECO, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic, CMEEC, BE, LILCO, and Potomac and UL.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric

[Docket No. ER94–1420–000]

Take notice that on July 1, 1994, Portland General Electric Company (PGE) tendered for filing a service agreement under FERC Electric Tariff, Original Volume No. 1 (PGE–1) with City of Redding, California. Copies of the filing have been served on the parties included in the distribution list defined in the filing letter.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER94–1421–000]

Take notice that on July 1, 1994, Southern California Edison Company (Edison) requested the Commission to disclaim jurisdiction, and in the alternative tendered for filing the following procedure:

Operating Procedure for Prescheduling Interruptible Transmission Service (ITS) (Procedure)

The Procedure describes the process which Edison will utilize to evaluate requests to purchase and preschedule ITS provided under the terms of either a bilateral ITS Agreement or the Western Systems Power Pool Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Green Mountain Power Corporation

[Docket No. ER94–1422–000]

Take notice that on July 1, 1994, Green Mountain Power Corporation (GMP) tendered for filing an unexecuted Electric Service Agreement under which GMP will sell power and energy to the Northfield (Vt.) Electric Department (Northfield) pursuant to GMP's Power Rate W on file at the FERC, and an unexecuted Power Sales Agreement between GMP and Northfield pursuant to which GMP will purchase the output of Northfield's existing generation resources. GMP states that the Electric Service Agreement and the Power Sales Agreement are itnended to extend the existing power supply arrangements between GMP and Northfield, which were scheduled to expire on August 31, 1994, for another year. However, the Electric Service Agreement modifies procedures for implementation of a Value Adjustment to rates and charges for power and energy purchased by GMP under that agreement.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER94–1423–000]

Take notice that on July 1, 1994, Kansas City Power & Light Company (KCPL) tendered for filing an Interchange Agreement dated June 10, 1994, between KCPL and the Kansas Municipal Energy Agency (KMEA), to become effective as of September 1, 1994. This Agreement provides for the initial rates and charges for certain Interchange Services between KCPL and KMEA.

In its filing, MCPL states that the rates included in the above-mentioned Interchange Agreement are KCPL's rates and charges for similar service under schedules previously filed by KCPL with the Federal Energy Regulatory Commission.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Tucson Electric Power Company

[Docket No. ER94–1424–000]

Take notice that on July 1, 1994, Tucson Electric Power Company (Tucson) tendered for filing a Power Sale Agreement between Tucson and the Tohomo O'odham Utility Authority (TOUA). The Agreement provides for the sale by Tucson to TOUA of up to 10 MW of firm capacity and energy commenicng September 1, 1994.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER94–1425–000]

Take notice that on July 1, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing a change to Rate Schedule FERC No. 147, in the form of an amendment to an agreement among PG&E, the United States Department of Energy, San Francisco Operations Office (DOE/SF), and the federal Western Area Power Administration (Western).

The amendment reduces the contract rate of delivery (CRD) for power delivered by Western to the Lawrence Livermore National Laboratory over the California-Oregon Transmission Project. The reduced CRD also results in a reduction in the amount of standby transmission and spinning reserve supplied by PG&E.

Copies of this filing have served upon DOE/SF, Western and the California Public Utilities Commission.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Madison Gas and Electric Company

[Docket No. ER94–1426–000]

Take notice that on July 1 1994, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission a Power Sales Tariff for Negotiated Capacity and General Purpose Energy Sales. MGE respectfully requests an effective date of September 1, 1994.

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Tucson Electric Power Company

[Docket No. ER94–1427–000]

Take notice that on June 29, 1994, Tucson Electric Power Company (Tucson) tendered for filing an Economy Energy Agreement between Tucson and Colorado River Commission of the State of Nevada (CRC). The Agreement provides for the sale by Tucson to CRC of economy energy from time to time, subject to a split-savings price ceiling.

The parties request an effective date of July 1, 1994, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Electric Power Company

[Docket No. ER94–1428–000]

Take notice that on July 1, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing a Coordination Sales Tariff. Under the Coordination Sales Tariff, SWEPCO will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Energy Service available to customers upon mutual agreement.

SWEPCO seeks an effective date of August 31, 1994. Copies of this filing were served on the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas. Copies are available for public inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: July 28, 1994, 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 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17826 Filed 7–21–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–642–000, et al.]

K N Interstate Gas Transmission Co., et al.; Natural Gas Certificate Filings

July 13, 1994

Take notice that the following filings have been made with the Commission:

1. K N Interstate Gas Transmission Co.

[Docket No. CP94–642–000]

Take notice that on July 5, 1994, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP94–642–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities to upgrade two town border stations (TBS) for the delivery of natural gas to the City of Hastings, Nebraska, under K N's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N proposes to replace its existing facilities at the West TBS with metering and appurtenant facilities at an estimated cost of $50,000 and at the North TBS with metering and appurtenant facilities at an estimated cost of $30,000. It is stated that the upgraded facilities will provide a peak hourly rate of 1,050 Mcf of gas per day. It is asserted that the proposed deliveries are within Hastings' existing contract demand volume from K N. It is further asserted that the upgraded facilities will have no significant impact on K N's peak day and annual deliveries. K N states that the proposal will improve the operational flexibility and reliability of Hastings' local distribution system.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP94–649–000]

Take notice that on July 7, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–649–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a new delivery point to accommodate natural gas deliveries to an industrial end-user, Heartland Corn Products (Heartland), located in Sibley County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

It is stated that the projected annual volume of delivery is estimated to be approximately 414,000 MMBtu with a peak day volume of 1,500 MMBtu. Northern states that the deliveries will serve Heartland's new ethanol production facility. It is further stated that the volumes proposed to be delivered to Heartland will be transported pursuant to Northern's transportation rate schedule and service agreement.

Northern states that this change is not prohibited by an existing tariff and Northern further avers that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Northern estimates the cost to install the delivery point to be $102,000 and states that Heartland will reimburse Northern $77,314 for the cost of those facilities.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP94–652–000]

Take notice that on July 8, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–652–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to abandon certain undersized facilities at the Le Grande Meter Station in Union County, Oregon, and to construct and operate upgraded replacement facilities at this station under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to change the trim plates in the two existing 2-inch regulators from 50 percent trim to 100 percent trim and add electronic flow measurement. Northwest also proposes to replace the existing 2-inch inlet piping and valves with new 4-inch inlet piping and associated valves upstream of the regulators to resolve operational problems that Northwest states it has been having with this meter station. Northwest states that these changes will increase the maximum design delivery capacity of this meter station from 6,866 Dth per day to approximately 8,580 Dth per day at a pressure of 200 psig. It is stated that these changes are necessary to better accommodate existing firm maximum daily delivery obligations to the Washington Water Power Company at this point. Northwest estimates the total cost of the proposed facility replacements at the Le Grande Meter Station to be approximately $279,550.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP94–648–000]

Take notice that on July 7, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–648–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade an existing meter station under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to upgrade the Cocoa Meter Station located in Brevard County, Florida by removing the first stage of regulation and replacing the second stage of regulation. The meter station is used to measure gas deliveries to City Gas Company of Florida (CGC). FGT states that the proposed upgrade would not change CGC's certificated levels of service, nor would CGC's contractual gas quantities be increased. Therefore, the proposed upgrade would not impact FGT's peak day or annual deliveries.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17828 Filed 7–21–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–390–000]

Commonwealth Edison Co.; Notice of Filing

July 18, 1994.

Take notice that on July 12, 1994, Commonwealth Edison Company (Edison) submitted additional information in support of its filing of Amendment No. 7, dated February 21, 1992, to the Interconnection Agreement, dated March 1, 1975, between Edison and Wisconsin Power and Light Company (Wisconsin Power).

Copies of this filing were served upon Wisconsin Power, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 26, 1994. 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. 94–17829 Filed 7–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–656–000]

General Services Administration; Notice of Application for the Construction, Operation, Maintenance, and Connection of Facilities for Importation of Natural Gas at the United States/ Canada International Boundary

July 18, 1994.

Take notice that on July 12, 1994, the General Services Administration (GSA), Denver Federal Center, Building 41, Room 200, P.O. Box 25006, Denver, Colorado, 80225–006, filed an application pursuant to section 3 of the Natural Gas Act, Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation Order No. 0204–112 of the Secretary of Energy. GSA seeks a Presidential Permit for a point of entry for the importation of natural gas and section 3 authority to construct, operate, maintain and connect natural gas import facilities. The proposed facilities will extend from the Canadian border to the Piegan Immigration and Customs Station near Babb, Montana. GSA's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

GSA says the import facilities will consist of 2,155 feet of 1 and one-half inch pipe. The proposed pipe will deliver up to 146 Mcf per day to the Piegan Border Station and several adjacent Staff residences. The estimated cost of the facilities is $12,500. The line will connect to the facilities of the Chief Mountain Natural Gas Cooperative, who will also build a tap and meter in Canada. GSA says that natural gas service is needed to replace propane which currently fuels heating equipment at the Piegan Border Station. GSA says the current propane heating system is sub-standard and violates local mechanical codes. The GSA requests that the Commission grant this application on an expedited basis.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest on or before August 1, 1994, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. All protests filed will be considered, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214

Lois D. Cashell,

Secretary.

[FR Doc. 94–17830 Filed 7–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–650–000]

Natural Gas Pipeline Company of America and K N Interstate Gas Transmission Co.; Notice of Application

July 18, 1994.

Take notice that on July 7, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148 and K N Interstate Gas Transmission Company (K N Interstate), 370 Van Gordon Street, Lakewood, Colorado 80228, filed in Docket No. CP94–650–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Natural and K N Interstate performed pursuant to Natural's Rate Schedule X–51, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural and K N Interstate state that pursuant to a gas exchange agreement between Natural and K N Interstate, Natural delivered up to 25,000 Mcf of natural gas per day to K N Interstate at a point on K N Interstate's Buffalo Wallow pipeline located in Roger Mills County, Oklahoma and K N Interstate redelivered equivalent volumes of natural gas to Natural at a point on K N Interstate's Buffalo Wallow field gathering system in Hemphill County, Texas. Natural and K N Interstate further state that by a letter agreement dated April 7, 1994, they agreed to terminate the agreement as of May 1, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 8, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Natural and K N Interstate to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17831 Filed 7–21–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–4713–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 04, 1994 Through July 08, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D-BLM-L65225–OR Rating LO, Upper Klamath Basin Resource Management Plan, Implementation, Klamath Falls Resource Area, Lakeview District, Klamath County, OR.

Summary: EPA had no objection to the proposed action.

ERP No. D-FHW-L40190–AK Rating EO2, Sterling Highway (Miles Post 37–60) Transportation Project, Reconstruction between Skilak Lake Road (east) and the Seward Wye, Funding, COE Section 10 and 404 Permits, NPDES Permit, Special-Use Permit and US Coast Guard Permit, AK.

Summary: EPA expressed environmental objections based on potential water quality standards violations; the need for complete mitigation and monitoring discussion and the need for a cumulative effects analysis. Additional information was requested to clarify compliance with State water quality standards; for monitoring and mitigation strategies; and for cumulative effects analysis.

ERP No. D-NPS-L65229–AK Rating EC2, Brooks River Area Development, Use and Management Plan, Implementation, Katmai National Park, AK.

Summary: EPA expressed environmental concerns with impacts to wetlands and water quality from road and other construction and accidental fuel spills. EPA requests that wetlands be formally delineated, mitigation and contingency measures be developed and that this information be included in the final EIS.

ERP No. D-SCS-D36111–WV Rating EC1, Upper Buffalo Creek Watershed, Flood Prevention and Watershed Protection, Funding, City of Mannington, Marion County, WV.

Summary: EPA suggested that the final EIS further address cost-benefit ratios and emergent wetland vegetation.

Final EISs

ERP No. F-AFS-L65212–ID Prichard Creek Analysis Area, Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Wallace Ranger District, Coeur d'Alene River, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

Dated: July 19, 1994

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–17889 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4713–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed July 11, 1994 Through July 15, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940275, Draft EIS, AFS, AZ, UT, Kaibab National Forest Land and Resource Management Plan Amendment, Implementation, Coconino, Yavapal and Mohave Counties, AZ and Kane County, UT, Due: October 20, 1994, Contact: Bruce Higgins (602) 635–2681.

EIS No. 940276, DRAFT EIS, FHW, MO, MO–179 Extension, MO–50 west to the West Edgewood Boulevard, Funding, Right-of-Way and COE Section 404 Permit, Jefferson City, Cole County, MO, Due: September 06, 1994, Contact: Don Neumann (314) 636–7104.

EIS No. 940277, Final EIS, UAF, NJ, McGuire Air Force Base (AFB) Realignment, Implementation, Burlington County, NJ, Due: August 22, 1994, Contact: Jean Reynolds (618) 256–3067.

EIS No. 940278, Final EIS, AFS, OR, Fox Ecosystem Restoration Projects: Day and Dunning Timber Salvage Sales and Other Projects, Implementation, Malhaur National Forest, Long Creek Ranger District, Grant County, OR, Due: August 22, 1994, Contact: John Shoberg (503) 575–2110.

EIS No. 940279, Final EIS, FRC, AR, River Mountain Pumped Storage Hydroelectric Project, FERC No. 10455, Construction, Operation and Maintenance, License, Logan County, AR, Due: August 22, 1994, Contact: James Haimes (202) 219–2780.

EIS No. 940280, Draft EIS, FRC, MN, St. Louis River Basin Hydroelectric Projects, Issuing New Licenses for FERC Projects Cloquet No. 2363 and St. Louis River No. 2360, St. Louis and Carlton Counties, MN, Due: September 05, 1994, Contact: Michael Strzelecki (202) 219–2827.

EIS No. 940281, Draft EIS, UAF, OH, Rickenbacker Air National Guard Base (ANGB), Portions to be Disposal and Reuse, Franklin and Pickaway Counties, OH, Due: September 05, 1994, Contact: Jonathan D. Farthing (210) 536–3787.

EIS No. 940282, Draft EIS, FHW, CA, River Street Widening in Santa Cruz, Improvements from Water Street to Highway 1, Funding and Right-of-Way Grant, Santa Cruz County, CA, Due: September 05, 1994, Contact: John Schultz (916) 551–1314.

EIS No. 940283, Final EIS, AFS, ID, Katka Peak Timber Sale and Road Construction, Implementation, Bonners Ferry Ranger District, Idaho Panhandle National Forests,

Boundary County, ID, Due: August 22, 1994, Contact: Rob Steinhorst (208) 267–7423.

Amended Notices

EIS No. 940192, Draft EIS, AFS, WY, Shoshone National Forest Allowable Timber Sale Quantity, Implementation, Fremont, Hot Springs, Park, Sublette and Teton Counties, WY, Due: July 25, 1994, Contact: Bob Rossman (307) 527–6241. Published FR 05–20–94. Review period extended.

Dated: July 19, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–17890 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5020–2]

Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process. Issues pertaining to enhanced stakeholder involvement, as well as methods for prioritizing Federal facility environmental restoration activities will be discussed. Less than 15 days notice is given because of uncertainties in the final agenda caused by other priority-setting activities being conducted by the federal government.

DATES: The meeting will be held on July 26, 1994, from 9:00 a.m. until 5:00 p.m. and on July 27, from 8:30 a.m. until 4:00 p.m.

ADDRESSES: The meeting will be held at the Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Marilyn Null, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 401 M Street, SW., 20460, (202) 260–5686.

Dated: July 19, 1994.

Marilyn Null,

Designated Federal Official.

[FR Doc. 94–18035 Filed 7–22–94; 8:45 am]

BILLING CODE 6560–50–M

U.S. Environmental Protection Agency

[FRL–5017–8]

National Environmental Justice Advisory Council Notification of Public Advisory Committee Meeting(s); Open Meeting(s); Amended

Members of the public who wish to make a brief oral presentation at the meeting(s) will have the opportunity to do so either on Wednesday, August 3 or Thursday, August 4 from 6:00 p.m. to 9:00 p.m. In addition, limitation on timeframe for oral presentations has been increased from five to ten minutes. Friday, August 5, the meeting is from 8:00 a.m. to 2:45 p.m. This paragraph clarifies the times outlined in the second paragraph of the original **Federal Register** Notice (FR) and changes the fourth paragraph of original FR Notice.

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the National Environmental Justice Advisory Council (NEJAC) and four subcommittees will meet on the dates and times described below. All times noted are Mountain Standard Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC.

The full NEJAC will meet to discuss the role of the FACA, Environmental Impacts, EPA's Environmental Justice Draft Strategic Action Document, and the NEJAC Bylaws from Wednesday to Thursday, August 3–4, 1994 from 8:00 a.m. to 9:00 p.m. and Friday, August 5 from 8:00 a.m. to 2:45 p.m. at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234.

Members of the public who wish to make a brief oral presentation at the meeting(s) should contact Dr. Clarice Gaylord or Linda K. Smith no later than July 27, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments received by July 25, 1994 may be mailed to the NEJAC prior to the meeting; comments received after that date will be provided to the Council as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 27, 1994. They should be sent to Office of Environmental Justice (3103), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Telephone number is (202)260–6357 or FAX (202) 260–0852.

Waste and Facility Siting Subcommittee Meeting—August 4–5, 1994

The Waste and Facility Siting Subcommittee (WFSS) of the National Environmental Justice Advisory Committee (NEJAC) will hold its first meeting on Thursday and Friday, August 4–5, 1994, from 8:00 a.m. to 5:30 p.m. on Thursday, and from 8:00 a.m. to Noon on Friday. Location of this meeting will be the Albuquerque Hyatt Regency, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the WFSS intends to initiate discussion and solicit input on environmental justice definitions and guidelines, the Office of Solid Waste and Emergency Response (OSWER) Environmental Justice Task Force recommendations, options developed by OSWER's siting workgroup, OSWER's proposed rule on public participation and future field hearings on specific topics. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Ms. Jan Young, Designated Federal Official, OSWER, U. S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, by telephone at (202) 260–1691, Fax at (202) 260–6606.

(2) Enforcement Subcommittee (ES) Meeting—August 4–5, 1994:

The Enforcement Subcommittee (ES) of the National Environmental Justice Advisory Council (NEJAC) will conduct a meeting on Thursday and Friday, August 4–5, 1994 from 8:00 a.m. to 5:30 p.m. on Thursday and from 8:00 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras NW., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the ES intends to develop a mission statement for the Subcommittee and review the Office of Enforcement and Compliance Assurance's draft strategy on Environmental Justice and recommend actions for EPA to address. At this meeting, the ES will discuss future issues and a mechanism to review enforcement activities. The meeting is

open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Ms. Sherry Milan, Designated Federal Official, Office of Enforcement and Compliance Assurance, U. S. Environmental Protection Agency, 401 M Street SW., Washington, D. C. 20460, by telephone at (202) 260–9807, Fax at (202) 260–9437.

(3) Health and Research Subcommittee Meeting—August 4–5, 1994

The Health and Research Subcommittee (HRS) of the National Environmental Justice Advisory Council (NEJAC) will conduct a meeting on Thursday and Friday, August 4–5, 1994, from 8:00 a.m. to 5:30 p.m. on Thursday and from 8:00 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N. W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the HRS intends to review the Office of Research and Development's (ORD) draft process description for development of the Agency's Environmental Justice research strategy. HRS will also evaluate and recommend options on the U. S. Environmental Protection Agency's overall research priorities and science policy setting as it relates to environmental justice. The subcommittee will review ORD's research strategy and definitions. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Mr. Lawrence Martin, Designated Federal Official, Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, by telephone at (202) 260–0673, Fax at (202) 260–0507.

(4) Public Participation and Accountability Subcommittee Meeting—August 4–5, 1994

The Public Participation and Accountability Subcommittee (PPAS) of the National Environmental Justice Advisory Council (NEJAC) will hold its first meeting on Thursday and Friday, August 4–5, 1994, from 8:00 a.m. to 5:30 p.m. on Thursday and from 8:00 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the PPAS intends to find ways to improve communications, develop trust and involve affected communities. To this end, the Subcommittee will explore the creation of business and industry, stakeholder and other types of public/private partnerships to address environmental justice concerns. Finally, the PPAS will evaluate the Agency's strategy to use the Geographic Information System (GIS) program to identify potential geographic areas of environmental justice concern, i.e., define potential patterns of inequity and insure environmental justice accountability. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Mr. Bob Knox, Designated Federal Official, Office of Environmental Justice, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, by telephone at (202) 260–6357, Fax at (202) 260–0852.

FOR FURTHER INFORMATION CONTACT: Copies of the NEJAC Charter are available upon request. Please contact the Office of Environmental Justice (3103), U. S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 1–800–962–6215. For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Kathy Ackley at (703) 934–3293 or (703) 934–9740 (fax).

Dated: July 19, 1994.

Clarice E. Gaylord, Designated Federal Official,

National Environmental Justice Advisory Council.

[FR Doc. 94–17916 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51836; FRL–4874–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 200 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–1181, 94–1182, 94–1183, 94–1184, 94–1185, 94–1186, 94–1187, 94–1188, 94–1189, 94–1190, 94–1191, 94–1192, 94–1193, 94–1194, 94–1195, 94–1196, 94–1197, June 27, 1994.

P 94–1198, June 26, 1994.

P 94–1199, 94–1200, 94–1201, 94–1202, 94–1203, June 27, 1994.

P 94–1204, 94–1205, June 28, 1994.

P 94–1206, June 27, 1994.

P 94–1207, 94–1208, June 28, 1994.

P 94–1209, 94–1210, 94–1211, June 29, 1994.

P 94–1212, July 2, 1994.

P 94–1213, 94–1214, 94–1215, July 3, 1994.

P 94–1216, 94–1217, July 4, 1994.

P 94–1218, June 26, 1994.

P 94–1219, 94–1220, 94–1221, 94–1222, 94–1223, 94–1224, 94–1225, 94–1226, 94–1227, 94–1228, 94–1229, July 4, 1994.

P 94–1230, 94–1231, 94–1232, 94–1233, 94–1234, 94–1235, July 6, 1994.

P 94–1236, July 7, 1994.

P 94–1237, 94–1238, July 6, 1994.

P 94–1239, July 9, 1994.

P 94–1240, 94–1241, 94–1242, 94–1243, 94–1244, 94–1245, 94–1246, 94–1247, July 6, 1994.

P 94–1248, 94–1249, 94–1250, 94–1251, 94–1252, 94–1253, 94–1254, 94–1255, 94–1256, 94–1257, 94–1258, 94–1259, 94–1260, 94–1261, 94–1262, 94–1263, 94–1264, 94–1265, 94–1266, 94–1267, 94–1268, 94–1269, 94–1270, 94–1271, 94–1272, 94–1273, 94–1274, 94–1275, 94–1276, 94–1277, 94–1278, 94–1279, 94–1280, 94–1281, 94–1282, 94–1283, 94–1284, 94–1285, 94–1286, 94–1287, 94–1288, 94–1289, 94–1290, 94–1291, 94–1292, 94–1293, 94–1294, 94–1295, 94–1296, 94–1297, 94–1298, 94–1299, 94–1300, 94–1301, 94–1302, 94–1303, 94–1304, 94–1305, 94–1306, 94–1307, 94–1308, 94–1309, 94–1310, 94–1311, 94–1312, 94–1313, 94–1314, 94–1315, 94–1316, 94–1317, 94–1318, 94–1319, 94–1320, 94–1321, 94–1322, 94–1323, 94–1324, 94–1325, 94–1326, 94–1327, 94–1328, 94–1329, 94–1330, 94–1331, 94–1332, 94–1333, 94–1334, 94–1335, 94–1336, 94–1337, 94–1338, 94–1339, 94–1340, 94–1341, 94–1342, 94–1343, 94–1344, 94–1345, 94–1346, 94–1347, 94–1348, 94–1349, 94–1350, 94–1351, 94–1352, 94–1353, 94–1354, 94–1355, 94–1356, 94–1357, 94–1358, 94–1359, 94–1360, 94–1361, 94–1362, 94–1363, 94–1364, 94–1365, 94–1366, 94–1367, July 9, 1994.

P 94–1368, July 10, 1994.

P 94–1369, July 9, 1994.

P 94–1370, 94–1371, 94–1372, 94–1373, 94–1374, 94–1375, 94–1376, 94–

1377, 94–1378, 94–1379, 94–1380, July 10, 1994.

Written comments by:

P 94–1181, 94–1182, 94–1183, 94–1184, 94–1185, 94–1186, 94–1187, 94–1188, 94–1189, 94–1190, 94–1191, 94–1192, 94–1193, 94–1194, 94–1196, 94–1197, May 28, 1994.

P 94–1195, 94–1198, May 27, 1994.

P 94–1199, 94–1200, 94–1201, 94–1202, May 28, 1994.

P 94–1203, 94–1204, 94–1205, May 29, 1994.

P 94–1206, May 28, 1994.

P 94–1207, 94–1208, May 29, 1994.

P 94–1209, 94–1210, 94–1211, May 30, 1994.

P 94–1212, June 2, 1994.

P 94–1213, 94–1214, 94–1215, June 3, 1994.

P 94–1216, 94–1217, June 4, 1994.

P 94–1218, May 27, 1994.

P 94–1219, 94–1220, 94–1221, 94–1222, 94–1223, 94–1224, 94–1225, 94–1226, 94–1227, 94–1228, 94–1229, June 4, 1994.

P 94–1230, 94–1231, 94–1232, 94–1233, 94–1234, 94–1235, June 6, 1994.

P 94–1236, June 7, 1994.

P 94–1237, 94–1238, June 6, 1994.

P 94–1239, June 9, 1994.

P 94–1240, 94–1241, 94–1242, 94–1243, 94–1244, 94–1245, 94–1246, 94–1247, June 6, 1994.

P 94–1248, 94–1249, 94–1250, 94–1251, 94–1252, 94–1253, 94–1254, 94–1255, 94–1256, 94–1257, 94–1258, 94–1259, 94–1260, 94–1261, 94–1262, 94–1263, 94–1264, 94–1265, 94–1266, 94–1267, 94–1268, 94–1269, 94–1270, 94–1271, 94–1272, 94–1273, 94–1274, 94–1275, 94–1276, 94–1277, 94–1278, 94–1279, 94–1280, 94–1281, 94–1282, 94–1283, 94–1284, 94–1285, 94–1286, 94–1287, 94–1288, 94–1289, 94–1290, 94–1291, 94–1292, 94–1293, 94–1294, 94–1295, 94–1296, 94–1297, 94–1298, 94–1299, 94–1300, 94–1301, 94–1302, 94–1303, 94–1304, 94–1305, 94–1306, 94–1307, 94–1308, 94–1309, 94–1310, 94–1311, 94–1312, 94–1313, 94–1314, 94–1315, 94–1316, 94–1317, 94–1318, 94–1319, 94–1320, 94–1321, 94–1322, 94–1323, 94–1324, 94–1325, 94–1326, 94–1327, 94–1328, 94–1329, 94–1330, 94–1331, 94–1332, 94–1333, 94–1334, 94–1335, 94–1336, 94–1337, 94–1338, 94–1339, 94–1340, 94–1341, 94–1342, 94–1343, 94–1344, 94–1345, 94–1346, 94–1347, 94–1348, 94–1349, 94–1350, 94–1351, 94–1352, 94–1353, 94–1354, 94–1355, 94–1356, 94–1357, 94–1358, 94–1359, 94–1360, 94–1361, 94–1362, 94–1363, 94–1364, 94–1365, 94–1366, 94–1367, June 9, 1994.

P 94–1368, June 10, 1994.

P 94–1369, June 9, 1994.

P 94–1370, 94–1371, 94–1372, 94–1373, 94–1374, 94–1375, 94–1376, 94–1377, 94–1378, 94–1379, 94–1380, June 10, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51836]" and the specific PMN number should be sent to: Document Control Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460 (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NE–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94–1181

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; triethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1182

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; sodium hydroxide; potassium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1183

Manufacturer. Hoechst Celanese Corportion.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; sodium hydroxide; potassium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1184

Manufacturer. Hoechst Celanese Corportion.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; sodium hydride; diethanolamine; 2,6-bis(dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1185

Manufacturer. Hoechst Celanese Corportion.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; potassium hydroxide; monoethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1186

Manufacturer. Hoechst Celanese Corportion.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; potassium hydroxide; monoethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1187

Manufacturer. Hoechst Celanese Corportion.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; potassium hydroxide; monoethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1188

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; potassium hydroxide; diethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1189

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; monoethanolamine; triethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1190

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; diethanolamine; 2,6-bis(1,1-diethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1191

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; diethanolamine; triethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1192

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1193

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; sodium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1194

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; potassium hydride; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1195

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; 2,6-bis(1,1-dimethylethyl)-4- methylphenol

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1196

Importer. Hoechst Celanses Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; diethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1197

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; monoethanolamine; trithanolamine; 2,6,-bis(dimethylethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1198

Importer. Hoechst Celanese Corporation.

Chemical. (G) Fluorinated polyalkyl alkoxy siloxane.

Use/Import. (G) Additive, open, non-dispersive use. Import range: Confidential.

P 94–1199

Manufacturer. Nova Molecular Technologies.

Chemical. (S) 1,1-Dimethylethyl-2,2-dimethyl propyl nitroxide.

Use/Production. (G) Inhibitor. Prod. range: Confidential.

P 94–1200

Manufacturer. Confidential.

Chemical. (G) Poly (vinyl aryl/acrylate).

Use/Production. (G) Caoting component. Prod. range: Confidential.

P 94–1201

Importer. Hoechst Celanese Corporation.

Chemical. (S) Benzenacetic acid, 4-bromo.

Use/Import. (G) Intermediate for organic synthesis. Import range: 1,000–5,000 kg/yr.

P 94–1202

Importer. Hoechst Celanese Corporation.

Chemical. (G) Diglycidyl ether, polymer with poly (ethylene glycol), 5-amino-1,3,3-trimethylcyclohexane and 1,3-benzenedimethanamine.

Use/Import. (S) Coatings for corrosion-protection, cement conncrete and plastics. Import range: 10,000–36,000 kg/yr.

P 94–1203

Importer. Confidental.

Chemical. (G) Aliphatic polyester resin.

Use/Import. (G) Automotive refinish paint. Import range: Confidental.

P 94–1204

Manufacturer. Confidential.

Chemical. (G) Reaction product of cationic starch.

Use/Import. (G) Intermediate for organic synthesis. Import range: Confidential.

P 94–1205

Importer. Confidential.

Chemical. (S) Nitric acid, reaction products with cyclodecanol and cyclodoecanone, by-products from,high-boiling fraction, esterified with methanol.

Use/Import. (S) For wet end paper use to provide internal strength. Import range: Confidential.

P 94–1206

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (S) Fatty acids, tall-oil, maleated reacted with fatty acids,tall-oil, reaction products with dimethylemetriamine.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 94–1207

Manufacturer. Confidential.

Chemical. (G) Adduct of polyameric isocyanate and an amine siliane.

Use/Production. (G) Adhesive for open, non-dispersive use. Prod. range: Confidential.

P 94–1208

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Acrylic modified epoxy ester.

Use/Production. (S) Water based, air-drying primers for automotive and electric. Prod. range: Confidential.

P 94–1209

Manufacturer. Cyctec Industries Inc.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1210

Importer. Confidential.

Chemical. (G) Modified divinylbenzene/styrene/iminodiacetate copolymer, *Na* ion form.

Use/Import. (G) Contained use. Import range: Confidential.

P 94–1211

Importer. Confidential.

Chemical. (G) Modified divinylbenzene/styrene/iminodiacetate copolymer, *H* ion form.

Use/Import. (G) Contained use. Import range: Confidential.

P 94–1212

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted antraquinone.

Use/Production. (S) Site limited production and use. Prod. range: Confidential.

P 94–1213

Manufacturer. Confidential.

Chemical. (G) 2-Propene-1-aminium-*N,N*-dimethyl-*N*-2-propenyl-, chloride, copolymer with cationic monomer.

Use/Production. (G) Dispersant; ccoagulant for dewatering slurries. Prod. range: Confidential.

P 94–1214

Importer. Confidential.

Chemical. (G) Acrylic acid-acrylic acid ester copolymer alkanolammonium salt.

Use/Import. (G) Additive, open, non-disperive use. Import range: Confidential.

P 94–1215

Importer. Confidential.

Chemical. (G) Acrylic acid ester copolymer, hydroxy functioal.

Use/Import. (G) Additive, open, non-dispersive use. Import range: Confidential.

P 94–1216

Importer. Confidential.

Chemical. (G) Substituted naphthalene sulfonic acid, alkali salt.

Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 94–1217

Importer. Wacker Silicones Corporation.

Chemical. (G) Alkoxylated polydimethylsiloxane.

Use/Import. (S) Antifoam agent for coating materials (dispersions, lactices). Import range: Confidential.

P 94–1218

Manufacturer. ELF Atochem North America, Inc.

Chemical. (S) 1,1,1-Trifluoroethane.

Use/Production. (S) Frigerant. Prod. range: Confidential.

P 94–1219

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo substituted naphthalene disulfonic acid.

Use/Production. (G) Fiber reactive for textile dyeing. Prod. range: 2,500–10,000 kg/yr.

P 94–1220

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo substituted naphthalene disulfonic acid.

Use/Production. (G) Fiber reactive for textile dyeing. Prod. range: 2,500–10,000 kg/yr.

P 94–1221

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo substituted naphthalene disulfonic acid.

Use/Production. (S) Fiber reactive for textile dyeing. Prod. range: 2,500–10,000 kg/yr.

P 94–1222

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Tetrasubstrituted benzene sulfonic acid.

Use/Production. (S) Reactive for cellulose or nylon. Prod. range: Confidential.

P 94–1223

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Tetrasubstituted benzene sulfonic acid.

Use/Production. (S) Reactive dye for cellulose or nylon. Prod. range: Confidential.

P 94–1224

Manufacturer. The Dow Chemical Company.

Chemical. (G) Thermoplastic polyurethane elastomer resin.

Use/Production. (S) Injection molding of plastic articles and plastic profiles. Prod. range: Confidential.

P 94–1225

Manufacturer. The Dow Chemical Company.

Chemical. (G) Thermoplastic polyurethane elastomer resin.

Use/Production. (S) Injection molding of plastic and extrusion of plastic profiles. Prod. range: Confidential.

P 94–1226

Manufacturer. Confidential.

Chemical. (G) Urea modified hydroxy acrylate copolymer.

Use/Production. (G) Highly dispersed material. Prod. range: 40,000–110,000 kg/yr.

P 94–1227

Manufacturer. Confidential.

Chemical. (G) Urea modified hydroxy acrylate copolymer.

Use/Production. (G) Highly dispersed material. Prod. range: 40,000–110,000 kg/yr.

P 94–1228

Manufacturer. Confidential.

Chemical. (G) Urea modified hydroxy acrylate copolymer.

Use/Production. (S) Highly dispersed material. Prod. range: 40,000–110,000 kg/yr.

P 94–1229

Manufacturer. Confidential.

Chemical. (G) Urea modified hydroxy acrylate copolymer.

Use/Production. (G) Highly dispersed material. Prod. range: 40,000–110,000 kg/yr.

P 94–1230

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry coating for metal substrates. Prod. range: Confidential.

P 94–1231

Manufacturer. Monsanto Company.

Chemical. (G) Polyolefin modified nylon 6,6.

Use/Production. (S) Molding-automotive & industrial. Prod. range: Confidential.

P 94–1232

Manufacturer. Monsanto Company.

Chemical. (G) Polyolefin modified nylon 6,6.

Use/Production. (S) Molding automotive & industrial. Prod. range: Confidential.

P 94–1233

Manufacturer. Monsanto Company.

Chemical. (G) Polyolefin modified nylon 6,6,/6 copolymer.

Use/Production. (S) Molding automotive & industrial. Prod. range: Confidential.

P 94–1234

Manufacturer. Confidential.

Chemical. (G) Fatty imidazolium compound.

Use/Production. (S) Corrosion inhibitor for oil and gas tubular goods. Prod. range: Confidential.

P 94–1235

Manufacturer. Confidential.

Chemical. (G) Fatty imidazolium compound.

Use/Production. (S) Corrosion inhibitor for oil and gas tubular goods. Prod. range: Confidential.

P 94–1236

Manufacturer. Amoco Corporation.

Chemical. (G) Aromatic polyester-polyphthalamide copolymer.

Use/Production. (G) Manufacture of molded parts. Prod. range: Confidential.

P 94–1237

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Polyimide.

Use/Production. (G) Molding resin. Prod. range: Confidential.

P 94–1238

Manufacturer. Confidential.

Chemical. (S) Propanenitrile, 3-(amino, *N*-tallow alkyl) tripropylenetetra-.

Use/Production. (S) Intermediate for production of polyamines. Prod. range: Confidential.

P 94–1239

Manufacturer. Confidential.

Chemical. (G) Synthetic white oil.
Use/Production. (S) Intermediate for production of polyamines. Prod. range: Confidential.

P 94–1240

Manufacturer. Confidential.
Chemical. (S) Nitriles, C_{10-18} unsaturated.
Use/Production. (S) Intermediate for production of polyamines. Prod. range: Confidential.

P 94–1241

Manufacturer. Confidential.
Chemical. (S) Propanenitrile, 3-(amino, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl))trimethylenedi-.
Use/Production. (S) Intermediate for production of polyamines. Prod. range: Conidential.

P 94–1242

Manufacturer. Confidential.
Chemical. (S) Propanenitrile, 3-(amino, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl)) dipropylenetri-.
Use/Production. (S) Intermediate for production of polyamines. Prod. range: Confidential.

P 94–1243

Manufacturer. Confidential.
Chemical. (S) Propanenitrile, 3-(amino, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl) tripropylenetetra-.
Use/Production. (S) Intermediate for product of polyamines. Prod. range: Confidential.

P 94–1244

Manufacturer. Confidential.
Chemical. (S) Amines, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl) dipropylenetri-.
Use/Production. (S) Asphalt emulsions. Prod. range: Confidential.

P 94–1245

Manufacturer. Confidential.
Chemical. (S) Amines, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl) tripropylenetri-.
Use/Production. (S) Asphalt emulsions. Prod. range: Confidential.

P 94–1246

Manufacturer. Confidential.
Chemical. (S) Amines, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl) tetrapropylenepenta-.
Use/Production. (G) Asphalt emulsions. Prod. range: Confidential.

P 94–1247

Manufacturer. Adhesives Research, Inc.
Chemical. (G) Acrylic polymer.
Use/Production. (S) Pressure sensitive adhesive for tape product(s). Prod. range: 10,000–50,000 kg/yr.

P 94–1248

Manufacturer. Confidential.
Chemical. (G) Syythetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1249

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1250

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1251

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1252

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1253

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1254

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1255

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1256

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1257

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1258

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1259

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1260

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1261

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1262

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1263

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1264

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1265

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1266

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1267

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1268

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.

Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1269

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1270

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1271

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1272

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1273

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1274

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1275

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1276

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1277

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1278

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1279

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1280

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1281

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1282

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1283

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1284

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1285

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1286

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1287

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1288

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1289

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1290

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential

P 94–1291

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1292

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1293

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1294

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1295

Manufacturer. Confidential.
Chemical. (G) Synthetic.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1296

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1297

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1298

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1299

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.

Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1300

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1301

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1302

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1303

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1304

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1305

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1306

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1307

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1308

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1309

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1310

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1311

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1312

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1313

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1314

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1315

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1316

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1317

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1318

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1319

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidental.

P 94–1320

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1321

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1322

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1323

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range:Confidential.

P 94–1324

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1325

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1326

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1327

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1328

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1329

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1330

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.

Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1331

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1332

Manufacturer. Confidential.
Chemical. (G) Synethic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1333

Manufacturer. Confidential.
Chemical. (G) Synethic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1334

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1335

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1336

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1337

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1338

Manufacturer. Confidential.
Chemical. (S) Synethic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1339

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1340

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1341

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1342

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1343

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1344

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1345

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1346

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1347

Manufacturer. Confidential.
Chemical. (G) Synthetic white iol.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1348

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1349

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1350

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1351

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1352

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1353

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1354

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1355

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1356

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1357

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1358

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential

P 94–1359

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential

P 94–1360

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1361

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.

Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1362

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1363

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1364

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1365

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1366

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, chemical processing aid. Prod. range: Confidential.

P 94–1367

Manufacturer. Confidential.
Chemical. (G) Synthetic white oil.
Use/Production. (S) Lubricant, Chemical processing aid. Prod. range: Confidential.

P 94–1368

Manufacturer. Confidential.
Chemical. (G) Mixed chromium complexes of substituted hydroxyphenyl azo hydroxynaphthalenes mixed sodium salts and amine salts.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1369

Manufacturer. Confidential.
Chemical. (S) Adipic acid; pentaerthritol; rosin; 2-ethyl-(2-hydroxymethyl) 1-3-propanediol; 1-3-propanediol 2,2-dimethyl.
Use/Production. (S) Wood lacquers. Prod. range: 5,000–20,000 kg/yr.

P 94–1370

Manufacturer. Arizona Chemical Company.
Chemical. (G) Phenolic modified hydrocarbon copolymer.
Use/Production. (S) Resin components of heatset, webb offset, and sheetfed inks. Prod. range: Confidential.

P 94–1371

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Triethylamine salt of an aliphatic polyurethane copolymer.
Use/Production. (S) Resin components of heatset webb offset, and Prod. range: Confidential.

P 94–1372

Importer. Huls America, Inc.
Chemical. (G) Fatty alcohol polyurethane glycolether.
Use/Import. (S) Emulsion, concentrate for metal working fluids and textile processing. Import range: Confidential.

P 94–1373

Importer. Ashland Chemicals, Inc.
Chemical. (G) Synthetic and vegetable fatty acid modified poly (tri-methylol propane, pentaerythrital) phthalate.
Use/Import. (G) Short, synthetic alkyd esin for coating applications. Import range: Confidential.

P 94–1374

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemial for metal treatment. Prod. range: Confidential.

P 94–1375

Manufacturer. Confidential.
Chemical. (G) Substituted polylhydroxy aromatic compound.
Use/Production. (G) Chemial for metal treatment. Prod. range: Confidential.

P 94–1376

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemial for metal treatment. Prod. range: Confidential.

P 94–1377

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemial for metal treatment. Prod. range: Confidential.

P 94–1378

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemial for metal treatment. Prod. range: Confidential.

P 94–1379

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemial for metal treatment. Prod. range: Confidential.

P 94–1380

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 15, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17914 Filed 7–21–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59981; FRL–4867–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 3 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 94–86, May 4, 1994.
Y 94–87, 94–88, May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA

Nonconfidential Information Center (NCIC), NEM–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–86

Manufacturer. Enterprise Coatings Company.

Chemical. (G) Aliphatic diisocyanate polymer.

Use/Production. (G) Industrial textile adhesive binder. Prod. range: Confidential.

Y 94–87

Manufacturer. C. J. Osborn, Corporation.

Chemical. (G) Polyurethane alkyd.

Use/Production. (S) Pigment coatings. Prod. range: Confidential.

Y 94–88

Manufacturer. Virkler Company.

Chemical. (G) Fatty acids, tall-oil, maleated, esters with a mixture of $C_{10'-15}$ alkyl and alkoxylated potassium salts.

Use/Production. (G) Textile fiber and fabric processing aid. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 15, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17913 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00155; FRL–4868–3]

Dry Cleaning Industry; Notice of Availability of Comparison Study of Conventional Dry Cleaning and an Alternative Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a study entitled "Multiprocess Wet Cleaning: A Cost and Performance Comparison of Conventional Dry Cleaning and an Alternative Process." The study is the result of a joint EPA/industry effort that demonstrated the viability of an alternative non-solvent "wet" cleaning process which relies on soaps, heat, steam and pressing to clean clothes that are traditionally dry cleaned.

ADDRESSES: The document is available at a cost of $12.00 from the Government Printing Office (GPO), 732 North Capitol St., NE., Washington, DC 20401, telephone (202) 783–3238. Ask for document number EPA 744–R–093–004. This document is also available from the National Technical Information Service (NTIS), 5258 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650; ask for publication PB94–108030. The cost is $27. Free copies of the Executive Summary can be obtained by contacting EPA's Pollution Prevention Information Clearinghouse (PPIC), Environmental Protection Agency, 401 M St., SW., Mail Code 3404, Washington, DC 20460, telephone (202) 260–1023, Fax (202) 260–1678. A brochure on multiprocess wet cleaning is also available from PPIC. Ask for document number EPA 744–S–94–001.

FOR FURTHER INFORMATION CONTACT: EPA's Pollution Prevention Information Clearinghouse (PPIC), Environmental Protection Agency, 401 M St., SW., Mail Code 3404, Washington, DC 20460, telephone (202) 260–1023, Fax (202) 260–1678.

SUPPLEMENTARY INFORMATION: The Agency's Design for the Environment Program within the Office of Pollution Prevention and Toxics formed a partnership with the dry cleaning industry, universities, and environmental, labor, and consumer groups to explore ways to reduce exposure to perchloroethylene (PCE), the chemical solvent used by most dry cleaners to clean clothes. In November and December 1992, a short-term, high volume demonstration project was conducted to compare the cost and performance of the alternative non-solvent process with traditional dry cleaning methods that use PCE. Results of the project indicate that the wet cleaning process appears to be economically competitive and acceptable to consumers. The new wet cleaning method, which can reduce the public's exposure to toxic dry cleaning chemicals, may be a viable alternative for some of the nation's dry cleaners.

Dated: June 28, 1994.

Mark A. Greenwood,

Director, Office of Pollution, Prevention and Toxics.

[FR Doc. 94–17911 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–50–F

[OW–FRL–5017–6]

Policy for the Development of Effluent Limitations in National Pollutant Discharge Elimination System Permits to Control Whole Effluent Toxicity for the Protection of Aquatic Life: Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final policy document entitled "Policy for the Development of Effluent Limitations in National Pollutant Discharge Elimination System (NPDES) Permits to Control Whole Effluent Toxicity (WET) for the Protection of Aquatic Life." The purpose of the new policy is to promote uniform, nationwide compliance with existing statutory and regulatory requirements for the control of WET and to assist permit writers in implementing these requirements.

DATES: Copies of this document are available beginning July 22, 1994.

ADDRESSES: Copies of this document can be obtained from U.S. EPA, National Center for Environmental Publications and Information, P.O. Box 42419, Cincinnati, Ohio 45242–2419 (Document Number EPA 833–B–94–002).

FOR FURTHER INFORMATION CONTACT: Wendy J. Miller, Office of Water, Office of Wastewater Management, 4203, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 260–3716.

SUPPLEMENTARY INFORMATION: Since 1984 EPA has undertaken various regulatory activities for the control of WET to protect aquatic life. In 1984, EPA published the "Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants." 49 FR 9016 (March 9, 1984). The policy discusses such issues as integration of chemical specific and biological permit limits; chemical, physical, and biological testing requirements (including WET testing requirements); and use of data.

In 1989, EPA revised the regulations governing the development of water quality-based effluent limitations, including those to control WET. 40 CFR 122.44(d)(1). The regulations impose specific requirements such as requiring effluent limits where the permitting authority finds "reasonable potential" to cause an exceedance of applicable water quality criteria.

In 1991, EPA revised the 1985 *Technical Support Document for Water Quality-based Toxics Control* (TSD).

The new TSD provides an explanation of the technical support for WET testing and gives detailed guidance on development of water quality-based permit limitations for WET and toxic pollutants.

Based upon its accumulated experience in administering the WET control program to date, EPA decided to develop a new WET control policy to supplement existing policy. The new policy consists of eight policy statements, explanations of each policy statement, and appendices containing background materials. In part, the policy restates EPA's strong continuing commitment to existing Clean Water Act provisions and the regulatory requirements at 40 CFR 122.44(d)(1) governing the control of WET for the protection of aquatic life. It also addresses some specific areas where questions have arisen regarding the implementation of these requirements.

The text of the eight statements of policy is provided below.

1. Basis for WET Controls

The permitting authority should evaluate WET water quality criteria attainment for acute WET at the edge of the acute mixing zone and for chronic WET at the edge of the chronic mixing zone except where the State has different requirements for evaluating WET criteria.[1] The permitting authority will develop WET effluent limitations based upon the more stringent of the acute or chronic criterion applied at the edge of the respective mixing zone, or, alternatively, on both.

2. Evaluation of Dischargers for Reasonable Potential

At a minimum, the permitting authority should review all major dischargers for reasonable potential to cause or contribute to exceedance of WET water quality criteria.

3. Evaluating Reasonable Potential

The permitting authority will consider available WET testing data and other information in evaluating whether a discharger has reasonable potential to cause or contribute to exceedance of WET water quality criteria.

4. Consequences of Establishing Reasonable Potential

Upon finding reasonable potential to cause or contribute to exceedance of WET water quality criteria, the permitting authority will impose effluent limitations to control WET.

5. Whole Effluent Toxicity Monitoring

Where appropriate, the permitting authority should impose WET monitoring conditions upon dischargers that do not have effluent limitations to control WET.

6. Compliance Schedules in NPDES Permits

Where allowed under State and federal law, NPDES permits may contain schedules for compliance with WET effluent limitations.

7. Whole Effluent Toxicity Controls and the Pollutants Ammonia and Chlorine

The requirements of the water quality permitting regulations apply without regard to the pollutant(s) that may be causing toxicity, including ammonia and chlorine.

8. Whole Effluent Toxicity Controls and Publicly Owned Treatment Works (POTWs)

The requirements of the water quality permitting regulations apply to all dischargers, including POTWs.

Dated: July 14, 1994.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 94–17918 Filed 7–21–94; 8:45 am]

BILLING CODE 6560–60–P

[1] Throughout the policy, the term "WET water quality criteria" refers to State numeric water quality criteria for WET and State narrative water quality criteria for toxicity such as "no toxics in toxics amounts" in State water quality standards.

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1370.

Federal Communications Commission

OMB Control No.: 3060–0383
Title: Satellite Communications—Part 25
Expiration Date: 05/31/97
Estimated Annual Burden: 10,996 total hours; 4 hours per response.
Description: Earth and space station applicants are required to submit information as specified in 47 CFR part 25 so that the Commission may determine whether their request should be granted. The information is used to determine the objectives of public interest, convenience and necessity are being met in accordance with 47 U.S.C. 309.

OMB Control No.: 3060–0343
Title: Qualifications of Domestic Satellite Space Station Licensees—Section 25.140
Expiration Date: 05/31/97
Estimated Annual Burden: 25,000 total hours; 1000 hours per response.
Description: Domestic fixed-satellite station applicants must submit information as required by 47 CFR 25.140. To enable the Commission to determine whether the applicants are financially, technically and legally qualified to construct, launch and operate their proposed systems and have justified the need for expansion satellites, applicants are required to submit specified documentation.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17849 Filed 7–21–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Emigrant Bancorp, 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 August 16, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Emigrant Bancorp, Inc., New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Emigrant Savings Bank, New York, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Guaranty Development Company, Livingston, Montana; to acquire 100 percent of the voting shares of American Bank Whitefish, Whitefish, Montana, a *de novo* bank.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. SN, Ltd., Moab, Utah; to become a bank holding company by acquiring 26.57 percent of the voting shares of First Western Bancorporation, Moab, Utah, and thereby indirectly acquire First Western Bancorporation, Moab, Utah.

Board of Governors of the Federal Reserve System, July 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-17841 Filed 7-21-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR—462]

Announcement of Cooperative Agreement to the Association of State and Territorial Health Officials

Summary

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to continue educating State and territorial health officials in health effects of hazardous substances in the environment. Approximately $75,000 is available in FY 1994 to fund this cooperative agreement. It is expected that the award will begin on or about September 30, 1994, for a 12-month budget period within a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The proposed cooperative agreement is to address the need to improve information exchange and transfer between State and Federal agencies, and among State agencies; to increase training opportunities to help States improve the capacity to conduct risk assessment and risk communication; to recommend a strategic plan to increase public and State health professionals' awareness of the toxic pollution problems in the Great Lakes States, improve their ability to diagnose, treat and manage illness or injury related to environmental problems, and enhance their ability to communicate health risk information; and to build capacity to respond to community concerns by providing training and guidance in addressing issues of community concern related to hazardous waste sites. Funding is to support a full time position to implement and conduct these activities.

ATSDR will collaborate with the planning, implementation, and evaluation of risk communication training programs, Public Learning Institute, teleconference briefings, consultation service, newsletter column and materials; and development, printing, and distribution of the national directory of risk assessors and environmental scientists.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i), (14) and (15)].

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to ASTHO for this project. No other applications are solicited. The program announcement and application kit have been sent to ASTHO.

ASTHO represents the chief public health official of each State and territory. Through its own membership, the ASTHO Environment Committee, the Association of State and Territorial Health Risk Assessors (ASTHRA), other affiliate organizations, and the Public Health Foundation, ASTHO has developed unique knowledge and understanding of the needs and operations of State health agencies. Association members have already developed an enormous wealth of experience in risk communication and have identified risk communication programs as a priority need for State health agencies.

ASTHRA is an organization functioning under the umbrella of ASTHO and is composed of State health professionals involved in health risk assessment. ASTHRA promotes information exchange between State level scientists and other professionals who are responsible for environmental health risk assessments. States have varying capacity to meet the demand for either developmental or sophisticated risk assessment. Improved information exchange, technology transfer, and increased training opportunities will enhance the capacity of State health agencies to respond to the demand for environmental services, information, and risk assessment. Therefore, a structure to improve the partnership between ASTHO, ASTHRA, and ATSDR is essential.

ASTHO has advised ATSDR that the ASTHRA membership is the target audience to reach in supporting the continued development of ASTHO's health risk assessment component. In 1993 through the cooperative agreement, ASTHO conducted six risk communication workshops. It is anticipated that ASTHRA will continue these activities.

Executive Order 12372 Review

The application is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement No. 462 and contact Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 225 East Paces Ferry Road, NE., Mailstop E–14, Atlanta, GA 30305, telephone (404) 842–6797.

The applicant may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 18, 1994.

Claire V. Broome, M.D.,

Deputy Administrator, Agency for Toxic Substances and Disease Registry

[FR Doc. 94–17855 Filed 7–21–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

[Docket No. 94E–0158]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cattlyst® 50 Type A Medicated Article

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cattlyst® 50 Type A Medicated Article and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Cattlyst® 50 Type A Medicated Article (laidlomycin propionate potassium). Cattlyst® 50 Type A Medicated Article is indicated for improved feed efficiency and increased rate of weight gain. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cattlyst® 50 Type A Medicated Article (U.S. Patent No. 4,431,665) from Syntex (U.S.A), Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated May 19, 1994, advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of Cattlyst® 50 Type A medicated Article represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cattlyst® 50 Type A Medicated Article is 4,253 days. Of this time, 3,762 days occurred during the testing phase of the regulatory review period, while 491 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective:* July 14, 1982. FDA has verified the applicant's claim that the date the investigational new animal drug application (INAD) became effective was July 14, 1982.

2. *The date the application was initially submitted with respect to the human drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act:* October 30, 1992. FDA has verified the applicant's claim that the date the new animal drug application (NADA) for Cattlyst® 50 Type A Medicated Article (NADA 141–025) was initially submitted was October 30, 1992.

3. *The date the application was approved:* March 4, 1994. FDA has verified the applicant's claim that NADA 141–025 was approved on March 4, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 3 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 20, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 25, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42,

1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–17814 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0149]

Miscellaneous Compliance Policy Guides; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of eight compliance policy guides (CPG's) because either they are outdated, their issues are addressed elsewhere, or they no longer reflect current FDA policy. This action is being taken to ensure that FDA's CPG's are accurate and reflect FDA policy and sound scientific principles.

DATES: Effective July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Judith A. Gushee, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1785.

SUPPLEMENTARY INFORMATION: FDA is revoking eight of its CPG's because either they are outdated, their issues are addressed elsewhere, or they no longer reflect current FDA policy. The following eight guides are being revoked:

(1) CPG 7125.02 "Quantity of Contents Declaration on Labels of Liquid Animal Feeds"

CPG 7125.02 was established in 1980 under the Metric Conversion Act of 1975 (15 U.S.C. 205b) to clarify FDA's preference for metric labeling for liquid animal drugs. The Metric Conversion Act of 1975 was amended by the American Technology Preeminence Act of 1991 (ATPA) (Pub. L. 102–245). Section 107 of the ATPA amended the Fair Packaging and Labeling Act (FPLA) (15 U.S.C. 1451 *et seq.*) to require that the most appropriate metric units be used as the primary system for expressing quantity of content. Section 107 of the ATPA was repealed by Pub. L. 102–329, which provided certain technical amendments to the FPLA, including dual (metric and English) labeling and certain exemptions. These amendments provide a more appropriate basis for metric labeling. Therefore, CPG 7125.02 is unnecessary.

(2) CPG 7125.04 "Diethylcarbamazine"

CPG 7125.04 was established to provide monograph criteria for diethylcarbamazine-containing drugs instead of requiring new animal drug application (NADA) approval. Since establishing this CPG, FDA has determined these products are not exempt from the NADA approval process. Therefore, CPG 7125.04 no longer reflects FDA policy.

(3) CPG 7125.07 "Impact of CGMPR Violations on NADA"

The Center for Veterinary Medicine has routinely been involved in reviewing results of inspections and district endorsements involving NADA's and abbreviated new animal drug applications (ANADA's). For those facilities unable to manufacture in compliance with current good manufacturing practices (CGMP's), approval of applications was delayed pending reinspection and satisfactory corrective action. Compliance Program Guidance Manual (CPGM) 7368.001, part V, describes district responsibilities in reporting their findings for preapproval inspections. The current CPGM is adequate to cover this issue of CGMP noncompliance in the preapproval stage. Therefore, CPG 7125.07 is superfluous.

(4) CPG 7125.08 "Hexachlorophene in Pet Shampoos"

Pet shampoos are considered grooming aids if they contain hexachlorophene at not more than 0.1 percent (as a preservative) and are not labeled with therapeutic claims. CPG 7125.21 "Animal Grooming Aids" and 21 CFR 500.46 adequately address the issues. Therefore, CPG 7125.08 is not needed.

(5) CPG 7126.15 "Crotolaria Seeds in Grains and Feeds"

At FDA's urging, the feed industry has become meticulous in inspecting incoming raw ingredients for foreign materials, including crotolaria seeds. Crotolaria, although once a nuisance and a toxin, has not been a compliance problem for years. Therefore, CPG 7126.15 is no longer relevant.

(6) CPG 7126.30 "Diethylstilbestrol Residues in Edible Animal Tissue"

The approval for use of Diethylstilbestrol in animal drugs or feeds was withdrawn in the **Federal Register** of July 6, 1979 (44 FR 39618 at 39619), as confirmed by the Commissioner's decision in the **Federal Register** of September 21, 1979 (44 FR 54852 at 54900). Therefore, CPG 7126.30 is obsolete.

(7) CPG 7126.32 "Current Good Manufacturing Practice (CGMP) Violations in Medicated Feed Mills—Direct Issuance of Regulatory Letters"

Compliance Program Guidance Manual (CPGM) 7371.004 describes current policy concerning warning letters and provides model letters. Therefore, CPG 7126.32 is obsolete because it describes regulatory letters that are no longer issued.

(8) CPG 7126.39 "Ammonium Chloride Used in Ruminant Feeds"

CPG 7126.39 concerned a formerly approved use of ammonium chloride in 21 CFR 558.45 for treating urinary calculi (see the **Federal Register** of March 3, 1986 (51 FR 7382 at 7395)), which has since been withdrawn (see the **Federal Register** of October 26, 1987 (52 FR 39911 at 39912). There are no approved drug claims for use of ammonium chloride in ruminant feed and the agency has not documented any evidence of misuse of the compound in several years. Therefore, CPG 7126.39 is obsolete.

Dated: July 13, 1994.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–17810 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0229]

Grieshaber & Co., Inc.; Premarket Approval of Grieshaber Scleral Buckling Balloon Catheter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Grieshaber & Co., Inc., Kennesaw, GA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of Grieshaber Scleral Buckling Balloon Catheter. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 2, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 22, 1994.

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. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Debra Y. Lewis, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION: On August 27, 1992, Grieshaber & Co., Inc., Kennesaw, GA, 30144, submitted to CDRH an application for premarket approval of the Grieshaber Scleral Buckling Balloon Catheter. The device is a scleral buckling balloon catheter and is indicated for use as a temporary implant to buckle the sclera to facilitate retinal reattachments where multiple or single breaks in the anterior two-thirds of the globe do not subtend a retinal arc of more than one clock hour (6 millimeters). The application includes authorization from Storz®, St. Louis, MO 63122–6694, to incorporate information contained in its approved premarket approval application (PMA) for the Lincoff Balloon (P820009).

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 2, 1994, CDRH approved the application by a letter to the applicant from the Acting 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.

Opportunity for Administrative Review

Section 515(d)(3) of 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 August 22, 1994, 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 Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 8, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–17812 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0051]

Guideline for Establishing a Safe Concentration; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline entitled "Guideline for Establishing a Safe Concentration." This guideline includes information and guidance to regulated industry and the public on food factors. This guideline is being made available as a revision to a document entitled "General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals" which is a compilation of eight guidelines (hereinafter referred to as "the compilation"). The new guideline replaces guideline IV entitled "Guideline for Establishing a Tolerance," which is no longer in effect.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guideline to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the compilation which includes the new guideline entitled "Guideline for Establishing a Safe Concentration" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Margaret A. Miller, Center for Veterinary Medicine (HFV–156), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1692.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 31, 1987 (52 FR 49589) FDA announced the availability of a compilation of seven guidelines entitled "General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals." The compilation was issued in accordance with FDA's requirement under the general safety provisions of sections 409, 512, and 706 of the Federal Food, Drug, and Cosmetic Act (the act) to determine whether each food additive, new animal drug, or color additive proposed for use in food-producing animals is safe for those animals and whether the edible products derived from treated animals are safe. The pertinent regulations implementing the statutory provisions are in 21 CFR part 70, 21 CFR 514.1, and 21 CFR part 570.

Under the act, the sponsor of a compound is required to furnish FDA with the scientific data necessary for demonstrating that residues of the sponsored compound in the edible products of treated animals are safe. The compilation was developed to inform sponsors of the scientific data that FDA believes will provide an acceptable

basis for determining the safety of the compound.

Guidelines state procedures or practices that may be useful to the persons to whom they are directed, but are not legal requirements. Guidelines represent the agency's position on a procedure or a practice at the time of their issuance. A person may follow a guideline or choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, then that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. A guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

FDA is announcing the availability of a new guideline entitled "Guideline for Establishing a Safe Concentration" that includes information and guidance to regulated industry and the public on food factors. This guideline is being made available as a revision to the compilation and replaces guideline IV entitled "Guideline for Establishing a Tolerance," which is no longer in effect.

The new guideline sets out new consumption values that FDA's Center for Veterinary Medicine (CVM) will use in partitioning the Acceptable Daily Intake (ADI) for drug residues among the edible products of food producing animals. The new daily consumption values for total red meats and poultry, across all species, are 300 grams (g) of meat (as muscle tissue), 100 g of liver, 50 g of kidney, 50 g of fat, 100 g of eggs, and 1.5 liters (l) of milk. These values are a more realistic estimate of actual food consumption than the values currently used by CVM.

CVM will continue to regulate eggs and milk as independent commodities, which means that these products are not considered components of the 500 g of edible muscle and organ tissues. The intake estimate of milk will remain 1.5 l. CVM will now assume, however, that an individual consumes an entire portion of meat and edible tissues and an entire portion of milk on a daily basis. Therefore, a part of the ADI will be reserved for milk when evaluating products approved in lactating dairy cows and products seeking approval in both lactating dairy cows and another animals species. The other part of the ADI will be partitioned among the animal tissues as described above. For products approved in both laying hens and other animals, a part of the ADI will be reserved for eggs.

In addition to incorporating the new food factors, the concept of negligible tolerance has been omitted from the new guideline because CVM usually can establish a finite or zero tolerance when assessing the safety of a drug.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in determining whether further revision of the guideline is necessary.

A copy of the compilation which includes the new guideline entitled "Guideline for Establishing a Safe Concentration," is available for public examination in the office above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17813 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

HIV Care Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to States and territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1994 funds have been awarded to States and territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability, and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 103–112.

FOR FURTHER INFORMATION, CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Eric P. Goosby, M.D., Director, Division of HIV Services, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $162,705,300 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control and Prevention for the 24 months ending September 30, 1993, and a per capita income factor. Below is the distribution of funds by State.

State	Amount
Alabama	$1,421,553
Alaska	100,000
Arizona	1,855,383
Arkansas	821,978
California	28,172,762
Colorado	1,794,570
Connecticut	2,246,095
Delaware	515,066
Dist of Colum	2,155,767
Florida	16,361,686
Georgia	4,527,285
Hawaii	545,494
Idaho	130,115
Illinois	5,363,921
Indiana	1,394,908
Iowa	333,799
Kansas	605,134
Kentucky	641,709
Louisiana	2,494,411
Maine	205,421
Maryland	3,625,966
Massachusetts	3,501,905
Michigan	2,874,019
Minnesota	970,420
Mississippi	900,115
Missouri	2,716,091
Montana	100,000
Nebraska	292,135
Nevada	924,894
New Hampshire	160,060
New Jersey	6,650,657
New Mexico	485,763
New York	26,126,095
North Carolina	1,996,053
North Dakota	100,000
Ohio	2,519,172
Oklahoma	1,133,726
Oregon	1,170,946
Pennsylvania	4,421,998
Rhode Island	452,600
South Carolina	2,091,875
South Dakota	100,000
Tennessee	1,675,354
Texas	11,813,825

State	Amount
Utah	511,096
Vermont	100,000
Virginia	2,403,511
Washington	2,262,586
West Virginia	173,904
Wisconsin	1,069,752
Wyoming	100,000
Puerto Rico	7,521,643
Guam	3,379
Virgin Islands	68,703

Eligibility Criteria

In order to receive funding under Title II of the CARE Act, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the Title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with Title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuation of health insurance coverage, ensure that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and that information concerning such criteria will be made available to the public;
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under Title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under Title II; and
- The State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant funds to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.
- Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1994 Title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: July 18, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–17840 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–15–P

HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to eligible metropolitan areas.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1994 funds have been awarded to the 34 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2)

inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 103–112.

FOR FURTHER INFORMATION, CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Eric P. Goosby, M.D., Director, Division of HIV Services, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $319,989,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 34 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control and Prevention (CDC) as of March 31, 1993. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 34 EMAs.

EMA	Total Award
Atlanta, GA	$7,488,801
Baltimore, MD	3,923,438
Bergen-Passaic, NJ	2,019,121
Boston, MA	6,955,035
Chicago, IL	9,625,451
Dallas, TX	6,935,644
Denver, CO	3,375,884
Detroit, MI	2,849,559
Fort Lauderdale, FL	6,814,599
Houston, TX	10,133,592
Jersey City, NJ	4,140,141
Kansas City, MO	2,655,564
Los Angeles, CA	25,441,211
Miami, FL	15,258,563
Nassau-Suffolk, NY	2,886,968
New Haven, CT	2,136,872
New Orleans, LA	3,243,332
New York, NY	100,054,267
Newark, NJ	7,009,180
Oakland, CA	3,929,287
Orange Co., CA	2,627,947
Orlando, FL	2,715,587
Philadelphia, PA	7,374,936
Phoenix, AZ	2,217,471
Ponce, PR	1,176,793
Rivrside-Sn Bern,CA	2,402,010
St Louis, MO	2,248,247
San Diego, CA	5,233,574
San Francisco, CA	39,210,400
San Juan, PR	8,456,057
Seattle, WA	3,233,903
Tmpa-St Ptrsbrg, FL	3,304,312
Washington, D.C.	9,328,712
West Palm Beach, FL	3,582,542

Eligible Grantees

Metropolitan areas which were eligible for grant awards under Title I were those areas for which, as of March 31, 1993, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area. Included were all human immunodeficiency virus (HIV)-infected persons with severe immunosuppression (<200 CD4+ T-lymphocytes/μL or a CD4+ T=lymphocyte percentage of total lymphocytes of <14), pulmonary tuberculosis (TB), recurrent pneumonia, or invasive cervical cancer.

Grants were awarded to the chief elected official (CEO) of the city or urban county in each EMA that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under Title I, the CEO was required to establish or designate an HIV health services planning council to: (1) establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; and grantees receiving categorical grants for early intervention services under Title III of the CARE Act. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under Title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that receive Title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That Title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with Title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the Title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and

• HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the Title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: July 18, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–17839 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 15, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests).

1. The Impact of Ryan White Title III(b) Funding on the Provision of HIV Primary Care—New—This information collection is being conducted in support of an evaluation of the HIV Early Intervention Services Program. A mailed survey will be administered to all 130 organizations funded under this program to assess the changes that have occurred in the nature, extent, and delivery of HIV services. Respondents: Non-profit organizations; Number of Respondents: 121; Number of Responses per Respondent: 1; Average Burden per Response: 4.7 hours; Estimated Annual Burden: 569 hours.

2. Youth Risk Behavior Survey (YRBS)—0920–0258 (Reinstatement)—A survey will be conducted biennially among school students in grades 9–12 to determine priority health risk behaviors related to the major preventable causes of mortality, morbibity and social problems during adolescence and adulthood. Findings will be used to address the need for programs and to focus programs on adolescents at greatest risk for certain health problems. Respondents: Individual or households; Number of Respondents: 12,000; Number of Responses per Respondent: 1; Average Burden per Response: 0.75 hours; Estimated Annual Burden: 9,000 hours.

3. Health Outcomes in a Community Adjacent to a Hazardous Waste Site—Southbend Subdivision, Harris County, Texas—0923–0009 (Reinstatement)—This request is for completion of a one-time symptom and illness prevalence study of residents living near a National Priority List hazardous waste site in the Southbend subdivision, Harrison County, Texas. Additional time is needed to complete the component which will examine reproductive outcomes of former and current women residents of the subdivision. Respondents: Individuals or households, Businesses or other for-profit; Number of Respondents: 335; Number of Responses per Respondent: 1; Average Burden per Response: .70 hour; Estimated Annual Burden: 335 hours. Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Dated: July 18, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–17851 Filed 7–21–94; 8:45 am]

BILLING CODE 4160–17–M

National Institutes of Health

Division of Research Grants; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: July 27, 1994.

Time: 9 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. A. Keith Murray, Scientific Review Admin., 5333 Westbard Ave., room 325, Bethesda, MD 20892, (301) 594–7145.

Purpose/Agenda: To review Small Business Innovation Research Program Applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17936 Filed 7–21–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–93]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave. NW., Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; (These are not toll-free numbers).

Dated: July 15, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/22/94

Suitable/Available Properties

Buildings (by State)

California

16 Comm. Support Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430001
Status: Pryor Amendment
Base closure Number of Units: 16
Comment: 1092–170849 sq. ft., 1–2 stories, incl. stores, restaurants, fire dept., child care center, asbestos pres., envir. clean-up plans pending, subj. to Tidelands Trust, vacated 10/97.

2 Maintenance Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430002
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 609–2900 sq. ft., 1 story, presence of asbestos, envir. clean-up plans pending, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

3 Recreation Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430003
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 304–36959 sq. ft., 1–2 stories, incl. youth center & gym, asbestos pres., needs rehab., envir. clean-up plans pending, may be subject to the Tidelands Trust, to be vacated 10/97.

17 Admin. Support Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430004
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: 474–42737 sq. ft., 1–2 stories, some need rehab., asbestos pres., envir. clean-up plans pending, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

8 Guard Houses
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430005
Status: Pryor Amendment
Base closure Number of Units: 8
Comment: 20–360 sq. ft., 1–2 stories, incl. 4 watch towers, some need rehab., pres. of asbestos, envir. clean-up plans pending may be subject to the Tidelands Trust, to be vacated 10/97.

7 Training Facilities

Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430006
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 1040–47475 sq. ft., 1–3 stories, incl. indoor training pool, pres. of asbestos, envir. clean-up plans pending, may be subject to the Tidelands Trust, to be vacated 10/97.

7 Hangars
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430007
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 65000–118000 sq. ft., 1 story, pres. of asbestos, envir. clean-ups plans pending, historic location, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

66 Storage Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430008
Status: Pryor Amendment
Base closure Number of Units: 66
Comment: 72–117419 sq. ft., 1–3 stories, incl. warehouses, haz. mat. storage bldgs., asbestos, needs rehab., envir. clean-up plans pending, subj. to Tidelands Trust, to vacate 10/97.

3 Temp. Lodging Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430009
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 9360 sq. ft. each, 2 stories, wood/stucco frames, envir. clean-up plans pending, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

1 Medical Facility
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430010
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 13000 sq. ft., 3 stories, concrete structure, pres. of asbestos, envir. clean-up plans pending, historic location, may be subject to the Tidelands Trust, to be vacated 10/97.

1 Air Passenger Terminal
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430011
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 21136 sq. ft., 4 stories, concrete structure, pres. of asbestos, envir. clean-up plans pending, historic location, may be subject to Tidelands Trust, to be vacated 10/97.

4 Dormitories
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430012
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 27000–114000 sq. ft., 1–2 stories, pres. of asbestos, envir. clean-up plans pending, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

16 Maintenance Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430013
Status: Pryor Amendment
Base closure Number of Units: 16
Comment: 96–65702 sq. ft., 1–2 stories, some need rehab., pres. of asbestos, envir. clean-up plans pending, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

9 Miscellaneous Facilities
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Location: Bldgs. 15, 63, 133, 273, 329, 376, 385, 535, 624
Landholding Agency: Navy Base Close
Property Number: 789430014
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 54–16000 sq. ft., 1 story, some need rehab., pres. of asbestos, envir. clean-up plans pending, may be subject to the Tidelands Trust, scheduled to be vacated 10/97.

Pennsylvania

Bldg. 9
Defense Personnel Support Center
Philadelphia Co: Philadelphia PA 19101–
Landholding Agency: COE—BC
Property Number: 329430001
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 863,679 sq. ft., most recent use—warehouse, possible contaminants, scheduled to be vacated 10/94.

Bldg. 13
Defense Personnel Support Center
Philadelphia Co: Philadelphia PA 19101–
Landholding Agency: COE—BC
Property Number: 329430002
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 370,311 sq. ft., most recent use—production plant, possible contaminants, scheduled to be vacated 10/94.

Land (by State)

Maryland

Tipton Army Airfield
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: COE–BC
Property Number: 329430003
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 100+ acres including bldgs., 40103 sq. ft., most recent use-buffer for airfield/bldgs inc. hangar & admin. space, land contains unexploded ordnances, scheduled to be vacated 9/97.

Unsuitable Properties

Buildings (by State)

California

Bldg. 75A
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430015
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 111
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430016
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 135
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430017
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 151
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789430018
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 334
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Propery Number: 789430019
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 335
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Propery Number: 789430020
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 336
Naval Air Station—Alameda County
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Propery Number: 789430021
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Tennessee

6 Ammun./Communication Facs.
Naval Air Station—Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy Base Close
Propery Number: 789430022
Status: Pryor Amendment
Base closure Number of Units: 6
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

23 Personnel/Support Facs.
Naval Air Station—Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy Base Close
Propery Number: 789430023
Status: Pryor Amendment
Base closure Number of Units: 23

Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

5 Utility Support Facilities
Naval Air Station—Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy Base Close
Propery Number: 789430024
Status: Pryor Amendment
Base closure Number of Units: 5
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

19 Maintenance Facilities
Naval Air Station—Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy Base Close
Propery Number: 789430025
Status: Pryor Amendment
Base closure Number of Units: 19
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

17 Fuel Disp/Training Facs.
Naval Air Station—Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy Base Close
Propery Number: 789430026
Status: Pryor Amendment
Base closure Number of Units: 17
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

[FR Doc. 94–17739 Filed 7–21–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–054–94–4380–04; 4–00154]

Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure.

SUMMARY: The Las Vegas Stateline Resource Area within the Las Vegas District will issue temporary closures of certain public lands for the protection of persons, property, resources and public lands for the purpose of BLM permitted off-highway vehicle races.

The date, time, and legal location of the closure will be announced five working days prior to the event via local media. A map of the affected lands will be available for inspection at the Las Vegas District office. The following are exceptions to the closure:

—Race entrants
—Authorized pit crews, course monitors, and race officials
—Spectators within designated spectator areas

Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Authority for temporary closures is contained in Title 43 CFR, subpart 8364.1.

Gary Ryan,

Assistant District Manager.

[FR Doc. 94–17817 Filed 7–21–94; 8:45 am]
BILLING CODE 4310–HC–M

[UT–068–04–4210–05–241A]

Notice of Intent for Plan Amendment; Grand Resource Area Resource Management Plan, Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI)—Proposal to Amend the Grand Resource Area Resource Management Plan, Grand County, Utah.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the Grand Resource Management Plan (RMP). Seven (7) parcels of public land would be managed for disposal by Public Land Sale under the authority of Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713), Land Exchange under the authority of Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (90 Stat. 2756; 43 U.S.C. 1716), or Recreation and Public Purposes Patent under the authority of Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Act of January 25, 1988 (102 Stat. 3815; 43 U.S.C. 869–2).

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Palmer, Grand Resource Area Manager, 885 South Sand Flats Road, Moab, Utah 84532, telephone (801) 259–8193. Existing planning documents and information are available at the above address or at the Moab District Office, 82 East Dogwood Drive, Moab, Utah 84532, telephone (801) 259–6111. Comments on the proposed plan amendment should be sent to Brad Palmer, Grand Resource Area Manager, Bureau of Land Management, 885 South Sand Flats Road, Moab, Utah 84532, telephone (801) 259–8193.

SUPPLEMENTARY INFORMATION: The proposed amendment identifies certain lands as suitable for disposal by Public Land Sale, Land Exchange, or patent under the Recreation and Public Purposes Act. Lands have been identified that are needed for community expansion, sanitary landfill, or tailings disposal; for disposal of lands under short-term authorizations; and to resolve long-standing trespass. The lands being studied are described as follows:

Salt Lake Meridian, Utah

Parcel 1. Fish Ford

T. 21 S., R. 24 E., (30.00 acres)
Section 27, E½W½SE¼;
Section 34, NE¼NE¼NE¼;
Section 35, NW¼NW¼.

Parcel 2. Klondike Area

T. 23 S., R. 19 E., (2560.00 acres)
Section 14, All;
Section 15, All;
Section 22, All;
Section 23, All.

Parcel 3. Dewey

T. 23 S., R. 24 E., (29.00 acres)
Section 8, lands south of State Route 128 in the N½SW¼.

Parcel 4. Stateline (Dolores River)

T. 23 S., R. 26 E., (5.00 acres)
Section 32, N½NE¼SW¼SE¼.

Parcel 5. Professor Valley Ranch

T. 24 S., R. 23 E., (13.07 acres)
Section 21, within SE¼SE¼ (3.25 acres);
Section 27, within NE¼NW¼NW¼ (2.39 acres), NE¼NW¼SW¼NE¼, N½NE¼SW¼NE¼ (7.43 acres).

Parcel 6. North Moab

T. 25 S., R. 21 E., (5.625 acres)
Section 26, SW¼SE¼SW¼NW¼SE¼ (0.625 acres), NW¼SW¼SE¼SE¼ (2.50 acres), SE¼SW¼SE¼SE¼ (2.50 acres).

Parcel 7. Castleton

T. 25 S., R. 23 E., (5.00 acres)
Section 25, N½SW¼NW¼NE¼.

The existing plan does not identify these lands for disposal. However, expressions of interest have been received from Grand County and members of the public that appear to have merit and the disposal of which may be in the public interest. Therefore, they will be considered through the plan amendment process.

General issues to be addressed in the amendment include impacts of the proposed disposals to livestock forage, wildlife habitat, cultural resources, visual resources, and public safety. Site-specific environmental assessments will be prepared at such time that a specific disposal is being considered.

Dated: June 30, 1994.

G. William Lamb,

Acting State Director.

[FR Doc. 94–17834 Filed 7–21–94; 8:45 am]
BILLING CODE 4310–DQ–P

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council

AGENCY: Department of the Interior, U.S. Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 10 a.m. to 3:30 p.m. on Monday, August 1, 1994.

PLACE: The meeting will be held at the Red Lion Hotel—Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon 97217.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The primary purpose of the meeting is to develop the spawner deficit accounting issue to meet the Pacific Fishery Management Council's needs for a potential amendment to the Salmon Framework Plan.

Dated: July 14, 1994.

John H. Doebel,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–17885 Filed 7–21–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Availability of a Plan of Operations and Environmental Assessment Proposed Drilling and Production Operations; Bright and Company, Padre Island National Seashore Kleberg County, TX

The National Park Service has received from Bright and Company, a Plan of Operations for exploratory drilling and production of the Dunn-McCampbell No. 1 Gas Well at Padre Island National Seashore, Kleberg County, Texas.

Pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B (36 CFR 9B); Executive Order 11988, Floodplain Management; and Executive Order 11990, Protection of Wetlands, the Plan of Operations and Environmental Assessment are available for public review and comment for a period of 60 days from the publication date of this notice. Copies of these documents are available from the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas, telephone 512–937–2621; or Ms. Victoria Barela, Division of Environmental Coordination, National Park Service, Southwest Regional Office, 1220 S. St. Francis Drive, Santa Fe, New Mexico 87504–0728, telephone 505–988–6857.

Bright and Company has sited their proposed operations to avoid impacts to wetlands, as much as possible, and has developed mitigation measures to minimize unavoidable impacts. Bright and Company proposes to compensate for direct lost of 0.4 acres of non-tidal wetlands by restoring 0.8 acres of an abandoned oil and gas access road to its original wind-tidal flat condition. The wetlands compensation project is also located at Padre Island National Seashore.

Dated: July 11, 1994.

Mary R. Bradford,

Acting Regional Director, Southwest Region.

[FR Doc. 94–17818 Filed 7–21–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–6 (SUB-NO. 361X),
ABANDONMENT OF A LINE OF RAILROAD BETWEEN BN MP 193.3 NEAR LADD AND BN MP 188.27 AT HOWE IN BUREAU COUNTY, ILLINOIS. EA available 7/15/94.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17891 Filed 7–21–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 25) 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 regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. 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 Department of Justice 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. Robert B. Briggs , Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Return A—Monthly Return of Offenses Known to the Police. Supplement to Return A—Monthly Offenses Known to the Police.

(2) Return A, Supplement to Return A. Federal Bureau of Investigation.

(3) Monthly.

(4) State or Local Governments. These two forms (Return A and Supplement to Return A are needed to collect information regarding crimes and crimes cleared throughout the United States. Data are published in comprehensive annual "Crime in the United States" and semiannual "Uniform Crime Reports."

(5) 2,155 respondents at .5 hours per response per month, total annual responses 28,860 (12 months).

(6) 12,930 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 18, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc 94–17850 Filed 7–21–94; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Changes in Status of Extended Benefit (EB) Periods for the States of Washington and Maine

This notice announces changes in benefit period eligibility under the Extended Benefit (EB) Program for the States of Washington and Maine.

Summary

The following changes have occurred in the States of Washington and Maine since the publication of the last notice regarding States' EB status:

- May 29, 1994 Washington State triggered "on" to EB based on its 13-week Insured Unemployment Rate (IUR) exceeding 5.0 percent and surpassing 120 percent of the average of such rates for the corresponding 13-week periods in each of the preceding two calendar years.
- June 25, 1994 The EB trigger mechanisms for Maine have been below the thresholds necessary to be triggered "on" to EB since the week beginning May 1, 1994. However, Section 203(b)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 specifies that no EB period shall last for less than 13 consecutive weeks, regardless of whether or not the necessary thresholds are met. That 13-week period ended for Maine on June 25, 1995.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for extended benefits (20 CFR 615.13(c)(1)). In the case of a Stat ending an EB period, the State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits informing them of the ending of the EB period and its effect on the individual's right to Extended Benefits (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to EB benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment Service office of unemployment compensation claims office in their locality.

Signed at Washington, DC, on July 18, 1994.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 94–17887 Filed 7–21–94; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency have an interest in the rates determined as prevailing is encouraged to submit wage rate and

fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. ND94–0055 dated April 29, 1994.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision ND940027. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Oklahoma
OK940030 (Jul. 22, 1994)
OK940031 (Jul. 22, 1994)
OK940032 (Jul. 22, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY940002 (Feb. 11, 1994)
NY940003 (Feb. 11, 1994)
NY940007 (Feb. 11, 1994)
NY940008 (Feb. 11, 1994)
NY940012 (Feb. 11, 1994)
NY940013 (Feb. 11, 1994)
NY940020 (Feb. 11, 1994)
NY940021 (Feb. 11, 1994)
NY940022 (Feb. 11, 1994)
NY940026 (Feb. 11, 1994)

Volume II

Pennsylvania
PA940014 (Feb. 11, 1994)
PA940040 (Feb. 11, 1994)

Volume III

None

Volume IV

Ohio
OH940001 (Feb. 11, 1994)
OH940002 (Feb. 11, 1994)
OH940003 (Feb. 11, 1994)
OH940012 (Feb. 11, 1994)
OH940027 (Apr. 01, 1994)
OH940028 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)
OH940034 (Feb. 11, 1994)
OH940035 (Feb. 11, 1994)
Wisconsin
WI940001 (Feb. 11, 1994)

Volume V

Iowa
IA940032 (Feb. 11, 1994)
Kansas
KS940009 (Feb. 11, 1994)
KS940021 (Feb. 11, 1994)
KS940022 (Feb. 11, 1994)
KS940023 (Feb. 11, 1994)
KS940026 (Feb. 11, 1994)
KS940062 (Mar. 25, 1994)
KS940064 (Feb. 11, 1994)
Oklahoma
OK940001 (Feb. 11, 1994)
OK940023 (Feb. 11, 1994)
Texas
TX940010 (Feb. 11, 1994)
TX940017 (Feb. 11, 1994)

Volume VI

Arizona
AZ940001 (Feb. 11, 1994)
AZ940002 (Feb. 11, 1994)
AZ940004 (Feb. 11, 1994)
AZ940005 (Feb. 11, 1994)
AZ940006 (Feb. 11, 1994)
AZ940007 (Feb. 11, 1994)
AZ940010 (Feb. 11, 1994)
AZ940011 (Feb. 11, 1994)
AZ940012 (Feb. 11, 1994)
AZ940013 (Feb. 11, 1994)
AZ940014 (Feb. 18, 1994)
AZ940015 (Feb. 18, 1994)
AZ940016 (Feb. 18, 1994)
AZ940017 (Feb. 11, 1994)
California
CA940004 (Feb. 11, 1994)
CA940027 (Feb. 18, 1994)
Colorado
CO940002 (Feb. 11, 1994)
CO940018 (Feb. 11, 1994)
CO940021 (Feb. 11, 1994)
Idaho
ID940001 (Feb. 11, 1994)
ID940003 (Feb. 11, 1994)
Montana
MT940001 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)
Washington
WA940001 (Feb. 11, 1995)
WA940002 (Feb. 11, 1994)
WA940003 (Feb. 11, 1994)
WA940007 (Feb. 11, 1994)
WA940008 (Feb. 11, 1994)
WA940011 (Feb. 11, 1994)
WA940013 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of July 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–17713 Filed 7–21–94; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–93]

Wyle Laboratories; Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the application of Wyle Laboratories for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution

Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Wyle Laboratories, which made application pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this application is: Wyle Laboratories, 7800 Governors Drive, P.O. Box 077777, Huntsville, Alabama 35807.

Background

Wyle Laboratories (WL), a publicly-held corporation, was founded in 1949 in El Segundo, California, as an independent test laboratory to support the aerospace industry. In 1959, Wyle expanded to a new location in Norco, California and created the Huntsville facility in 1962 to support the National Aeronautics and Space Administration (NASA) and the establishment of the George C. Marshall Space Flight Center (MSFC) in Huntsville, Alabama, with testing, engineering, and research capabilities. Of the three major operations at the Huntsville facility, the one of interest to the NRTL Accreditation program is the Test Operations Division, which includes the Product Safety Department. The Product Safety Testing and Certification Department of the Test Operations Division is responsible for the testing, certification, and factory follow-up inspections of the products.

Wyle Laboratories applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in April 1992. An on-site evaluation was conducted from November 2–6, 1992, and the results discussed with the applicant who responded [Ex. 3A(2)] with appropriate actions and clarifications to recommendations made as a result of the survey [Ex. 3A(1)]. These actions were accomplished prior to the preparation of the final report. The final on-site review report (Ex. 3A) consisting of the on-site evaluation of WL's testing facilities and administrative and technical practices, and the corrective actions taken by WL in response to these evaluations, and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of WL's application together with a positive preliminary finding was published in the **Federal Register** on January 6, 1994 (59 FR 783–785). There were eight responses, all of a positive nature, to this **Federal Register** notice of the WL application and preliminary finding (Docket No. NRTL–1–93).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that WL does have testing equipment and facilities appropriate for the areas of recognition it seeks. The laboratory has available all the general test equipment required to perform the testing required by the particular standards for which accreditation is sought. If any unique pieces of additional equipment are necessary, WL will obtain them as required.

WL's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks. Environmental conditions in the laboratory are adequately controlled for the type of testing performed in the laboratory.

OSHA has determined that Wyle Laboratories has appropriate written test procedures, and calibration and quality control programs to enable it to adequately perform appropriate testing.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system. Wyle Laboratories meets these criteria.

WL's application as well as the on-site review report indicate that WL does maintain effective procedures for producing creditable findings and reports that are objective. The laboratory maintains a system for identifying product samples submitted for testing to ensure that there is no confusion regarding the identity of the samples or the results of the measurement.

Wyle Laboratories' Standard Operating Procedure documents the investigation and testing for product safety investigations. These standard operating procedures specify the records that are to be maintained for the investigation, list the general steps of the investigation in chronological order, specify the personnel responsible for conducting each stage of the investigation, and require the investigators to verify that the latest edition of the standards are used.

Wyle Laboratories has a written Appeals Procedure which provides an unbiased review of questions or protests regarding the results or process of Wyle Laboratories' Product Safety Certification Program by a client or any interested third party.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. WL has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

Wyle Laboratories performs inspections of factory production runs to assure conformance with the appropriate product safety standard and WL's Certification Report. The adequacy of the manufacturer's Quality Control Program will be reviewed on the initial inspection.

WL's Follow-Up Services Agreement requires that it will have access, unannounced and unrestricted, to all facilities where products may be fabricated, processed, or stored. Such inspections will be conducted at approximately three-month intervals from the date of the initial inspection, (four times per year), depending upon production schedules. The inspection is to assure that the product on the production line is identical to the product tested and approved for labeling.

The procedure states that unresolved discrepancies found during the follow-up inspections could result in forfeiture of the right to apply the label, removal of the already affixed labels, and the recall of products sold with the label. WL will retain the right to notify vendors, authorities, potential users, and others of the improper, or unauthorized, use of its mark.

WL will conduct field inspections to monitor and assure the proper use of its certification mark after the products are delivered.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in it application that it is in complete compliance with this requirement.

OSHA believes, based upon an examination of the application with particular reference to the statements in Exhibit 2A(1), Section 3, pages 12 and 13, and the response (Ex. 4) to questions raised by the Office of the Solicitor, that Wyle Laboratories is independent within the meaning of section 1910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI UL test standards for which WL has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that Wyle Laboratories has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, Wyle Laboratories is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

WL has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI/UL 153—Portable Electric Lamps
ANSI/UL 187—X-Ray Equipment
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 484—Room Air Conditioners
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 508—Industrial Control Equipment
UL 544—Electric Medical and Dental Equipment
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1236—Electric Battery Chargers
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1411—Transformers and Motor Transformer for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1459—Telephone Equipment
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1585—Class 2 and Class 3 Transformers
ANSI/UL 1778—Uninterruptible Power Supply
UL 1863—Communication Circuit Accessories
ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

Wyle Laboratories must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to WL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If WL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

WL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, WL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

WL shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

WL will continue to meet the requirements for recognition in all areas where it has been recognized;

WL will not test or certify any equipment or materials for a client

which installs its equipment in an electronic enclosure cabinet manufactured or distributed by Wyle.

WL will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on July 22, 1994 and will be valid for a period of five years from that date, until July 24, 1999, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington DC this 15th day of July, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–17888 Filed 7–21–94; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Perry Nuclear Power Plan, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the operating license to reflect the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. The two companies are currently wholly-owned subsidiaries of the Centerior Energy Corporation. As described in the application, the company formed from the merger is intended to be renamed. The name of the combined operating company has yet to be determined (hereinafter referred to as "NEWCO") and the licensees indicate it will be provided by supplemental letter. The proposed amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with NEWCO as a licensee, (2) designate NEWCO as owner of Perry Nuclear Power Plant, Unit 1, and (3) make other associated changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain a licensee.

The proposed action is in accordance with the licensee's application for amendment dated June 2, 1994.

The Need for the Proposed Action

The proposed action in the form of an amendment application is needed to reflect the result of the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. This action is also intended to maximize the operating efficiencies of the two affiliated companies.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or to the operating, maintenance, engineering or other nuclear-related personnel as a result of the proposed merger and license amendment. The proposed merger would not change the technical qualifications and responsibilities of personnel. All of the Cleveland Electric Illuminating Company personnel in the Perry organization would be transferred to NEWCO upon completion of the merger. This organization would continue to report to Centerior Service Company. After the merger, NEWCO and Centerior Service Company would be required to continue to operate, manage, and maintain the Perry Nuclear Power Plant, Unit 1, in accordance with the conditions and requirements of the NRC. No changes resulting from the merger are expected with regard to the following: lines of authority and responsibility, essential nuclear support functions provided to Perry, effectiveness of the organization, priorities and ongoing plant improvement projects, technical qualifications, and corporate financial resources presently available in support of Perry operations.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect the nonradiological plant effluents and has not other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Perry Nuclear Power Plant, Units 1 and 2, documented in NUREG–0884.

Agencies and Persons Consulted

The NRC staff consulted with the Ohio State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 2, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 15th day of July 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Acting Director, Project Directorate III–3, Division of Reactor Project—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17842 Filed 7–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–520, STN 50–529, and STN 50–530]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration, Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–41, NPR–51, and NPF–74 issued to Arizona Public Service Company (the licensee) for operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 located in Maricopa County, Arizona.

The proposed amendment would implement recommended changes from Generic Letter (GL) 93–05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." Specifically, the licensee proposed to change their Technical Specifications corresponding to the following GL 93–05 line numbers: 4.1.2, 5.8, 5.14, 6.1, 7.5, 8.1, 9.1, 12, and 14.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated based on the safety analysis, because the proposed changes to the TS do not affect the assumptions, design parameters, or results of any UFSAR accident analysis. The proposed amendment does not add or modify any existing equipment. The changes to the surveillance requirements will result in an overall improvement in plant safety by reducing the frequency of plant trips and subsequent challenges to the safety systems, decreasing equipment degradation due to excessive testing, reducing radiation exposure to plant personnel (which is not justified by the safety significance of the surveillance), and eliminating an unnecessary burden on plant personnel (time required for testing is not justified by the safety significance of the testing). Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously analyzed.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed since the proposed TS changes do not involve modifications to any of the existing equipment or affect the operation or design basis of the equipment. The proposed changes increase the surveillance intervals for a small fraction of the SR [surveillance requirement], while ensuring that overall plant safety is improved. Therefore, the proposed TS changes would not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety presently provided is not reduced by the proposed changes in surveillance intervals in this TS amendment. The operability requirements of the affected systems, structures, and components are not changed by this TS amendment. Although the proposed changes increase the surveillance intervals for the affected TS, the reliability and operability of systems, components, and structures continues to be ensured by periodic testing. Since equipment reliability and operability will be maintained, the proposed TS changes will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 4, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 18th day of July 1994.

For the Nuclear Regulatory Commission.

Linh N. Tran,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 94–17843 Filed 7–21–94; 8:45 am]

BILLING CODE 7590–01–M

[IA 94–015]

John W. Boomer, Address Deleted; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

John W. Boomer has been a nuclear medicine technologist since 1972. On February 11, 1993, Mr. Boomer, as the President of Chesapeake Imaging Center Inc. (CIC or Licensee) applied for an NRC license. On March 23, 1993 Materials License No. 47–25238–01 was issued to CIC by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The license authorized the possession and use of radiopharmaceuticals for nuclear medicine activities in accordance with the conditions specified therein. The license was terminated this date.

II

On July 30, 1993, the NRC conducted an initial inspection of CIC at its facility located in Chesapeake, West Virginia. As a result of the inspection, multiple violations of NRC requirements were identified. One specific violation identified involved the failure to

perform weekly surveys for removable contamination in the nuclear medicine department between March 24 and July 30, 1993. As a result of this inspection, a Notice of Violation is being issued contemporaneously with this Order.

Between August 3 and September 30, 1993, an investigation was conducted by the NRC Office of Investigations (OI) to determine if certain violations identified during the July 30, 1993, inspection were the result of deliberate misconduct. Based on investigative findings, the NRC staff concludes that Mr. Boomer deliberately caused CIC to violate the requirement to perform the weekly contamination surveys, after being advised by the CIC facility Manager and CIC technical consultant that such surveys were required. Mr. Boomer was aware of the NRC requirement to perform weekly contamination surveys, yet deliberately failed to meet the requirement in violation of 10 CFR 35.70(e) and 10 CFR 30.10.

A transcribed telephone enforcement conference between the NRC staff and Mr. Boomer was held on March 8, 1994. Mr. Boomer indicated during the enforcement conference that he had significant difficulties in obtaining the funds from investors and did not recognize the severity of the noncompliance but rather focused on the needs of patients traveling miles to obtain the studies. Mr. Boomer also stated during the enforcement conference that he did accept responsibility for not obtaining the equipment in a more timely fashion and for not notifying NRC and indicated that he would exercise better judgment in the future. From the discussions at the enforcement conference, the staff believes an order to remove Mr. Boomer from involvement in NRC-licensed activities is warranted based on (1) The deliberate noncompliance with the NRC's weekly survey requirement, (2) the fundamental lack of assurance that he will in the future comply with Commission requirements, (3) his position as President, (4) his approximate 20 years experience in NRC-licensed activities, and (5) his decision to continue operations although he knew he was not in compliance with the weekly survey requirement.

III

Based on the above, Mr. Boomer engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 35.70(e). The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to perform weekly contamination surveys. Compliance with the NRC requirement to perform weekly contamination surveys is necessary to protect members of the public as well as Licensee employees from unnecessary radiation exposure that could result from undetected radioactive contamination. Performance of weekly contamination surveys is an important safety requirement intended to prevent radioactive contamination of patients, employees and other members of the public. Mr. Boomer's deliberate actions in causing the Licensee to violate these requirements have raised serious doubts as to whether he can be relied on to be involved in NRC-licensed activities.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Boomer were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boomer be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. During this period Mr. Boomer also shall be required to provide a copy of this Order to any prospective employer who engages in NRC-licensed activities prior to the time that Mr. Boomer accepts employment with such prospective employer. The purpose of this notice is so that any prospective employer is aware of Mr. Boomer's prohibition from engaging in NRC-licensed activities. Additionally, Mr. Boomer is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Boomer's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Mr. John W. Boomer is prohibited for three years from the date of this Order from any involvement in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years from the date of this Order, Mr. John W. Boomer shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in 1 above) prior to his acceptance of employment with such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Mr. Boomer's prohibition from engaging in NRC-licensed activities.

3. The first time Mr. Boomer is employed in NRC-licensed activities following the three year prohibition, he shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323, at least five days prior to the performance of licensed activities or his being employed to perform NRC-licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed.

4. If Mr. Boomer is currently involved in NRC-licensed activities at an employer or entity, Mr. Boomer shall, in accordance with Paragraph 1 above, immediately cease such activities and provide notice within 20 days of the date of this Order to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 of the name, address and telephone number of the employer or entity where the licensed activities are being conducted. Further, Mr. Boomer shall provide a copy of this Order to his employer if his employer is engaged in NRC-licensed activities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon a showing by Mr. Boomer of good cause.

V

In accordance with 10 CFR 2.202, Mr. Boomer must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge

made in this Order and shall set forth the matters of fact and law on which Mr. Boomer or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street NW., suite 2900, Atlanta, Georgia 30323, and to Mr. Boomer if the answer or hearing request is by a person other than Mr. Boomer. If a person other than Mr. Boomer requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boomer or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Boomer, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further Order or processing. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 14th day of July 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 94–17844 Filed 7–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–366]

Georgia Power Co., et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPR–5, issued to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Unit 2, located in Appling County, Georgia.

The proposed amendment would revise Technical Specification (TS) 3.3.6.6 for Hatch Unit 2 to permit the traversing incore probe (TIP) system to be considered operable with less than four operable TIP machines. The TIP system is used to periodically determine the power distribution in the core, for the calibration of the local power range monitor (LPRM) detectors, and for monitoring core thermal limits: the average planar linear heat generation rate (APLHGR), the linear heat generation rate (LHGR), and the minimum critical power ratio (MCPR).

The proposed amendment will also allow the utilization of substitute TIP data for the inaccessible locations from either symmetric TIP locations or from normalized TIP data as calculated by the online core monitoring system.

In the July 19, 1994, submittal, the licensee stated that, on July 11, 1994, with Hatch Unit 2 operating at 100% rated thermal power, Plant Hatch shift personnel were performing the procedure for the TIP normalization required to be performed every 31 effective full power days. Nearing completion of the procedure, personnel were unable to place the "D" TIP into channel 9. It had apparently stuck in channel 8, indicating a problem with the indexing mechanism. The indexing mechanism is located inside the primary containment (drywell), access to which is not possible at the present power level. Based on the last successfully performed LPRM calibration, the next one is to be completed no later than August 9, 1994. If the surveillance is not performed by that time, it will be necessary to declare the APRMs inoperable and, thus, enter an immediate reactor shutdown in accordance with TS 3.3.1.b, Action 3.

The problem with the "D" TIP could not have been foreseen, although Plant Hatch has had problems with the indexing mechanism in the past. However, each problem is unique and has a different root cause. Subsequent to the discovery of the problem, efforts to return the "D" TIP to operable status were initiated. These efforts were led by the licensee's engineering staff with vendor representatives on-site as well. The licensee has performed several tests which included verification of proper voltage to the indexer motor, verification of proper motor winding resistance as well as over-voltage tests on the indexing mechanism, and also conducted a reverse motor test in an attempt to free the indexer; however, this attempt was unsuccessful. All the licensee's efforts to repair the TIP, without drywell access, were exhausted on Friday, July 15, 1994.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The change does not involve a significant hazards consideration for the following reasons:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TIP system is not used to prevent, or mitigate the consequences of, any previously analyzed accident or transient, nor are any assumptions made in any accident analysis relative to the operation of the TIP system. No other safety related system is affected by this change.

The use of substitute values from symmetric TIP locations or from calculations performed by the on-line computer core monitoring system does not affect the consequences of plant transients previously evaluated in the FSAR [Final Safety Analysis Report], because the total core TIP reading (nodal power) uncertainty is less than 8.7%. Thus, the MCPR safety limit is not affected.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the installation of any new equipment, or the modification of any equipment designed to prevent or mitigate the consequences of accidents or transients. Therefore, the change has no effect on any accident initiator, and no new or different type of accidents are postulated to occur.

(3) The proposed amendment does not result in a significant reduction in the margin of safety.

The total core TIP reading uncertainties will remain with the assumptions of the licensing basis, thus, the margin of safety to the MCPR safety limits is not reduced. The ability of the computer to accurately represent nodal powers in the reactor core is not compromised. The ability of the computer to accurately predict the LHGR, APLHGR, MCPR, and its ability to provide for LPRM calibration, is not compromised. Therefore, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a

significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Earnest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 19, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 20th day of July 1994.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17984 Filed 7–21–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34391; File No. S7–8–90]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of an Amendment to the National market System Plan of OPRA Relating to Exemptions form OPRA's Indirect Access Fee for Certain Subscribers

July 15, 1994.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 27, 1994, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"), exempting from OPRA's Indirect Access Fee those subscribers who receive a data feed transmission of options market information from an OPRA vendor on a single stand-alone computer for the sole purpose of providing a single-screen display of options information for the subscriber's own internal use. OPRA has designated this proposal as concerned solely with an existing fee, permitting it to become effective upon filing, pursuant to Rule 11Aa3–2(c)(3)(ii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the proposed amendment is to respond to recent and ongoing changes in computer and communications technology that have resulted in an ever greater number of OPRA subscribers choosing to receive options information in the form of a bulk data feed transmission from a vendor, rather than as a vendor-controlled interrogation or display service. At the time the Subscriber Indirect Access Fee was first adopted, only a relatively few large subscribers received a data feed transmission, usually to serve multiple terminals in a network. The Subscribers Indirect Access Fee was intended to allocate to these subscribers OPRA's higher administrative costs associated with providing access to subscribers whose terminal population is not under vendor control. Recent changes in computer and communications technology have now made it cost effective for an increasing number of smaller OPRA subscribers to access options market information by means of vendor-provided, data-feed transmissions received on a single computer terminal. Since such single-device data-feed subscribers do not subject OPRA to the higher costs associated with multiple device counts and entitlements, OPRA has determined that it would more fairly allocated its costs through the fees charged to various categories of users of options market information to exempt such single-device data feed subscribers from the Subscriber Indirect Access Fee. Such subscribers will continue to be subject to OPRA's basic Subscriber Fee, and the Indirect Access Fee will continue to apply to multiple terminal users of data feed transmissions.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission 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 extension that are filed with Commission, and all written communications relating to the proposed extension between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to

delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17862 Filed 7–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34389; File No. SR–NSCC–94–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Modifying Clearing Fund Requirements

July 15, 1994.

On April 4, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–94–06) under Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the Federal Register on May 25, 1994, to solicit comments from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change modifies NSCC's clearing fund requirements for those NSCC members for which NSCC sponsors an account at The Depository Trust Company ("DTC"). The modified requirements are designed to more accurately reflect NSCC's risks associated with such sponsoring. The modified requirements also will be more consistent with the way in which NSCC and DTC address similar risks associated with dual NSCC/DTC members.

Currently under certain situations, NSCC applies a factor in calculating its clearing fund requirements for members' non-continuous net settlement ("non-CNS") activity (*e.g.*, envelope settlement system activity").[3] The DTC settlement activity of members which NSCC sponsors into DTC ("sponsored members") is included in the non-CNS calculation. The factor is applicable when a member's average daily envelope settlement system debits exceed the member's excess net capital. For the reasons set forth below, NSCC desires to eliminate application of the factor in the clearing fund calculation related to sponsored members' DTC settlement activity. In lieu thereof, NSCC has determined to add an additional advisory surveillance criteria to its guidelines for placing a member on surveillance status in order to cover circumstances where a sponsored member's average daily envelope settlement system debits plus its average daily DTC settlement debits exceed the sponsored member's excess net capital.[4]

In File No. SR–NSCC–82–10, NSCC amended its clearing fund formula to permit the collection of additional clearing fund deposits from members using NSCC's envelope settlement system.[5] Calculation of the additional clearing fund deposits involved use of a factor. The primary purpose of the additional clearing fund deposits and the use of a factor was to better protect NSCC against the risks presented by the envelope settlement systems (*i.e.*, that securities delivered through the envelope settlement systems would not be available for return to the deliverer in the event the receiver were to become insolvent and be unable to pay for the delivery). However, NSCC did not limit the application of the factor to only the calculation of clearing fund requirements for physical envelope deliveries but also applied it in the calculation of clearing fund requirements associated with the DTC settlement activity of sponsored members.

NSCC believes that its current clearing fund formula, as applied to sponsored members, can result in excessive clearing fund requirements. NSCC believes that the risk associated with sponsored members' DTC settlement activities will be adequately addressed without the application of a factor. The proposed rule change, while eliminating the use of a factor in determining a sponsored member's clearing fund requirement with respect to DTC settlement activity, gives NSCC the ability to place a sponsored member on advisory surveillance status with an increased clearing fund requirement under the circumstances where previously the factor would have been applied. Furthermore, NSCC will continue to collect from each sponsored member a clearing fund deposit based not only on the member's NSCC settlement activities but also based on its DTC settlement activities. The portion of NSCC's clearing fund deposit based on DTC settlement activities generally will be the same amount the sponsored member would be required to deposit with DTC for that DTC settlement activity if the sponsored member had a regular account at DTC.

II. Discussion

For the reasons discussed below, the Commission believes the proposal is consistent with the Act and particularly Section 17A(b)(3)(F) of the Act.[6] Section 17A(b)(3)(F) requires that the rules of clearing agencies be designed to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

The Commission agrees with NSCC that the elimination of the factor in determining a sponsored member's clearing fund requirement with respect to DTC settlement activity will more appropriately reflect the relevant risks and that it will be consistent with the way in which DTC addresses settlement risks for its members. At the same time, the Commission believes that the modified NSCC clearing fund formula provides for the collection of deposits adequate to protect NSCC from the risks associated with the DTC settlement activities of sponsored members. Accordingly, the modified clearing fund formula should result in a more equal distribution of the financial burdens placed on NSCC sponsored members while allowing NSCC to fulfill its statutory safekeeping obligation.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–NSCC–94–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17863 Filed 7–21–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 34084 (May 18, 1994), 59 FR 27092.

[3] The factor is a number, calculated and adjusted in order to provide a minimum of one and a maximum of three, by which the member's non-CNS clearing fund requirement is multiplied in order to increase the requirement.

[4] Advisory surveillance status permits NSCC, among other things, to increase a member's clearing fund requirement 2.5% (or in the discretion of NSCC up to 5%) of the member's average daily non-CNS and non-mutual fund services debits plus 2.5% of the member's average daily non-CNS and non-mutual fund services credits.

[5] Securities Exchange Act Release No. 18852 (June 18, 1982), 47 FR 29426 [File No. SR–NSCC–82–10] (order approving proposed rule change).

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[7] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20409; File No. 812–8496]

Financial Horizons Life Insurance Company, et al.

July 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Financial Horizons Life Insurance Company ("Financial Horizons"), Financial Horizons VA Separate Account-3 (the "Account") and Nationwide Financial Services, Inc. ("Nationwide").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expense risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on July 23, 1993 and amended on November 22, 1993 and on June 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 12, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Carol Edwards Dunn, McCutchan, Druen, Maynard, Rath & Dietrich, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Financial Horizons, a wholly owned subsidiary of Nationwide Life Insurance Company ("Nationwide Life"), is a stock life insurance company incorporated under the laws of Ohio. Financial Horizons established the Account on July 24, 1991 to serve as a funding medium for certain individual deferred variable annuity contracts (the "Contracts") issued by Financial Horizons. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–66496), for the Account.

2. Nationwide, also a wholly-owned subsidiary of Nationwide Life, serves as the general distributor for the Contracts. Nationwide is registered with the Commission as a broker-dealer and as an investment advisor. Applicants also represent that Nationwide is a member in good standing of the National Association of Securities Dealers.

3. The Contracts are sold either as nonqualified contracts or as individual retirement annuities which may quality for special tax treatment under the provisions of Section 408(b) of the Internal Revenue Code of 1986, as amended. Purchase payments may be allocated by the Contract owner to one or more subaccounts of the Account. Each subaccount of the Account will invest at net asset value in shares of the corresponding mutual fund which is registered under the 1940 Act. Prior to the annuity commencement date, a Contract owner may elect any of three annuity payment options.

4. Upon withdrawal of part or all of the Contract value, a contingent deferred sales charge (the "Sales Charge") may be imposed by Financial Horizons. The Sales Charge is calculated by multiplying the applicable percentage by the amount withdrawn and is deducted from the amount withdrawn. The Sales Charge will be applied as follows:

No. of years from date of payment	Sales charge percentage
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7	0

5. After the first Contract year, the owner of a Contract may withdraw an amount, free of Sales Charge, equal to 10% of the sum of all purchase payments made to the Contract at the time of withdrawal less any purchase payments previously withdrawn that were subject to a Sales Charge. This privilege is noncumulative.

6. An annual Contract maintenance charge of $30 is deducted from the value of the Contract. Additionally, an administration charge equal on an annual basis to 0.05% of the daily net asset value of the Account is deducted from the value of the Contract. This administration charge is deducted during both the accumulation and the annuity phases of the Contract. Applicants represent that Financial Horizons estimates that the annual administration charge of 0.05% for expenses will yield an amount considerably less than the current and projected future administrative costs of Financial Horizons, even when this charge is added to the $30 annual Contract maintenance charge. Applicants state that they will rely on Rule 26a–1 under the 1940 Act in deducting both charges and that both charges are guaranteed not to increase. Applicants further state that Financial Horizons will monitor to ensure that the charges do not exceed expenses.

7. Financial Horizons will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Financial Horizons for assuming certain mortality and expense risks in connection with the Contracts. Approximately .80% of the 1.25% charge is attributable to mortality risk, and approximately .45% is attributable to expense risk. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risk, Financial Horizons will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Financial Horizons. If Financial Horizons realizes a profit from the charge, the profit will become part of the general account of Financial Horizons and may be used in its discretion.

8. Applicants state that the mortality risk borne by Financial Horizons consists of: (a) The risk of guaranteeing to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (b) the risk of promising to pay a death benefit upon the death of the designated annuitant prior to the annuity commencement date even where the investment experience in the Account has eroded the purchase payments made by the Contract owner. Applicants state that the expense risk assumed by Financial Horizons is the guarantee that

the Contract maintenance charge and the administration charge will never increase regardless of actual expense incurred by Financial Horizons.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally preformed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Financial Horizons under the Contracts.

3. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by Financial Horizons is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon the analysis by Financial Horizons of publicly available information relative to other insurance companies of similar size and risk ratings offering similar products. Applicants represent that Financial Horizons will maintain a memorandum, available to the Commission upon request, setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Financial Horizons also maintains a supporting actuarial memorandum, available to the Commission upon request, demonstrating the reasonableness of the mortality and expense risk charge given the risks assumed under the Contracts.

4. Applicants represent that Financial Horizons has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Financial Horizons and will be made available to the Commission upon request.

5. Applicants represent that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17864 Filed 7–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20408; File No. 812–9026]

Minnesota Mutual Life Insurance Company, et al.

July 18, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Minnesota Mutual Life Insurance Company (the "Company"), Minnesota Mutual Group Variable Annuity Account (the "Separate Account"), and MIMLIC Sales Corporation.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions 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 from the assets of the Separate Account of a mortality and expense risk charge under certain variable annuity contracts ("Contracts").

FILING DATE: An application was filed on May 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 12, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 400 Robert Street North, St. Paul, MN 55101–2098.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Michael V. Wible, Special Counsel at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Company is a mutual life insurance company organized under the laws of Minnesota. It is licensed to do business in all States except New York (where it is an authorized reinsurer), the District of Columbia, Canada and Puerto Rico.

2. The Separate Account, registered as a unit investment trust under the 1940 Act, is a segregated investment account of the Company that funds the Contracts and other variable annuities contracts. The Separate Account is divided into sub-accounts, each of which invests solely in the shares of one of the following management investment companies: The Index 500 and Money Market Portfolios of MIMLIC Series Fund, Inc., Vanguard Wellington Fund, the Vanguard Long Term Corporation Bond Portfolio of Vanguard Fixed Income Securities Fund, Inc., Scudder International Fund, Inc., Fidelity Contrafund, Inc., and Janus Twenty Fund.

3. The Contracts are group deferred variable annuity contracts designed to provide benefits under deferred compensation plans of State and local governments and other tax-exempt organizations as provided in section 457 of the Internal Revenue Code of 1986, as amended. In a typical plan, the sponsor or eligible governmental unit is the

owner of the Contract and will designate individuals eligible to become participants in the Contracts. The Contracts and all interests under them are subject to the general interests of creditors of the owners of the Contracts.

4. MIMLIC Sales Corporation, registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940, is the principal underwriter of the Contracts.

5. There is an annual Contract administration charge of 0.15 that is deducted in reliance on Rule 26a–1. This charge may be increased to 0.40% provided the charge could continue to be deducted in reliance on Rule 26a–1.

6. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, a contingent deferred sales charge ("CDSC") of up to 6% of the amount withdrawn or surrendered is charged. Applicants represent that the sum of the CDSC charges deducted will not exceed 9% of purchase payments made by or on behalf of a participant. The following table shows the applicable percentage for withdrawals or surrenders in the first month of each of the first seven participation years:

During participation month	Deferred sales charge (percent)
1	6
13	5
25	4
37	3
49	2
61	1
73 and thereafter	0

7. The Company will deduct a mortality and expense risk charge that is equal, on an annual basis, to 1.25% of the average daily net asset value of the Separate Account: approximately .60% for mortality risks and .85% for expense risks. The current level of the proposed charge is 0.85%, of which 0.40% is for mortality risks and 0.45% is for expense risks.

The mortality risks assumed by the Company arise from its guarantees to make annuity payments as provided in the Contracts regardless of how long a participant lives and regardless of any improvement in life expectancy of participants as a class. Also, the Company bears mortality risks associated with the Contract's death benefit provision. The expense risk assumed by the Company arise in connection with the Company's guarantees to make annuity payments in accordance with annuity tables provided in the Contracts regardless of whether the Company's estimates of expenses is correct over the life of the Contracts.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under section 6(c) exempting them from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Contracts.

3. Applicants represent that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of publicly available information about comparable products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge and the ability to make free withdrawals. The Company represents that it will maintain at its home office a memorandum, available to the Commission, setting forth in detail this analysis.

4. To the extent the CDSC is insufficient to cover the actual cost of distribution, the excess distribution costs will be paid from the Company's general assets, including the profits, if any, from the mortality and expense risk charges. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract owners. The basis for such conclusion will be set forth in a memorandum maintained by the Company at its service office and available to the Commission upon request.

5. The Company represents that the Separate Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b-1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17865 Filed 7–21–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 2042]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1995 Applications

AGENCY: Department of State.

ACTION: Notice of application.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, room 6841, U.S. Department of State, 2201 C Street NW., Washington, DC 20520. Telephone: (202) 736–9060 or 736–9059, fax: (202) 736–9066.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1995 under a program administered by the Department of State.

SUPPLEMENTARY INFORMATION: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as

intermediaries administering national competitive programs concerning the countries of Eastern Europe and the independent states of the former Soviet Union. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 30, 1994.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, room 6841, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, room 6841, 2201 C Street NW., Washington, DC.

The Advisory Committee staff will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (EDT) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Eastern Europe and the independent states of the former Soviet Union, the program contributes to the overall objectives of the FREEDOM Support and SEED programs.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldava, Poland, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Bosnia and Herzegovina, Slovenia, Croatia, Serbia, Montenergro, and the Former Yugoslav Republic of Macedonia. (No funds may actually be spent in Serbia.)

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determinations on awards.

Applications for funding under the Act are invited from US organizations prepared to conduct competitive programs on the independent states of the former Soviet Union and the countries of Eastern Europe and related fields. Applying organizations or institutions should have the capability to conduct *competitive award programs that are national in scope.* Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral levels, and must have demonstrated a likely career commitment to the study of Eastern Europe and/or the independent states of the former Soviet Union.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Eastern Europe and/or the independent states of the former Soviet Union by proposing;

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies, including training in the languages of the region, with such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the countries of Eastern Europe and the independent states of the former Soviet Union by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of

Eastern Europe and the independent states of the former Soviet Union in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Funds may be used for certain library activities which clearly strengthen research and training on the countries of Eastern Europe and the independent States of the former Soviet Union and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the independent states of the former Soviet Union and the less commonly taught languages of the East European countries. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above which has appropriate peer group review mechanisms.

—*Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Eastern Europe and the independent states of the former Soviet Union. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the application must justify the expenditure.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Eastern Europe and the independent states of the former Soviet Union. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encourage, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $10 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1994, the Congress appropriated to the program $10 million from the Agency for International Development budget.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date, depending upon the source of the appropriation.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of key professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully. The one-page summary and budget should precede the narrative in the proposal.

Proposed programs should be described fully, including benefits for the fields. All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amounts of anticipated awards.

Applicants who have received a grant from this program in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant received support prior to the last competition, a summary of those awards also should be included.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Proposals from national organizations involving language instruction programs should provide for those programs supported in the past year information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices must be included in the application.

Applicants should include certifications of compliance with the provisions of: (1) the Drug-Free Workplace Act (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Since funds provided by AID would come separately from its East European

(including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Education Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A detailed program budget indicating direct expenses by program element, by region (the independent states of the former Soviet Union or Eastern Europe), indirect costs, and the total amount requested. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

All payments will be made to grant recipients through the Department of State by wire transfers.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in PART II, Program Information (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Eastern Europe and the independent states of the former Soviet Union (30 points); and

(3) Budget presentation and cost effectiveness (30 points).

Dated: July 8, 1994.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 94–17861 Filed 7–21–94; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–94–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 11, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 15, 1994.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 119CE
Petitioner: Pilatus Britten-Norman Ltd.
Sections of the FAR Affected: 14 CFR 23.1303(e)
Description of Relief Sought: To permit type certification of the Pilatus Britten-Norman BN2T–4R Model INSLANDER airplane without a speed warning device installed.

Docket No.: 27749
Petitioner: Aviall, Inc.
Sections of the FAR Affected: 14 CFR 145.51(d)
Description of Relief Sought: To permit the continued operation of Aviall Component Services located in McAllen, Texas, under Aviall Repair Station Certificate No. RA1R445K.

Dispositions of Petitions

Docket No.: 23753
Petitioner: Saudi Arabian Airlines Corporation
Sections of the FAR Affected: 14 CFR 61.2; 63.2; and 67.12
Description of Relief Sought/ Disposition: To extend Exemption No. 3923, which permits Saudia pilots to be issued U.S. pilot certificates with type rating if required, instrument ratings, flight engineer certificates, and medical certificates. This exemption is also amended to permit Saudia employees to be examined for and issued U.S. certificates and ratings required to operate Saudia's fleet as if Saudia were a certificated U.S. air carrier.
Grant, June 24, 1994, Exemption No. 3923G

Docket No.: 23980
Petitioner: United States Hang Gliding Association, Inc.
Sections of the FAR Affected: 14 CFR 91.17 and 103.1(b)
Description of Relief Sought/ Disposition: To continue to allow an unpowered ultralight (hang glider) to be towed aloft by a powered ultralight.
Grant, June 24, 1994, Exemption No. 4144E

Docket No.: 25494
Petitioner: Bohlke International Airways
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To continue to allow properly trained and certificated pilots employed by Bohlke International Airways (BIA) to remove and install aircraft cabin seats and supplemental type certificated stretcher and base assemblies in BIA's Aero Commander Model 681, Cessna Model 402, and Jet Commander Model 1121B aircraft.
Grant, June 27, 1994, Exemption No. 5500A

Docket No.: 26495
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To continue to allow pilots employed by Era Aviation, Inc., to remove and reinstall aircraft cabin sets in the company's Bell Model 212, 214ST, 222, and 412; MBB Model 105; and Aerospatiale Model 332 helicopters.
Grant, June 21, 1994, Exemption No. 5483A

Docket No.: 27355
Petitioner: PZL Swidnik Co.
Sections of the FAR Affected: 14 CFR 91.609 and appendix F of part 91; 135.152 and appendix C
Description of Relief Sought/ Disposition: To permit a certificate holder to operate PZL Swidnik W–3A helicopters that are not equipped with flight recorders that meet the standards specified in the FAR.
Denial, June 24, 1994, Exemption No. 5932

Docket No.: 27363
Petitioner: Accelerated Freefall East, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To allow non-student foreign parachutists to use parachute equipment approved or accepted in their own country while jumping at Accelerated Freefall East, Inc., sponsored events at its facilities.
Grant, June 27, 1994, Exemption No. 5934

Docket No.: 27432
Petitioner: Dornier Luftfahrt GmbH
Sections of the FAR Affected: 14 CFR 25.562(c)(5)
Description of Relief Sought/ Disposition: To allow a time extension to Exemption No. 5765 from the Head Injury Criterion (HIC) of § 25.652(c)(5) of the FAR, for front row passenger seats located behind bulkheads in Dornier Model 328 airplanes, which expires on June 30, 1994.
Partial Grant, June 13, 1994, 5765A

Docket No.: 27628
Petitioner: Sky King Inc.
Sections of the FAR Affected: 14 CFR 121.409(d)
Description of Relief Sought/ Disposition: To permit Sky King to conduct flightcrew windshear training in a simulator that is not approved for that windshear training.
Denial, June 23, 1994, Exemption No. 5931

Docket No.: 27743
Petitioner: Flight Services Group, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought/ Disposition: To allow Flight Services Group, Inc., to operate as a supplemental part 121 air carrier without approved windshear equipment installed in its BAC 1–11, 401AK aircraft until such equipment is available in late 1994 or early 1995.
Denial, June 24, 1994, Exemption No. 5933

[FR Doc. 94–17874 Filed 7–21–94; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Launderdale-Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George E. Spofford, Director of Aviation of the Broward County Aviation Department at the following address: Broward County Aviation Department, 1400 Lee Wagener Boulevard, Fort Lauderdale, Florida 33315.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broward County Aviation Department under 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Airports Plans & Programs Manager, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Lauderdale-Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 15, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Broward County Aviation Department for the Board of County Commissioners of Broward County, Florida was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in while or in part, no later than October 29, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1995
Proposed charge expiration date: July 31, 2000
Total estimated PFC revenue: $74,338,000
Brief description of proposed project(s):
Impose and Use Projects:
Land Acquisition for Approach Area & Transitional Zones
Drainage Rehabilitation
Federal Inspection Services Facilities, Ph I Terminal 3
Secuity System
Service Road
Terminal 3 HVAC System
Taxiway C Reconstruction
Master Plan and Part 150 Studies
Airfield Signage System and Paved Area Markings
Airport Terminal Sign System—Phase I
Concourse E Air Carrier Pavenue Reconstruction
Noise Mitigation/Abatement Program
Impose Only Projects:

Runway 9L–27R Centerline Lighting
Runway 9L–27R Dual Parallel Taxiway A
Remote Midfield Aircraft Parking Apron
Air Cargo Apron and Drainage
Noise Monitoring System

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31 and Scheduled Foreign Flag Air Carriers Filing RSPA Form T–100 operating scheduled intercontinental service from Fort Lauderdale-Hollywood International Airport

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broward County Aviation Department.

Issued in Orlando, Florida on July 15, 1994.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 94–17879 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bloomington-Normal Airport, Bloomington, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bloomington-Normal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, Room 258, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael LaPier, Director of Aviation of the Bloomington-Normal Airport Authority at the following address: Route 1, Box 36, Bloomington, Illinois, 61704.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bloomington-Normal Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL, 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bloomington-Normal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 27, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Bloomington-Normal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: October 1, 1994
Proposed charge expiration date: March 31, 2010
Total estimated PFC revenue: $3,855,012
Brief description of proposed project(s): ARFF Access Road Construction; Baggage Claim Improvements to Existing Terminal; Land Acquisition for Future Terminal; and PFC Administration Costs.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bloomington-Normal Airport Authority.

Issued in Des Plaines, Illinois on July 3, 1994.

Ben DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–17878 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Control Tower; Hot Springs, AR; Decommissioning

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of decommissioning.

SUMMARY: Notice is hereby given that on or about July 29, 1994, the Airport Traffic Control Tower at Hot Springs, Arkansas, will be decommissioned. This information will be reflected in the FAA Organization Statement the next time it is issued.

49 U.S.C. 1348, 1354(a); 49 U.S.C. 106(g)

Issued in Fort Worth, Texas, on July 6, 1994.

Wm. Jack Sasser,

Acting Regional Administrator, Southwest Region.

[FR Doc. 94–17875 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Control Tower; Pine Bluff, AR; Decommissioning

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of Decommissioning.

SUMMARY: Notice is hereby given that on or about July 29, 1994, the Airport Traffic Control Tower at Pine Bluff, Arkansas, will be decommissioned. This information will be reflected in the FAA Organization Statement the next time it is issued.

49 U.S.C. 1348, 1354(a); 49 U.S.C. 106(g).

Issued in Fort Worth, Texas, on July 6, 1994.

Wm. Jack Sasser,

Acting Regional Administrator, Southwest Region.

[FR Doc. 94–17876 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Control Tower; Plainview, TX; Decommissioning

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of decommissioning.

SUMMARY: Notice is hereby given that on or about July 29, 1994, the Airport Traffic Control Tower at Plainview, Texas, will be decommissioned. This information will be reflected in the FAA

Organization Statement the next time it is issued.

49 U.S.C. 1348, 1354(a); 49 U.S.C. 106(g)

Issued in Fort Worth, Texas, on July 6, 1994.

Wm. Jack Sasser,

Acting Regional Administrator, Southwest Region.

[FR Doc. 94–17877 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation (Amtrak)

[Waiver Petition Docket Number PB–94–3]

Amtrak is seeking a waiver of compliance from certain sections of the Railroad Power Brakes and Drawbars Regulations, 49 CFR Part 232. Amtrak is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 36 months to 48 months on all passenger cars equipped with 26–C Brake Equipment. Section 232.17(b)(2) states—"Brake equipment on passenger cars must be clean, repaired, lubricated and tested as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S–045 in the Manual of Standards and Recommended Practices of the Association of American Railroads (AAR)." Paragraph 2.1.2 of Standard S–045 (AAR Manual Section A, Part III) currently specifies 36 months for 26–C Type Brake Equipment.

FRA Docket Number H–91–2 authorized Amtrak to conduct a four year test of the 26–C Brake Equipment on 50 cars of their 103 Horizon car fleet built between May 1989 and January 1990. A tear down inspection of five representative cars was conducted after the four year service period. The test has now been concluded and a final report indicating satisfactory performance of the brake equipment over the four year test period has been issued. As a result of this performance, Amtrak has requested that the COT&S period for all cars with 26–C Brake Equipment be extended to 48 months.

Interested parties are invited to participate in these proceedings by submitting written reviews, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request. All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–94–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before August 22, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on July 18, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–17928 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–06–P

Federal Railroad Administration

Locomotive Crashworthiness; Open Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of open meeting.

SUMMARY: FRA will hold an informal open meeting on August 29, 1994, in order to present the initial results of an analysis of locomotive crashworthiness. The meeting will be open to any interested person who wishes to attend as an observer.

DATE AND ADDRESSES: The open meeting will be held on Monday, August 29, 1994, beginning at 10 a.m., in room 2230, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Program Person: Thomas D. Schultz, Program Manager, Office of Research and Development, FRA, Washington, DC 20590. Telephone: (202) 366–0466. Principal Attorney: Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366–0635.

SUPPLEMENTARY INFORMATION: The provisions of law that were contained in section 10 of the Rail Safety Enforcement and Review Act (Pub. L. 102–365), simultaneously repealed and reenacted as section 4(t) of Pub. L. 103–272 on July 5, 1994, require that FRA assess the adequacy of existing locomotive crashworthiness standards. At this open meeting, FRA's Office of Research and Development will present the methodology and the initial results of the analysis. These first results are based on a model developed for this research project relying on engineering data from existing locomotive designs. Using information gleaned from previous accidents, accident scenarios are applied to the model. This analysis will be used to assess crashworthiness as required by statute.

Since the issues to be discussed have potential bearing on future FRA regulatory activities, this meeting will be open to any interested person who may wish to observe. There will also be an opportunity for questions.

Issued in Washington, DC, on July 18, 1994.

James T. McQueen,

Associate Administrator for Railroad Development.

[FR Doc. 94–17927 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 94–62; Notice 1]

Receipt of Petition for Determination that Nonconforming 1991 Mercedes-Benz 230CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 Mercedes-Benz 230CE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 Mercedes-Benz 230CE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was

certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 22, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1991 Mercedes-Benz 230CE (Model ID 124.043) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1991 Mercedes-Benz 300CE. G&K has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1991 Mercedes-Benz 300CE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 230CE to the 300CE, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1991 model 230CE, as originally manufactured in the same manner as the 1991 model 300CE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 230CE is identical to the certified 1991 model 300CE with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the bumpers on the 1991 model 230CE must be reinforced to comply with the Bumper standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rear view mirror, which is convex, but lacks the required warning statement.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) installation of U.S.-model knee bolsters to augment the vehicle's air bag based passive restraint system, which otherwise conforms to the standard.

Standard No. 214 *Side Door Strength*: installation of reinforcing beams

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 15, 1994.

William A. Boehly,

Associated Administrator for Enforcement.

[FR Doc. 94–17925 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–58; Notice 1]

Receipt of Petition for Determination that Nonconforming 1991 Mercedes-Benz 300CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 Mercedes-Benz 300CE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 Mercedes-Benz 300CE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 22, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to determine whether 1991 Mercedes-Benz 300CE (Model ID 124.051) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1991 Mercedes-Benz 300CE that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Mercedes-Benz 300CE to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Mercedes-Benz 300CE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Mercedes-Benz 300CE is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 Accelerator Control Systems, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.—model sealed beam headlamps and front sidemarkers; (b) installation of U.S.—model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp; (d) replacement of bulb failure modules with U.S.—model components.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN place that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) installation of knee bolsters to augment the vehicle's air bag based passive restraint system, which otherwise conforms to the standard.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1991 Mercedes-Benz 300CE must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted

to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 15, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17926 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 11, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0004
Form Number: PD F 1522
Type of Review: Extension
Title: Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized
Description: This form is used by owners of savings bonds/notes to request payment.
Respondents: Individuals or households
Estimated Number of Respondents: 56,000
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 14,000 hours
OMB Number: 1535–0006
Form Number: PD F 2458
Type of Review: Extension
Title: Certificate of Entitlement United States Savings and Retirement Securities and Checks After Administration of a Decedent's Estate
Description: This form is used to establish who is entitled to savings bonds/notes, and checks issued in payment thereof, in an amount not exceeding $1,000; which belong to a decedent who estate was administered in court and settled without effecting disposition of the bonds or checks.
Respondents: Individuals or households
Estimated Number of Respondents: 7,000
Estimated Burden Hours Per Response: 8 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 938 hours
OMB Number: 1535–0008
Form Number: PD F 1938
Type of Review: Extension
Title: Request for Reissue of United States Savings Bonds/Notes During the Lives of Both Coowners
Description: This form is used to request reissue of savings bonds/notes during the lives of both coowners.
Respondents: Individuals or households
Estimated Number of Respondents: 37,000
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 6,179 hours
Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328
OMB Reviewer: Milo Sunderhauf, (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–17832 Filed 7–21–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

July 15, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0228
Form Number: IRS Form 6252
Type of Review: Extension
Title: Installment Sale Income
Description: Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit included in income on the taxpayer's return.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 782,848
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr. 15 min.
Learning about the law or the form—39 min.
Preparing the form—56 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 13,200 hours
OMB Number: 1545–0495
Form Number: IRS Form 4506–A
Type of Review: Extension
Title: Request for Public Inspection or Copy of Exempt Organization Tax Form
Description: Form 4506–A is used to request a public inspection or a copy of an exempt organization tax form. It is also used to request an aperture card of Form 990–PF.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions
Estimated Number of Respondents/ Recordkeepers: 20,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—2 min.
Preparing the form—17 min.

Copying, assembling, and sending the form to the IRS—14 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 13,200 hours
OMB Number: 1545–0644
Form Number: IRS Form 6781
Type of Review: Extension
Title: Gains and Losses From Section 1256 Contracts and Straddles
Description: Form 6781 is used by taxpayers in computing their gains and losses from Section 1256 Contracts and Straddles and their special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains and losses.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 100,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—10 hr., 17 min.
Learning about the law or the form—2 hr., 28 min.
Preparing the form—3 hr., 40 min.
Copy, assembling, and sending the form to the IRS—16 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,667,000 hours

OMB Number: 1545–0712
Form Number: IRS Form 6198
Type of Review: Extension
Title: At-Risk Limitations
Description: Internal Revenue Code (IRC) 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 121,400
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 12 min.
Learning about the law or the form—59 min.
Preparing the form—1 hr., 5 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 437,040 hours
OMB Number: 1545–0771
Regulation ID Numbers: EE–63–88 Final (previously LR–216–84) and IA–140–86 Temporary (previously LR–117–85)
Type of Review: Extension
Title: Taxation of Fringe Benefits and Exclusions from Gross Income for Certain Fringe Benefits (EE–63–88 Final); Substantiation Requirements with Respect to Listed Property and Substantiation Requirements Relating to Taxation of Fringe Benefits, Travel, Entertainment, and Gift Expenses (§ 1.274–5) (IA–140–86 Temporary)
Description: Section 274(d) and regulation section 1.274–5 require all taxpayers to substantiate their deductions for business travel, entertainment or gift expenses by keeping adequate records as to amount, time, place, business purpose and business relationship. This is necessary to verify that deductions are not permitted for personal expenses. The regulations also provide rules on certain exclusions from gross income.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers:
Respondents—7,282,150
Recordkeepers—21,300,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Respondent—5 hrs., 30 min.
Recordkeeper—1 hr., 45 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 50,377,688 hours

OMB Number: 1545–1008
Form Number: IRS Form 8582
Type of Review: Revision
Title: Passive Activity Loss Limitations
Description: Under section 469 of the Internal Revenue Code, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. Worksheets 1 and 2 are used to figure the amount to be entered on lines 1 and 2 of Form 8582, and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 4,500,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 5 min.
Learning about the law or the form—1 hr., 43 min.
Preparing the form—1 hr., 34 min.
Copy, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 21,705,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–17833 Filed 7–21–94; 8:45 am]
BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 795]

RIN 1512–AB23

States Subject to the Waiting Period Provision Imposed by the Brady Handgun Violence Prevention Act; States Having Alternative Systems to the Waiting Period Provision; Listing of Chief Law Enforcement Officers for Purposes of the Brady Handgun Violence Prevention Act (93F–057P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of States subject to the waiting period provision of the Brady Handgun Violence Prevention Act and States having alternative systems, and a list of chief law enforcement officers for purposes of the Brady Handgun Violence Prevention Act.

SUMMARY: Beginning on February 28, 1994, the Brady Handgun Violence Prevention Act imposes a 5-day waiting period on the sale, delivery, or transfer of a handgun in States that do not require a background check. ATF is issuing this notice to inform Federal firearms licensees of the States that do not currently require a background check, as well as those States requiring a background check for handgun purchasers. In addition, ATF has compiled a list of chief law enforcement officers for purposes of the Brady Handgun Violence Prevention Act.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103–159, cited as the "Brady Handgun Violence Prevention Act" (hereafter "the Act") provides, in part, for a national waiting period of 5 days before a licensed importer, manufacturer, or dealer may lawfully transfer a handgun to a nonlicensed individual.

The Act provides that the waiting period provisions of the law are effective on February 28, 1994, and cease to apply on November 30, 1998. The statute also provides alternatives to the waiting period provisions.

On February 14, 1994, ATF issued temporary regulations implementing the provisions of Public Law 103–159 (T.D. ATF–354, 59 FR 7110).

During February, letters were sent to all Federal firearms licensees advising them as to whether their sales or other dispositions were subject to the Federal 5-day waiting period or their State background check system. In addition, licensees in States which are subject to the Federal 5-day waiting period were advised of the designated chief law enforcement officers in their State.

ATF has completed a study of relevant State laws to determine which States are subject to the federal waiting period provisions and which qualify as "alternative" States. Information regarding each category is set out below:

States Subject to the Federal Five Day Waiting Period and Their Respective Chief Law Enforcement Officers for Brady Purposes

Alabama

The County Sheriff.

Alaska

The Chief of Police in areas having a police department.

The Alaska State Troopers in areas without a Chief of Police.

Arizona

The Chief of Police in incorporated areas and the County Sheriff in unincorporated areas. In Maricopa County, the Chief of Police, Phoenix Police Department for both the City of Phoenix and all other municipalities in the metropolitan Phoenix area. The County Sheriff for the unincorporated areas of Maricopa County.

Arkansas

The Arkansas State Police.

Georgia

The Federal 5-day waiting period does not apply to transfers of handguns to persons holding a valid Georgia license to carry any pistol or revolver issued by the State within 5 years of the proposed purchase.

In all other instances, the County Sheriff, except in the following Counties:

Bacon County—Chief, Alma Police Department
Dekalb County—Chief, Dekalb County Police Department
Elbert County—Chief, Elberton Police Department
Evans County—Chief, Claxton Police Department
Irwin County—Chief, Ocilla Police Department
Jefferson County—Chief, Wrens Police Department
Wilkinson County—Chief, Gordon Police Department

Kansas

The County Sheriff.

The Chief of Police for the incorporated cities and towns in Johnson County.

Kentucky

The Kentucky State Police.

Louisiana

The Sheriff.

The Superintendent of Police for New Orleans in Orleans Parish.

Maine

The Chief of Police in areas having a municipal police department and the State Police in all other areas.

Mariana Islands

The Department of Public Safety, Bureau of Motor Vehicles, Criminal Record and Firearm ID, Civic Center Susupe, Saipan, MP 96950, Attn. Chief Anthony G. Adriano; telephone number 011–670–234–6921.

Minnesota

The Municipal Police Chief.

The County Sheriff where there is no local police agency.

Mississippi

The Federal 5-day waiting period does not apply to transfers of handguns to persons holding a valid license to carry concealed pistol or revolver issued by the State within 5 years of the proposed purchase.

In all other instances, the Chief of Police in incorporated areas and the County Sheriff in unincorporated areas.

Montana

The Chief of Police in incorporated areas and the County Sheriff in unincorporated areas.

Nevada

The Department of Motor Vehicles and Public Safety, Nevada Highway Patrol, Records and Identification Services, 555 Wright Way, Carson City, Nevada 89711; telephone number 1–800–474–7865. The local telephone number 702–687–6200.

New Hampshire

The Chief of Police or the County Sheriff in areas not covered by a Chief of Police.

New Mexico

The Chief of Police in incorporated areas and the County Sheriff in unincorporated areas.

North Carolina

The County Sheriff.

North Dakota

The Federal 5-day waiting period does not apply to transfers of handguns to persons holding a valid permit to carry concealed handgun issued by the State within 5 years of the proposed purchase.

In all other instances, the County Sheriff.

Ohio

The Attorney General, whose designated representative is the Superintendent of the Bureau of Criminal Identification and Investigation.

Oklahoma

The Chief of Police in incorporated cities and towns.

The County Sheriff in incorporated cities and towns having no police authority of their own.

The County Sheriff in unincorporated areas.

Pennsylvania

The Federal 5-day waiting period does not apply to transfers of handguns to persons holding a valid permit/license to carry a handgun issued by the State within 5 years of the proposed purchase.

In all other instances, the County Sheriff. The Commissioner of the Philadelphia Police Department in Philadelphia County.

Puerto Rico

The Police Superintendent, c/o Jose Marrero, Firearms Bureau Chief, GPO Box 70166, San Juan, Puerto Rico 00936.

Rhode Island

The Chief of Police.

South Carolina

The South Carolina Law Enforcement Division (SLED); telephone number 803–737–9000.

South Dakota

The Federal 5-day waiting period does not apply to transfers of handguns to persons holding a valid permit to carry concealed handgun issued by the State within 5 years of the proposed purchase.

In all other instances, the County Sheriff.

Texas

The Chief of Police in incorporated cities and towns and the County Sheriff in unincorporated areas.

Vermont

In the counties of Caledonia, Chittenden, Essex, Franklin, Grand Isle, Orleans, and Windham—the County Sheriff.

In Addison County, Troop C of the State Police, except that in the towns of Bristol, Middlebury, and Vergennes—the Chief of Police.

In Lamoille County, the Sheriff, except that in the town of Morristown—the Chief of Police.

In Orange County, the State Police.

In Remington County, the State Police, except that in the towns of Bennington, Manchester, and Winhall—the Chief of Police.

In Rutland County, the State Police, except that in the towns of Brandon and Rutland—the Chief of Police.

In Washington County—the County Sheriff, except that in the town of Montpelier—the Chief of Police.

In Windsor County—the State Police, except that in the towns of Hartford and Springfield—the Chief of Police.

Washington

The Chief of Police in incorporated areas and the County Sheriff in unincorporated areas.

West Virginia

The West Virginia State Police.

Wyoming

Albany County—County Records and Communications
Big Horn County—County Sheriff
Campbell County—County Sheriff (except the city of Gillette)
Gillette—Chief of Police
Carbon County—County Sheriff (except the cities of Encampment, Saratoga, and Rawlins)
Encampment—Chief of Police
Saratoga—Chief of Police
Rawlins—Chief of Police
Converse County—Chief of Police of Douglas (except the city of Glenrock)
Glenrock—Chief of Police
Crook County—County Sheriff
Fremont County—County Sheriff (except the city of Riverton)
Riverton—Chief of Police
Goshen County—Chief of Police of Torrington
Hot Springs County—County Sheriff
Johnson County—County Sheriff
Laramie County—County Sheriff (except the city of Cheyenne)
Cheyenne—Chief of Police
Lincoln County—County Sheriff
Natrona County—Chief of Police of Casper
Nicbrara County—County Sheriff
Park County—Cody Law Enforcement Center (except the city of Powell)
Powell—Chief of Police
Platte County—County Sheriff
Sheridan County—Chief of Police
Sublette County—County Sheriff
Sweetwater County—County Sheriff (except the cities of Green River and Rock Springs)
Green River—Chief of Police
Rock Springs—Chief of Police
Teton County—County Sheriff
Uinta County—County Sheriff
Washakie County—Chief of Police of Worland
Weston County—Chief of Police of Newcastle
Yellowstone National Park—Law Enforcement Office

Military Installations and Indian Reservations in States Subject to the Federal Five Day Waiting Period

On military installations, the Provost Marshal or an equivalent official on the military installation.

On Indian reservations, the law enforcement agency having jurisdiction to enforce the law on the Indian reservation.

Alternatives to the Waiting Period

ATF has completed a study of all States to determine which States currently have laws that qualify as alternatives to the 5-day waiting period requirements.

A list of States having such alternative systems appears below.

States Not Subject to the Federal Five Day Waiting Period

California—Permit or other approval type system
Colorado—"Instant check"
Connecticut—Permit or other approval type system
Delaware—"Instant check"
Florida—"Instant check"
Guam—Permit or other approval type system
Hawaii—Permit or other approval type system
Idaho—"Instant check"
Illinois—Permit and "instant check"
Indiana—Permit or other approval type system
Iowa—Permit or other approval type system
Maryland—Permit or other approval type system
Massachusetts—Permit or other approval type system
Michigan—Permit or other approval type system
Missouri—Permit or other approval type system
Nebraska—Permit or other approval type system
New Jersey—Permit or other approval type system
New York—Permit or other approval type system
Oregon—Permit or other approval type system
Tennessee—Permit or other approval type system
Utah—"Instant check"
Virginia—"Instant check"
Virgin Islands—Permit or other approval type system
Wisconsin—"Instant check"

Availability of Information

The list of States subject to the Federal 5-day waiting period, the list of chief law enforcement officers for such States, and the list of States not subject to the Federal 5-day waiting period, are based on available information. These lists are subject to change because of possible amendments to State laws and changes in the designations of chief law enforcement officers which may occur either before or after publication of this notice. Therefore, ATF recommends that Federal firearms licensees, and other interested persons, maintain contact with the appropriate State and local officials for updated information on these matters. Federal firearms licensees are reminded that if they are notified by a chief law enforcement officer described herein or by ATF that another law enforcement agency is serving as the Brady chief law enforcement officer, they must act in accordance with the actual notice received as opposed to the information contained in this general notice.

Drafting Information

The author of this document is James P. Ficaretta, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 922.

Signed: May 13, 1994.

John W. Magaw,

Director.

[FR Doc. 94–17819 Filed 7–21–94; 8:45 am]

BILLING CODE 4810–31–U

Sunshine Act Meetings

Federal Register
Vol. 59, No. 140
Friday, July 22, 1994

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Wednesday, July 27, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–18009 Filed 7–20–94; 11:42 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 27, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. (1) Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) to permit discounts on traditional bank products and brokerage services for customers obtaining traditional bank products from affiliates (proposed earlier for public comment; Docket No. R–0832); and (2) publication for comment of a proposed amendment to Regulation Y to remove its restrictions on tying between nonbank subsidiaries when the packaged products are separately available.
2. Proposed 1995 Federal Reserve Bank budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–18008 Filed 7–20–94; 11:42 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 25, 1994.

A closed meeting will he held on Wednesday, July 27, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 27, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Felicia Kung (202) 942–0500.

Dated: July 19, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18024 Filed 7–20–94; 12:54 pm]

BILLING CODE 8010–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 9:00 a.m., August 8, 1994.

PLACE: Uniformed Services University of the Health Sciences, Room D3001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 9:00 a.m. Meeting—Board of Regents.

(1) Approval of Minutes—20 May 1994; (2) Awards; (3) Faculty Matters; (4) Departmental Reports; (5) Financial Report; (6) Report—President, USUHS; (7) Comments—Chairman, Board of Regents.
New Business.

CONTACT PERSON FOR MORE INFORMATION: Bobby D. Anderson, Executive Secretary of the Board of Regents, 301/295–3116.

Dated: July 20, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–18057 Filed 7–20–94; 3:06 pm]

BILLING CODE 5000–04–M

Corrections

Federal Register
Vol. 59, No. 140
Friday, July 22, 1994

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 COMMERCE

International Trade Administration

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In the issue of Tuesday, July 12, 1994, on page 35564, in the second column, in the correction of notice document 94–15532, in the the second paragraph, in the sixth line "940–004" should read "94–004".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 185

[OPP–300335; FRL–4770–3]

RIN 2070–AC18

Pesticides; Proposed Rule Revoking Certain Food Additive Regulations

Correction

In proposed rule document 94–15925, beginning on page 33941 in the issue of July 1, 1994, make the following correction:

On page 33946, in the third column after amendatory instruction 7, insert amendatory instruction 8 to read as follows:

§ 185.6300 [Removed]

8. By removing § 185.6300.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM–166Z; Amdt. No. 172–134]
RIN 2137–AC46

Transportation of Hazardous Materials; Miscellaneous Amendments

Correction

In the correction to rule document 94–13138 appearing on page 35411 in the issue of Monday, July 11, 1994, the correction to § 172.101 should read as set forth below.

§ 172.101 [Corrected]

On page 28492, in the table, in the second column, the second entry should read as follows:

Ammonium nitrate fertilizers: *uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90% ammounium nitrate and not more than 0.2% combustible material (including organic material calculated as carbon), or with more than 70% but less than 90% ammonium nitrate and not more than 0.4% total combustible material.*

BILLING CODE 1505-01-D

federal register

Friday
July 22, 1994

Part II

Department of Labor

Office of the Secretary

29 CFR Part 15

Regulations Governing Administrative Claims Under the Federal Tort Claims Act and Related Statutes; Revision; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 15

RIN 1290–AA13

Revision of Regulations Governing Administrative Claims Under the Federal Tort Claims Act and Related Statutes

AGENCY: Department of Labor (DOL), Office of the Secretary.

ACTION: Proposed rule.

SUMMARY: This document gives notice of the proposed revision of the DOL's regulations governing administrative claims submitted to DOL pursuant to the Federal Tort Claims Act (FTCA) and the Military Personnel and Civilian Employees' Claims Act (MPCECA), and for payment of claims arising out of the operation of the Job Corps. These regulations are being revised to reflect previous delegations of authority to the Counsel for Claims and to the Regional Solicitors and Associate Regional Solicitors to issue determinations on claims under the statutes covered by these regulations, to clarify the manner in which organizational units of the Department provide administrative assistance to the Office of the Solicitor in regard to claims and litigation under these statutes and to clarify and provide further examples of the manner in which MPCECA claims are submitted and determined. The regulations are also being amended to reflect a change in statutory authority for payment of claims arising out of operation of the Job Corps.

DATES: Written comments must be received by September 20, 1994.

ADDRESSES: Written comments should be submitted, in triplicate, to Claims Unit, Division of Employee Benefits, Office of the Solicitor, U.S. Department of Labor, suite S4325, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Nesvet, Counsel for Claims, Division of Employee Benefits, Office of the Solicitor, U.S. Department of Labor, suite S4325, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–4405.

SUPPLEMENTARY INFORMATION: The Federal Tort Claims Act (FTCA) surrenders the sovereign immunity of the United States for the negligent or wrongful act or omission of a Government employee acting within the scope of his or her employment. The Military Personnel and Civilian Employees' Claims Act (MPCECA) authorizes payment of claims of employees of the Government for loss of, or damage to, property incident to Government service. The Job Training Partnership Act (JTPA) authorizes payment of claims arising out of the operation of the Job Corps that are not cognizable under the FTCA. Part 15 of title 29 of the Code of Federal Regulations currently contains regulations implementing these three claims authorities.

Subpart A of part 15 sets forth regulations for claims under the FTCA. It is being revised to reflect previous delegations of authority to the Counsel for Claims to issue determinations of claims seeking damages in amounts exceeding $25,000 and to the Regional Solicitors and Associate Regional Solicitors to issue determinations of claims that arose within their jurisdictions seeking damages in amounts up to $25,000. Subpart A is also being amended to provide that all FTCA claims for amounts up to $25,000 should be filed with the official duty station of the employee whose act or omission forms the basis of the claim.

Subpart A is also being amended to clarify and provide specific directions concerning the manner in which organizational units of the Department provide assistance to the Office of the Solicitor in regard to FTCA claims and litigation. A number of non-substantive editorial changes are also being made to the language of these provisions.

Subpart B of part 15 sets forth regulations for claims under the MPCECA. It is being revised to reflect previous delegations of authority to the Counsel for Claims and to the Regional Solicitors and Associate Regional Solicitors. It is also being revised to reflect an amendment to the MPCECA increasing the maximum amount payable on a claim.

Subpart B is being amended to clarify the manner in which claims are submitted and calculated and to provide further illustrations of allowable claims and those not allowable under the MPCECA. Thus, provisions are being added clarifying that both filing of a claim and determination of a claim must be in writing and that a claim is not required to contain a demand for a specific sum of money. Each MPCECA claimant will be required to provide a statement from his or her immediate supervisor that possession of the property in question was reasonable, useful or proper and its loss or damage was incident to service. Additional examples of property for which reimbursement is not available are being added such as intangible property, real property and commercial property. A provision is also being added to recognize that claimants may be reimbursed for any sales tax incurred in connection with the repair of an item.

Subpart B is being revised to exclude payment for loss of, or damage to, cellular telephones, fax machines, computers and related hardware and software, unless the loss is incident to fire, flood, hurricane, other natural disaster or by theft from authorized quarters (as limited by § 15.13(c)(1)) or unless it is being shipped as part of a change in duty station paid for by the Department. Subpart B is also being revised to provide that an alternative work location at which an employee is performing duties pursuant to an approved Flexiplace agreement shall be considered an official duty station for purposes of this subtitle. The minimum amount of loss necessary to have a claim allowed is being raised from $10 to $25.

Subpart B is also being amended to provide that at the discretion of the official involved, a claimant may be required to turn over to the United States an item alleged to have been damaged beyond economical repair and to provide that current replacement cost and depreciated value are to be determined by use of publicly available adjustment rates or through use of other reasonable methods at the discretion of the deciding official. A number of non-substantive editorial changes are also being made to the language of subpart B.

Subpart C is being revised to reflect a change in the statutory authority for claims arising out of the operation of the Job Corps from the Comprehensive Training and Employment Act of 1973 to the JTPA. It also is being revised to reflect previous delegations of authority to the Regional Solicitors and Associate Regional Solicitors and to clarify the manner in which a claim is submitted. Subpart C is also being revised to provide that the determination of a claim shall be provided to the claimant in writing. A number of non-substantive editorial changes are also being made to the language of subpart C.

Regulatory Evaluation

This proposal is not considered a significant regulatory action under Executive Order 12866. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 29 CFR Part 15

Tort claims, Indemnity payments, Administrative practice and procedure, Government employees.

For the reasons set out above, DOL proposes to revise 29 CFR part 15 to read as follows:

PART 15—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED STATUTES

Subpart A—Claims Against the Government Under the Federal Tort Claims Act

Sec.
15.1 Scope and Purpose
15.2 Definitions
15.3 Administrative claim; who may file
15.4 Administrative claim; where to file
15.5 Administrative claim; evidence or information to substantiate
15.6 Administrative action
15.7 Determination of claims
15.8 Referral to Department of Justice
15.9 Final denial of claim
15.10 Action on approved claim

Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

15.11 General provisions
15.12 Filing of claims
15.13 Allowable claims
15.14 Restrictions on certain claims
15.15 Unallowable claims
15.16 Claims involving carriers or insurers
15.17 Claims procedures
15.18 Computation of award and finality of settlement
15.19 Attorney fees
15.20 Reconsideration

Subpart C—Claims Arising Out of the Operation of the Job Corps

15.30 Scope and purpose
15.31 Allowable claims
15.32 Claim procedure

Authority: 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 3721; 29 U.S.C. 1706(b)

Subpart A—Claims Against the Government Under the Federal Tort Claims Act

§ 15.1 Scope and purpose.

(a) The purpose of this subpart is to set forth regulations relating to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Department of Labor while acting within the scope of his or her office or employment.

(b) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (28 CFR part 14).

§ 15.2 Definitions.

(a) *Department* means the Department of Labor.

(b) *Organizational unit* means the jurisdictional area of each Assistant Secretary and each office head reporting directly to the Secretary.

(c) *Act* means the Federal Tort Claims Act, as amended, (28 U.S.C. 1346(b), 28 U.S.C. 2671, et seq.)

§ 15.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his or her duly authorized agent, or his or her legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her duly authorized agent, or his or her legal representative.

(c) A claim for death may be presented by the executor or administrator of the decedant's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, it shall present with its claim appropriate evidence that it has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or representative, show the title or legal capacity of the person signing and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or legal representative.

§ 15.4 Administrative claim; where to file.

(a) For the purposes of this subpart, a claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, a properly executed "Claim for Damage, Injury, or Death" on Standard Form 95, or other written notification of an incident accompanied by a claim for money damages in a sum certain for injury to or loss of property or personal injury or death by reason of the incident.

(b) In any case where the claim seeks damages in excess of $25,000 or which involves an alleged act or omission of an employee of the Department whose official duty station is in Washington, DC, a claimant shall mail or deliver his or her claim for money damages for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department while acting within the scope of his or her office or employment hereunder to the Counsel for Claims, Office of the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW., suite S4325, Washington, DC 20210.

(c) In all other cases, the claimant shall address his or her claim to the official duty station of the employee whose act or omission forms the basis of the complaint.

§ 15.5 Administrative claim; evidence or information to substantiate.

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant is required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent impairment, the prognosis, period of hospitalization, if any, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request: *Provided*, That he or she has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made, or agrees to make available to the Department, any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental and hospital, or any other, expenses incurred or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full-or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings lost. For example, income tax returns for

several years prior to the injury in question and the year in which the injury occurred may be used to indicate or measure lost income; a statement of how much it did or would cost the claimant to hire someone else to do the same work he or she was doing at the time of injury might also be used in measuring lost income.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full name, address, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him or her for support at the time of his or her death.

(5) Decedent's general physical and mental condition before his or her death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or damages claimed.

(c) *Property damages.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information with respect to each item of property:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 15.6 Administrative action.

(a) *Investigation.* When an organizational unit learns of an incident that reasonably can be expected to result in an allegation of harm caused to an individual or organization by an alleged negligent act or omission by an employee of that organizational unit or when it learns of an administrative claim or of litigation alleging such harm, it has the responsibility to fully investigate the incident and to take all actions necessary to preserve all relevant documents and other evidence. Each organizational unit should institute appropriate procedures to ensure that notification of such incidents are reported to the office responsible for ensuring that evidence is preserved and investigation undertaken.

(b) *Notification.* Upon receipt of an administrative claim under the Act or of notice of litigation seeking damages for an alleged negligent act or omission of an employee of the Department acting within the scope of his or her employment, the Office of the Solicitor shall notify the organizational unit responsible for the activity which gave rise to the claim or litigation and shall provide a copy of the administrative claim or the complaint filed in the litigation.

(c) *Administrative Report.* (1) Upon receiving notification of an administrative claim or litigation, the organizational unit or units involved in the circumstances of the claim or litigation shall be responsible for preparing an Administrative Report and forwarding it to the Office of the Solicitor in a timely manner. The Administrative Report shall be in the form of a single memorandum in narrative form with attachments. It should contain all of the following elements, unless permission is obtained from the Office of the Solicitor to dispense with a particular element:

(i) A brief explanation of the organization and operation of the program involved including statutory authority and applicable regulations;

(ii) A complete description of the events which gave rise to the claim or litigation, including a specific response to every allegation in the claim or litigation;

(iii) Any information available regarding the questions of whether the claimant or plaintiff actually suffered the harm alleged in the claim or litigation and what individual or organization caused any harm which appears to have occurred;

(iv) Any information available regarding the damages claimed;

(v) Any policy reasons which the organizational unit wishes to advance for or against settlement of the claim or litigation; and

(vi) Details of any claims the Department may have against the claimant or plaintiff, whether or not they appear to be related to the subject matter of the claim or litigation.

(2) A copy of all documents relevant to the issues involved in the claim or litigation should be attached to each copy of the Administrative Report. Original records should not be forwarded to the Office of the Solicitor unless specifically requested. They should be preserved, however and remain available for litigation if necessary.

(3) Organizational units should ensure that all Administrative Reports are either prepared or reviewed by an official of the organizational unit who was not personally involved in the incident in question prior to filing of the claim or suit.

(d) *Litigation.* During the course of any litigation, organizational units are responsible for providing assistance to the Office of the Solicitor in responding to discovery requests such as interrogatories and requests to produce documents, for providing assistance in analyzing factual and program issues, for providing witnesses for depositions and trials, and for assistance in producing affidavits and exhibits for use in the litigation.

§ 15.7 Determination of claims.

(a) *Authority to consider, ascertain, adjust, determine, compromise and settle claims.* The Counsel for Claims shall have the authority to consider, ascertain, adjust, determine, compromise and settle claims pursuant to the Federal Tort Claims Act which involve an alleged negligent or wrongful act or omission of an employee whose official duty station is the Department's national office in Washington, DC, or which exceed $25,000 in amount, or which involve a new precedent, a new point of law, or a question of policy. Regional Solicitors and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle, claims arising in their respective jurisdictions pursuant to the Federal Tort Claims Act which do not exceed $25,000 in amount and which do not involve a new precedent,

new point of law, or a question of policy.

(b) *Payment.* Any award, compromise, or settlement in the amount of $2,500 or less made pursuant to this section shall be paid by the Secretary of Labor out of appropriations available to the Department. Payment of an award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this subpart shall be made in accordance with 28 CFR 14.10.

§ 15.8 Referral to Department of Justice.

An award, compromise or settlement of a claim under § 2672 title 28, United States Code, and this subpart, in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this subpart, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

§ 15.9 Final denial of claim.

Final denial of an administrative claim under this subpart shall be in writing, and notification of denial shall be sent to the claimant, or his or her attorney or legal representative by certified or registered mail. The notification of final denial shall include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he or she may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 15.10 Action on approved claim.

(a) *Payment.* Payment of a claim approved under this subpart is contingent upon claimant's execution of a "Voucher for Payment Under Federal Tort Claims Act," Standard Form 1145. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his or her attorney as payees, and the check shall be delivered to the attorney whose address shall appear on the voucher.

(b) *Acceptance.* Acceptance by the claimant, or his or her agent or legal representative, of an award, compromise, or settlement under § 2672 or § 2677 of title 28, U.S.C., is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented and constitutes a complete release of any claim against the United States and against any office or employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 15.11 General provisions.

(a) *Scope and purpose.* This subpart applies to all claims filed by or on behalf of employees of the Department for loss of or damage to personal property incident to their service with the Department under the Military Personnel and Civilian Employees' Claims Act of 1964, (hereinafter referred to as the Act). A claim must be substantiated and the possession of the property determined to be reasonable, useful or proper.

(b) *Payment.* The maximum amount that can be paid for any claim under the Act is $40,000 and property may be replaced in kind at the option of the Government.

(c) *Policy.* The Department is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid losses which may not be recoverable from the Department. The procedure set forth in this subpart are designed to enable the claimant to obtain the proper amount of compensation for the loss or damage. Failure of claimant to comply with thee procedures may reduce or preclude payment of the claim under this subpart.

§ 15.12 Filing of claims.

(a) *Who may file.* (1) A claim may be made pursuant to this subpart by an employee or by a spouse or authorized agent, or legal representative on behalf of the employee. If the employee is deceased, the claim may be filed by a survivor in the following order of preference: spouse, children, parent, brother or sister or the authorized agent or legal representative of such person or persons.

(2) A claim may not be made hereunder by or for the benefit of a subrogee, assignee, conditional vendor or other third party.

(b) *Where to file.* A claim hereunder must be presented in writing. If the claimant's official duty station is at the Department's national office in Washington, DC, or if the claim is for an amount in excess of $25,000, the claim should be filed with the Counsel for Claims, Office of the Solicitor of Labor, U.S. Department of Labor, Suite S4325, 200 Constitution Avenue, NW., Washington, DC 20210. In all other cases the claimant shall address the claim to the regional or branch office of the Solicitor of Labor servicing the claimant's official duty station.

(c) *Evidence required.* The claimant is responsible for substantiating ownership or possession, the facts surrounding the loss or damage, and the value of the property. Any claim filed hereunder must be accompanied by the following:

(1) A written statement, signed by the claimant or his or her authorized agent, setting forth the circumstances under which the damage or loss occurred. This statement shall also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date of purchase or acquisition and the original cost of the property.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred incident to transportation or to the use of a motor vehicle.

(vii) Any and all available information as to the party responsible for the loss or damage, if such party is someone other than the claimant, and all information as to insurance contracts, whether held by the claimant or by the party responsible.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of an automobile, the claimant must file two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle.

(3) A copy of the power of attorney or other authorization if the claim is filed by someone other than the employee.

(4) A statement from the employee's immediate supervisor confirming that possession of the property was reasonable, useful or proper under the circumstances and that the damage or loss was incident to service.

(d) *Time limitations.* A claim under this part may be allowed only if it is filed in writing within 2 years after accrual of the claim. For the purpose of this part, a claim accrues at the later of:

(1) the time of the accident or incident causing the loss or damage,

(2) such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence or

(3) such time as cause preventing filing no longer exists or as war or armed conflict ends, whichever is earlier, if a claim otherwise accrues during war or an armed conflict or has accrued within two years before war or an armed conflict begins, and for cause shown.

§ 15.13 Allowable claims.

(a) A claim may be allowed only if the property involved was being used incident to service with the Department and:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act or omission of the claimant, his or her agent, the members of his or her family, or his or her private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the claimant was not the legal owner of the property for which the claim is made.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim for damage to, or loss, of personal property incident to service with the Department may be considered and allowed. For the purpose of subpart B of this part, an alternative work location at which an employee is performing duties pursuant to an approved Flexiplace agreement shall be considered an official duty station. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless hereinafter excluded:

(1) *Property or damage in quarters or other authorized places.* Claims may be allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States; or

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office, working area or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to order or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Mobile homes.* Claims may be allowed for damage to, or loss of, mobile homes and their contents under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to, or loss of, tires mounted on mobile homes will not be allowed, except in cases of collision, theft or vandalism.

(4) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster.

(iii) Efforts by the claimant to save human life or Government property.

(5) *Property used for the benefit of the Government.* Claims may be allowed for damage to, or loss, of property when used for the benefit of the Government at the request of, or with the knowledge and consent of superior authority.

(6) *Clothing and accessories.* Claims may be allowed for damage to, or loss, of property when used for damage to or loss of, clothing and accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures.

(7) *Expenses incident to repair.* Claimants may be reimbursed for the payment of any sales tax incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 15.14(c)) are also allowable.

§ 15.14 Restrictions on certain claims.

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency.* Claims may be allowed for loss of money or currency (which includes coin collections) only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by § 15.13(c)(1)). In incidents of theft from quarters, it must be conclusively shown that the quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount which is determined to have been reasonable for the claimant to have had in his or her possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to an agency of the Government other than the Department.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repairs only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and other motor vehicles.* Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between quarters and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and an assigned place of duty specifically authorized by the employee's supervisor as being more advantageous to the Government,); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 15.16.

(e) *Computers and electronics.* Claims may be allowed for loss of, or damage to, cellular phones, fax machines, computers and related hardware and software only when lost or damaged incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by § 15.13((c)(1)) or unless it is being shipped as a part of a change of duty station paid for by the Department. In incidents of theft from quarters, it must be conclusively shown that the quarters were locked at the time of the theft.

§ 15.15 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters occupied by the claimant

within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs or other articles of extraordinary value. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, if reasonable protection or security measures have been taken by claimant.

(f) *Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses incurred by the claimant in preparing the item such as the cost of the paper or other materials. No compensation is authorized for the time spent by the claimant in its preparation or for supposed literary value.

(g) *Incidental expenses and consequential damages.* The Act and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 15.13(c)(7), consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for the convenience of the claimant and at his or her expense.

(k) *Minimum amount.* Loss or damage amounting to less than $25.

§ 15.16 Claims involving carriers or insurers.

In the event the property which is the subject of the claim was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to the claimant's service and is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submitting his or her claim, the claimant shall certify in his claim that he or she has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on the claim, the claimant shall immediately notify them to address all correspondence in regard to the claim to the appropriate Office of the Solicitor of Labor.

(3) The claimant shall advise the appropriate Office of the Solicitor of any action taken by the carrier or insurer on the claim and, upon request, shall furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) The claimant shall assign to the United States, to the extent of any payment on the claim accepted by him or her, all rights, title and interest in any claim he or she may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of the claim by the United States, the claimant shall, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him or her from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his or her claim under this subpart is settled, the amount or recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, the claimant's total loss is to be determined without regard to the maximum payment limitations set forth in § 15.11.However, if the resulting amount, after making this deduction, exceeds the maximum payment limitations, the claimant shall be allowed only the maximum amount set forth in § 15.11.

§ 15.17 Claims procedures.

(a) *Award.* The Counsel for Claims, the Regional Solicitors, and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arose within their respective jurisdictions, except that any claim for an amount in excess of $25,000 shall fall within the exclusive jurisdiction of the Counsel for Claims.

(b) *Form of claim.* Any writing received by the Office of the Solicitor within the time limits set forth in § 15.12(d) will be accepted and

considered a claim under the Act if it constitutes a demand for compensation from the Department. A demand is not required to be for a specific sum of money.

(c) *Notification.* The determination upon the claim shall be provided to the claimant in writing by the deciding official.

§ 15.18 Computation of award and finality of settlement.

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of

(1) The amount requested by the claimant for the item as a result of its loss, damage or the cost of its repair,

(2) The actual or estimated cost of its repair, or

(3) The actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since its acquisition, whichever is lower, less any salvage value of the item in question.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use of publicly available adjustment rates or through use of other reasonable methods at the discretion of the official authorized to issue a determination upon the claim in question.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate.

(e) At the discretion of the official authorized to issue the determination upon the claim in question, a claimant may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Notwithstanding any other provisions of law, settlement of claims under the Act are final and conclusive.

§ 15.19 Attorney fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim.

§ 15.20 Reconsideration.

(a) *Deciding official.* While there is no appeal from the decision of the deciding official in regard to claims under the Act, the deciding official may always reconsider his or her determination of a claim.

(b) *Claimant.* A claimant may request reconsideration from the deciding official by directing a written request for reconsideration to the deciding official within 180 days of the date of the original determination. The claimant must clearly state the factual or legal basis upon which he or she rests the request for a more favorable determination.

(c) *Notification.* The determination upon the reconsideration will be provided to the claimant in writing by the deciding official.

Subpart C—Claims Arising Out of the Operation of the Job Corps

§ 15.30 Scope and purpose.

(a) The purpose of this subpart is to set forth regulations relating to claims for damage to persons or property arising out of the operation of Job Corps which the Secretary of Labor finds to be a proper charge against the United States but which are not cognizable under the Federal Tort Claims Act.

(b) This subpart further amplifies the regulatory provisions set forth in 20 CFR 638.526(b) regarding such claims.

§ 15.31 Allowable claims.

(a)(1) A claim for damage to persons or property arising out of an act or omission of a student enrolled in the Job Corps may be considered pursuant to § 436(b) of the Job Training Partnership Act (29 U.S.C. 1706(b)):

(i) If the act or omission which gave rise to the claim took place at the center to which the student involved was assigned, or

(ii) If the student involved was not within the geographical limits of his hometown and was within 100 miles of the center to which he or she was assigned, or while he or she was on authorized travel to or from the center.

(2) The claim may be paid if the deciding official, in his or her discretion, finds the claim to be a proper charge against the United States resulting from an act or omission of a student enrolled in the Job Corps.

(b) A claim for damage to person or property hereunder may not be paid if the claim is cognizable under the Federal Tort Claims Act (28 U.S.C. 2677).

(c) A claim for damage to person or property may be adjusted and settled hereunder in an amount not exceeding $1500.

§ 15.32 Claim procedures.

(a) *Claim.* A claim under this subpart must be in writing and signed by the claimant or by an authorized representative. It must be received by the Office of the Solicitor within two years of the date upon which the claim accrued.

(b) *Award.* The Regional Solicitors and Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arose within their respective jurisdictions.

(c) *Notification.* The determination upon the claim shall be provided to the claimant in writing by the deciding official.

(d) *Reconsideration.* Reconsideration of a determination under this subpart shall be available pursuant to the procedures and limitations set forth in § 15.20.

Signed at Washington, DC, this 14th day of July 1994.

Robert B. Reich,

Secretary of Labor.

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Part III

Department of Transportation

Federal Highway Administration

23 CFR Parts 420 and 511
State Planning and Research Program Administration; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 420 and 511

[FHWA Docket No. 93–18]

RIN 2125–AD21

State Planning and Research Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: With the restructuring of the Federal-aid highway program due to enactment of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Pub. L. 102–240, 105 Stat. 1914), regulations for the administration and management of activities undertaken with FHWA planning and research funds are updated to reflect the revised sources of, and activities eligible for, such funds. In addition, the ISTEA allows the States more flexibility in managing and directing federally funded research, development, and technology transfer (RD&T) activities. This final rule includes the ISTEA revisions and grants States this greater responsibility and flexibility for the management and oversight of their RD&T initiatives funded with FHWA planning and research funds.

EFFECTIVE DATE: This rule is effective on August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Solury (202–366–5003), Office of Environment and Planning, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590, for 23 CFR part 420, subpart A; Mr. Charles W. Niessner (703–285–2100), Office of Research and Development, Federal Highway Administration, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, VA 22101–2296, for 23 CFR part 420, subpart B; or Mr. Wilbert Baccus (202–366–0780), Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On December 21, 1993, a notice of proposed rulemaking (NPRM) was published by the FHWA in the Federal Register (58 FR 67510) to obtain comments from interested persons on proposed revisions to regulations for program approval and authorization; conduct; and reporting of planning, research, development, and technology transfer activities undertaken by States and their subrecipients, including metropolitan planning organizations (MPOs), with FHWA planning and research funds. The proposed revisions were necessary to reflect changes to Title 23, United States Code, Highways, that resulted from enactment of the ISTEA. In addition, the FHWA proposed that States establish a process for management of RD&T activities undertaken with FHWA planning and research funds that would enable States to exercise greater authority over such activities.

With respect to administration of FHWA planning and research funded RD&T activities, the final rule reflects the FHWA's belief that its stewardship role should be one of concentrating more on the policies and procedures by which States implement such activities than on project-specific approvals and oversight. This philosophy parallels the administrative oversight procedures adopted for FHWA planning and research funded transportation planning activities in earlier revisions to 23 CFR part 420, subpart A in 1985 and 1990.

The ISTEA instituted a number of substantive changes pertinent to transportation planning and RD&T programs. In addition to retitling it from Highway Planning and Research to State Planning and Research (SPR), the ISTEA: (1) increased the set-aside of funds apportioned to States for SPR activities from 1.5 percent to 2 percent; (2) included planning and RD&T as eligible activities under the National Highway System (NHS) program and Surface Transportation Program (STP); (3) permitted the use of certain funds made available under title 23, U.S.C., for intermodal transportation planning and RD&T; and (4) required the expenditure of 25 percent of a State's annual SPR funds for RD&T activities, unless the State certifies that it will use more than 75 percent for planning and the Secretary of Transportation (the Secretary) accepts the certification. These legislative provisions are reflected in this rule.

Thirty-one sets of comments were submitted to the docket in response to the NPRM; 28 from State transportation departments/agencies, 1 from a regional planning agency, 1 from a professional association, and 1 from a Federal agency. The overwhelming majority of comments were in support of the proposed revisions and the increased flexibility for State management of RD&T activities. However, there were some concerns regarding some of the specific revisions and the short deadline for compliance. Many of these concerns were due to misunderstandings about existing requirements and not the proposed revisions. A summary of the comments, their disposition, and the changes made to the rule follow.

Subpart A—Administration of FHWA Planning and Research Funds

General Comments and Responses

Comment: One State, in which most research is conducted for the State by higher education institutions, stated that the proposed regulation does not pertain to universities as subrecipients and recommended citing Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," November, 19, 1993, for universities as subrecipients.

Response: While the State is the recipient of FHWA planning and research funds, Part 420 also applies to subawards to all categories of subrecipients, including institutions of higher education. In accordance with standard OMB requirements, subawards are to be administered in accordance with the procedures in the OMB Circular and corresponding agency implementing regulations that apply to the type of agency receiving the subaward, whether or not specifically stated in the regulation. To clarify what applies to administration of subawards to institutions of higher education, a new paragraph (o) has been added to § 420.121 as discussed under the section-by-section analysis.

Comment: One commenter suggested that the term "State highway agency" be changed to "State transportation agency" to maintain consistent nomenclature and reflect reality.

Response: Since most of the State agencies to which Federal-aid highway program funds are apportioned are no longer single purpose highway agencies, the FHWA agrees that use of the term "State transportation agency" is more appropriate and has made this change. However, 23 U.S.C. 302 requires that a State desiring to avail itself of the provisions of title 23, U.S.C., have a suitably equipped and organized State *highway* department and has been interpreted by the FHWA to restrict reimbursement of a State *highway* department's indirect costs. Therefore, a definition of State transportation agency (STA) has been added to § 420.103, as discussed below under the section-by-section analysis, to distinguish a State *highway* department from other State transportation agencies in order to determine whether the agency's indirect costs are allowable under 23 U.S.C. 302.

Comment: One State commented that it is using a significant portion of its SPR funds for training, "since the ISTEA language which was supposed to have covered training was inadvertently left out of that Legislation."

Response: The ISTEA in fact continued the funding provisions (23 U.S.C. 321) for training of State personnel although at a reduced level of funding. With the exception of a specific type of training cited in 23 U.S.C. 307(c), FHWA planning and research funds may only be used for transportation planning or RD&T related training if the cost of the training is necessary, reasonable, and it benefits the purposes of the grant or subgrant. General training of employees who are not working on grant funded activities is not an allowable cost. This is consistent with OMB cost principles which are applicable to FHWA planning and research fund grants and subgrants.

Comment: One State questioned the estimate of 2,100 burden hours, shown under the heading Paperwork Reduction Act in the NPRM, for the 50 States to comply with the regulation and stated that it will take much more time to develop a procedures manual; procedures for tracking activities, schedules, accomplishment, and fiscal commitments; and procedures to determine the effectiveness of the implementation process, and the utilizations of the RD&T output. The commenter indicated that the State has many of the elements in place, but did not know if the FHWA Division office would accept them or require revisions in content or format.

Response: The estimate of 2,100 burden-hours (40 hours per respondent) is for the one-time preparation by each State, the District of Columbia, and the Commonwealth of Puerto Rico of the *new certification* required by subpart B of the regulation. Many of the other activities cited by the commenter are either required already (e.g., progress reports) and are covered by the cited existing OMB clearances or are standard management practices that the State should already have in place. An updated burden estimate has been prepared. It is estimated that the average one-time burden for preparation of RD&T management process documentation and certification statements is 480 burden-hours (12 weeks x 40 hours per week) per State.

Section-by-Section Analysis

The authority citation has been amended from the NPRM to include 23 U.S.C. 303(g) which allows the use of NHS, STP, and highway bridge replacement and rehabilitation (HBRR) funds for development and establishment of the management and monitoring systems required under 23 U.S.C. 303. In addition, section 149(b) has been deleted since this regulation does not apply to funds made available under this section of title 23, U.S.C.

Section 420.101 Purpose

This section states the purpose of this regulation. It indicates that the provisions of this part apply to subrecipients of States, including MPOs. Language has been added to indicate that it also applies to activities undertaken with NHS, STP, and Highway Bridge Replacement and Rehabilitation Program (HBRRP) funds for development, establishment, and implementation of the management and monitoring systems required by 23 U.S.C. 303 and 23 CFR part 500. Use of NHS and STP funds for such purposes was included in the NPRM definition of FHWA planning and research funds; the use of HBRRP funds is being added to the definition as discussed below. A reference to the additional requirements for RD&T programs and studies in subpart B of this part is included.

Section 420.103 Definitions

This section includes the terms defined in 23 U.S.C. 101(a) and contains additional definitions for terms used in this part.

The term "FHWA planning and research funds" includes SPR funds, metropolitan planning (PL) funds, and the optional use of NHS, STP, and Minimum Allocation (MA) funds for planning and RD&T purposes. It also includes the use of NHS, STP, and HBRRP funds for development, establishment, and implementation of the management and monitoring systems required by 23 U.S.C. 303. The definition has been amended from the NPRM to include funds apportioned under 23 U.S.C. 144 for the HBRRP when such funds are used for development, establishment, and implementation of the bridge management system required by 23 U.S.C. 303. This category was inadvertently not included in the NPRM.

Although this rulemaking does not change the definition of grant, one commenter believed that new readers may not be familiar with the difference between a contract and a grant and, therefore, suggested that a definition of grant be included to reduce confusion.

The FHWA agrees and has added definitions of "grant agreement" and "procurement contract." These mechanisms for agencies to make awards to recipients are adaptations of definitions in Chapter 63, Using Procurement Contracts and Grant and Cooperative Agreements, of title 31, CFR.

A "grant agreement" is defined as a legal instrument between an awarding agency and recipient where the principal purpose is to provide funds to the recipient to carry out a public purpose of support or stimulation authorized by law.

A "procurement contract" is defined as a legal instrument between an awarding agency and recipient where the principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

For administrative purposes, it is important to note that the purpose of the award determines whether the award is a grant or a procurement action. The administrative procedures for grants are governed by OMB Circulars A–102 and A–110 and agency implementing regulations. The administrative procedures for procurement contracts are governed by the Federal Acquisition Regulations (48 CFR Part 31) or State procedures if the recipient is a State.

Since FHWA planning and research funds may be pooled for planning, as well as RD&T, studies or activities of national or regional significance, the definitions of national and regional pooled-fund studies have been moved from § 420.203 to § 420.103. In addition, both definitions have been modified to indicate: that MPOs, as well as States, may contribute to pooled-fund studies; that national studies are usually administered by the FHWA headquarters office; that regional studies are usually administered by an FHWA regional office in cooperation with a lead State or MPO; and that the funds may be pooled with or without matching. While any of the categories of funds included in the definition of "FHWA planning and research funds" may be pooled, the matching requirement can only be waived for SPR or PL funds. Such waiver must be approved by FHWA headquarters for both national and regional studies in accordance with the provisions of § 420.119(d).

As discussed under the general comments and responses, a definition of State transportation agency has been added. "State transportation agency (STA)" is defined as the State highway department, transportation department, or other State transportation agency to which Federal-aid highway funds are apportioned.

Section 420.105 Policy

This section continues the FHWA's previous policy of allowing States maximum possible flexibility in determining which eligible activities may be undertaken with FHWA planning and research funds, as long as planning activities of national significance, as identified in paragraph (b) of this section, are being adequately addressed. Under the provisions of this section, the FHWA may withhold or withdraw authorization of FHWA planning and research funds if planning activities of national significance are not being performed by a State. As discussed in the preamble to the NPRM, this policy also applies to State subrecipients. Paragraphs (a)(1) through (4) in the NPRM have been rewritten and consolidated for clarity into paragraphs (a)(1) and (2) in the rule without changing the substance of the policy.

One commenter expressed concern about the potential involvement in long range data reporting requirements that would make unexpected demands on its manpower in order to provide data that support FHWA responsibilities as specified in § 420.105(b). The commenter indicated that clarification was needed on this requirement. Another commenter indicated that States should have the right to question the need for particular data requests from the FHWA if the cost of providing such data becomes high.

This provision has been in the regulation since 1986. The major data bases that are referenced in § 420.105(b) are the FHWA's Highway Performance Monitoring System (HPMS) and statistical reports provided by the States for inclusion in the annual publication "Highway Statistics." Both of these data collection activities have been approved by the OMB and are resubmitted for approval every three years. Occasionally, information not included in these ongoing data bases is needed due to special circumstances and enactment of legislation, such as, designation of a National Highway System in accordance the provisions of the ISTEA. With each update of the HPMS and highway statistics reporting requirements and with each special request, the FHWA will continue to make every effort possible to limit the burden to the States while still receiving the information essential to guide the national transportation program.

Section 420.107 SPR Minimum Research, Development, and Technology Transfer Expenditure

This section reflects the requirement in 23 U.S.C. 307(c) that not less than 25 percent of a State's annual SPR funds be expended for RD&T activities unless the State certifies that it will expend more than 75 percent of such funds for transportation planning under 23 U.S.C. 134 and 135. It includes specific procedures and criteria for FHWA approval of a State's certification that were in the FHWA Executive Director's June 25, 1992, memorandum to the FHWA Regional Administrators. (This memorandum is available for review and copying in the file for FHWA docket number 93–18 at the address specified above under the caption FOR FURTHER INFORMATION CONTACT.) The certification must be submitted annually with the work program or with the request for authorization of funds for the second year of a biennial work program. Except for rephrasing of the considerations in paragraphs (c)(1) to (6) to change them from questions to statements, this section is unchanged from the NPRM.

Several commenters expressed concern over the criteria and procedures in § 420.107 for waiver of the requirement for use of 25 percent of a State's annual apportionment of SPR funds. One commenter stated that the proposed rules go far beyond what should be necessary to support such a certification and that it appears that the FHWA is unduly striving to discourage this option. This commenter recommended that the requirements be reduced to an assurance that the State's RD&T needs are being adequately addressed. Similarly, other commenters stated that the requirements for submitting an exception to the use of 25 percent of SPR fund for research are onerous and effectively prohibit exceptions as they are currently written or that the proposed rule indicates that the FHWA will be reluctant to grant exceptions.

While 23 U.S.C. 307(c)(2) requires that a State certify to the Secretary that its total expenditures for transportation planning under 23 U.S.C. 134 and 135 for the fiscal year will exceed 75 percent, it also requires that the certification be accepted by the Secretary. Based on the extensive provisions and emphasis on transportation RD&T in the ISTEA, the FHWA strongly believes that the Congress intended that the States have effective transportation RD&T programs. Therefore, the criteria for approving an exception are being retained.

Section 420.109 Distribution of PL Funds

This section reflects the requirements in 23 U.S.C. 104 that a State must make apportioned PL funds available to MPOs and that the funds must be distributed by the State to MPOs in the State based on a formula, approved by the Secretary (approval authority has been delegated to the FHWA), that considers population, status of planning, attainment of national ambient air quality standards, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law. The FHWA's longstanding interpretation, that the legislative requirement that States make PL funds available to MPOs precludes the use of such funds by the State for administration of PL grants or subgrants, is included in paragraph (a). It is FHWA policy to consult with the appropriate Federal Transit Administration (FTA) regional office prior to approval of a State's PL formula.

One State commented that the requirement in paragraph (a) that "the State shall not use any PL funds for grant or subgrant administration" is too restrictive and should be changed to permit a reasonable amount for administration. Another State commented that under the ISTEA, a State DOT's role in administering and participating in MPO planning activities funded with PL funds has increased significantly and that there should be a provision which permits the State DOT to retain a certain percentage of PL funds for its costs in administering and participating in PL funded programs. Another State commented: that the cost for grant administration historically has been included as part of the funding package of the MPO planning work program; that this new provision may unfairly restrict the use of PL funds to only direct program activity and not permit the State or MPO to use PL funds for organization administration costs; and that by not allowing the use of PL funds for grant or subgrant administration, the FHWA will be placing an unfair economic burden on the various parties concerned.

These comments imply a misunderstanding of both the legislation and regulation. Before responding to these comments, a distinction needs to be made between "grant or subgrant administration" and "general planning process administrative activities." "Grant or subgrant administration" includes activities such as processing or preparing PL grant agreements between

the FHWA and the State, subgrant agreements between the State and the MPOs, fiscal documents, progress reports, and audits. "General planning process administrative activities" may include conducting MPO meetings, preparation of planning work programs, and salaries of an MPO executive director and other administrative support staff.

The legislation has always specified that PL funds are to be made available *to the MPOs* by the State. The FHWA historically has interpreted this to mean that a State cannot unilaterally retain PL funds for any purpose; all PL funds must be made available to the MPOs. If an individual MPO chooses to include activities (e.g., development of a long range plan, traffic counting) to be performed with its PL funds by the State for the MPO in its work program, it may do so. If the required State PL fund distribution formula, developed in consultation with the MPOs, allows for State retainage of PL funds, it may be approved by the FHWA if the retained funds will be used by the State for *technical activities* in support of metropolitan planning or for making discretionary subgrants to MPOs for special studies.

In no instance may PL funds (either in an MPO's work program or retained under an approved formula) be used by a State for PL fund "grant or subgrant administration" as indicated in subparagraph (a). Such State grant or subgrant administrative activities are eligible for SPR funding. "General planning process administrative activities" performed by MPOs are eligible for PL funds. Such general administrative activities performed by a State for an MPO are eligible for SPR funds and would be eligible for PL funds if included in the MPO's work program.

One State commented that it would be concerned if the regulation is administratively construed to require a specific formula for distribution, or require reconsideration of its policy on PL funds.

The requirement that funds be distributed by a State by a formula that considers specific factors has existed since the enactment of the PL funding in 1973. The ISTEA added the additional factor of attainment of the national ambient air quality standards. In developing the formula, the State must consult with the MPOs and must consider the legislatively mandated factors, but all of the factors do not need to be included in the formula. In accordance with paragraph (f), any formula that does not meet these requirements must be brought into conformance as soon as possible, but not later than in time for distribution of PL funds apportioned to the State for the first Federal fiscal year beginning after the effective date of the regulation.

Section 420.111 Work Program

This section includes requirements for State and subrecipient work programs that serve as the application for FHWA planning and research funds. References to 23 CFR part 450 and subpart B of this part are cited for additional information on metropolitan area unified planning work programs and RD&T work programs, respectively. Except for correcting citations to 23 CFR part 450 and changing the first word in paragraph (a) from "expenditure" to "proposed use," this section is unchanged from the NPRM. The work program in essence is a statement of work that identifies the proposed use of the funds; expenditure of the funds is documented in the financial and progress reports.

One commenter stated that the requirement to submit work program documents creates duplicate paperwork for agencies. The commenter stated that the same information is available in work plans for individual studies, and, if FHWA review of individual study work plans is no longer required, submission of a work program is not appropriate.

A work program has always been required for both planning and RD&T activities. The work program is the "grant application" for FHWA planning and research funds and is necessary for the FHWA to determine if the proposed work is eligible. A work program may consist of a listing of proposed studies and activities and other appropriate information, such as cost of the activity and performing agency, with sufficient description for the FHWA to determine eligibility of the work. "Work plans" that included details on need, purpose, approach, etc., for individual RD&T studies are no longer required. Therefore, there is no duplication.

One State commented that while a biennial work program is allowed, it requires a projection of available Federal funds which may be difficult to make on a biennial basis.

Historically, the amount of FHWA planning and research funds available to a State is consistent from year to year over the period covered by authorizing legislation (e.g., the ISTEA). In any case, if a State's or subrecipient's transportation planning is a continuation of the same activities with minimal change in activities over an extended period, use of a 2-year work program should result in a significant reduction in paperwork since draft and final work programs would not need to be prepared and submitted for review and approval in the second year unless significant changes are necessary in the description of work. The initial work program would describe the activities anticipated to be accomplished over the 2-year period along with an estimate of funds for each year. The FHWA would approve the 2-year work program and authorize the first year's work subject to availability of funds. Prior to the beginning of the second year, when the actual amount of funds that will be available is known, the State would only need to submit a request to revise the budget to reflect the actual funds available (and if necessary any significant amendments in the description of work to be accomplished) for the second year and request the FHWA's authorization to proceed with the second year's work.

Section 420.113 Eligibility of Costs

This section includes general criteria and incorporates by reference other regulations and OMB Circulars for determining eligibility of transportation planning and RD&T activities and allowability of items of cost (e.g., salaries, travel) within such activities that are proposed for FHWA planning and research funds. Administrative procedures that must be followed for costs to be eligible for reimbursement are also included.

One commenter requested that a list of examples of transportation planning and RD&T activities that are eligible for FHWA planning and research funds be included in the final rule. Appropriate sections of title 23, U.S.C., that include information on broad categories of eligible activities are included by reference. The FHWA believes that any attempt to provide a more specific listing could be misinterpreted since all eligible activities could not possibly be listed. The longstanding practice of allowing the FHWA field offices to determine eligible activities, in consultation with the headquarters office if necessary, has worked well in the past and will be continued. In addition, the FHWA headquarters office will continue to issue appropriate guidance when necessary on the eligibility of specific types of activities. For example, in response to several inquiries since enactment of the ISTEA, guidance has been provided on the use of FHWA planning and research funds for transportation planning involving modes in addition to highway or transit. As discussed in the preamble to the NPRM, transportation planning studies involving modes in addition to highway

or transit are eligible for FHWA planning and research funds when performed as part of the statewide or metropolitan transportation planning processes.

In response to questions regarding eligibility of travel costs of team members conducting peer reviews of a State's RD&T management process, subpart B has been revised, as discussed below under the responses to comments on subpart B, to specify that such travel costs are eligible for FHWA planning and research funds. While not required by this regulation or 23 CFR part 450, similar peer reviews of statewide and metropolitan transportation planning processes would also be eligible if included in a State or MPO transportation planning work program and it is determined by the FHWA that the costs are necessary, reasonable, and benefit the FHWA planning and research funded transportation planning process.

Paragraph (b) of this section in the NPRM referenced the provisions of 23 CFR part 140, subpart G on the allowability of indirect costs of STA planning and research units. The allowability of such costs for any STA unit that performs work for development, establishment, and implementation of the management and monitoring systems required under 23 U.S.C. 303 was addressed in a May 3, 1994, memorandum to the FHWA and FTA Regional Administrators. (This memorandum is available for review and copying in the file for FHWA docket number 93–18 at the address specified above under the caption **FOR FURTHER INFORMATION CONTACT**.) To more clearly identify such allowable indirect costs, the reference to 23 CFR part 140, subpart G has been replaced with the specific provisions and information provided in the May 3 memorandum. In accordance with longstanding FHWA interpretation of 23 U.S.C. 302, except as specified in new paragraph (b)(2) of § 420.113, STA indirect costs are not eligible for reimbursement with FHWA planning and research funds. Paragraph (b)(2) specifies that salaries, but not other indirect costs, for services rendered by STA employees generally classified as administrative are eligible for reimbursement for a transportation planning unit, RD&T unit, or other unit performing eligible work with FHWA planning and research funds (including development, establishment, and implementation of the management and monitoring systems required by 23 U.S.C. 303 and 23 CFR part 500). Such STA administrative costs are allowable in the ratio of time spent on the FHWA planning and research funded work in the unit to the total unit's working hours. The FHWA is currently conducting a review of its longstanding policy on eligibility of STA indirect costs and, if necessary based on the results of this review, the provisions in this section will be amended.

Section 420.115 Approval and Authorization Procedures

This section includes procedures for approval of work programs or projects, and amendments thereto, and authorization for work to be performed with FHWA planning and research funds. The governmentwide common grant management provisions for prior awarding agency approval of certain budget and programmatic changes are referenced at 49 CFR 18.30. While executed project agreements are still necessary, the language in paragraph (c) was revised to eliminate reference to forms PR–2 and PR–2A since these forms are currently being revised and the form numbers may change.

Several commenters believe that the requirement for prior FHWA approval for budget and programmatic changes as specified in 49 CFR 18.30 is contrary to the intent of giving States more responsibility and authority. Some commenters also recommended that, after receiving initial FHWA approval of the work programs, additional FHWA approval should only be sought when a budget revision means additional Federal funds are required. One commenter suggested that FHWA approval be sought only when a budget revision exceeds the limits of $10,000 and 15 percent of a research study cost as specified in 23 CFR 511.3(e).

Most of these comments reflect a misunderstanding of the provisions of 49 CFR 18.30 which are governmentwide common grant management provisions that have been applicable to FHWA planning and research funded work programs since revision of OMB Circular A–102 in 1988 and issuance of 49 CFR part 18. These provisions were included in 23 CFR part 420 in the 1990 update and are unchanged in this final rule.

The limit of $10,000 and 15 percent under 23 CFR 511.3(e), applies to *individual* RD&T studies; for example, a cost increase of greater than $15,000 for a $100,000 study would require prior approval. Under the provisions of 49 CFR 18.30(c)(1)(ii), the State may make budget transfers among direct cost categories (e.g., individual RD&T studies) without FHWA prior approval unless the *total* of such transfers over the period of the work program will, or is expected to, exceed the larger of $100,000 or 10 percent of the total approved (i.e., work program) budget. For example, if an RD&T work program totals $2 million, the State may transfer $200,000 among direct cost line items included in the work program without prior FHWA approval. At the discretion of the FHWA, this prior approval requirement may be waived. Thus the use of the provisions of 49 CFR 18.30 provide more flexibility and authority to the State than the provisions that are being replaced.

On the other hand, a budget change that involves an increase in the total funds authorized for the work program still requires prior FHWA approval and authorization. Similarly, the programmatic changes (e.g., adding a line item, contracting out) specified in 49 CFR 18.30(d) require prior FHWA approval.

One commenter interpreted the provisions of paragraphs (b) and (c) of this section to imply that the State can impose obligation limitations on subrecipients of the PL funds and requested that it be clarified to indicate that such limits can indeed be applied.

The provisions of these paragraphs are not new and are not related to the issue of distribution of available obligation authority within a State. These provisions allow work to proceed and be reimbursed at a later date in situations where sufficient funds or obligation authority are not available at the time authorization is requested for all work in a statewide or metropolitan area work program. Obligation authority is distributed to the States for use by the States as determined in cooperation with the FHWA field offices. In general, neither legislation nor the FHWA specifies categories of funds for which the States must use the obligation authority. States may choose to request authorization of only a portion of the PL funds needed for a work program period, but would then need to ensure that additional funds are requested and authorized prior to the MPO proceeding with the remainder of the work program. Such partial funding necessitates processing of project amendments and additional paperwork. It also could result in an MPO performing work that would be ineligible for reimbursement if the work is performed prior to approval of the amendment. Such partial funding should be avoided if possible.

Section 420.117 Program Monitoring and Reporting

This section includes grant monitoring and reporting requirements. The frequency and content of progress and financial reports specified in paragraphs (a) through (d) are identical

to those contained in the governmentwide common grant management requirements and 49 CFR 18.40 which is referenced in paragraph (a). Paragraph (e) requires FHWA approval prior to publication of reports that document the results of work performed with FHWA planning and research funds. A State may request waiver of this prior approval requirement. The reference to the Federal-aid Project Agreement (Form PR–2) in the first sentence of paragraph (e) has been deleted since Form PR–2 is being revised and the contents of the cited provision for prior approval of reports are included in this paragraph.

Several commenters believe that these reporting requirements are contrary to the concept of delegation of program management responsibility to the State which should be allowed to determine how to monitor its research program; FHWA review and approval should be limited to assurance that an adequate monitoring process is in place and is being used to guide the State's program; and, if a State truly has responsibility for managing its own program, the State should determine the needed frequency of reporting for adequately monitoring projects. Another commenter recommended that an annual report should be adequate and that the reporting format should be kept simple.

These grant reporting requirements are not new and are standard governmentwide grant reporting requirements that replaced more comprehensive requirements that were in 23 CFR part 420 prior to 1990. These reports are necessary for the FHWA to perform its grant oversight responsibilities. Progress and financial reports that include the specified information must be submitted at least annually. The FHWA field offices may require more frequent reports, but not more than quarterly, unless the State is determined to be a high-risk grantee in accordance with the provisions of 49 CFR 18.12. The reporting requirements are for the work program (i.e., grant), not for individual "projects/studies." The progress reports previously required in 23 CFR part 511 for individual research studies are no longer required. Progress on individual studies would be addressed in the overall work program report. A State may establish additional reporting procedures that meet its needs for individual studies.

Similarly, another commenter stated that § 420.117 requires an increased level of reporting activity and that the interpretation and administration of this section could produce some very demanding requirements. This commenter also questioned who would establish and approve performance goals, and what level of detail would be required.

As indicated above, this section is unchanged from the existing regulation and does not require increased reporting. The level of reporting will only be greater for a State or subrecipient if the State or subrecipient was not in compliance with the existing requirements.

One commenter recommended that the reporting provisions be flexible enough to allow monthly reports if agreed to by the agency and the subrecipient.

As mentioned above, the FHWA may require more frequent reports, but may not require submission of reports more than quarterly unless a recipient or subrecipient is determined to be a high risk. A State may establish the frequency of progress and financial reports for its subgrantees, but is encouraged not to impose more burdensome requirements than those imposed upon the State by the FHWA.

One commenter stated that the requirement in § 420.117(c) that reports from subrecipients be submitted no more than 90 days after the end of the reporting period does not allow sufficient time to complete the audit of the work program, especially when the MPO has elected a 2-year cycle for the audit to be performed. It was suggested that the 90-day requirement be deleted and the timeframe be determined by the State with approval of the FHWA.

The commenter is confusing grant audit requirements with grant reporting requirements. In accordance with governmentwide common grant management requirements, final progress and financial reports for a grant (i.e., the annual/biennial work program) must be submitted within 90 days of the end of the grant period. If the later financial audit, which covers the MPO's fiscal year and typically is not completed until a year after the end of the grant period, necessitates adjustments, the grant may be reopened or adjustment may be made to a current grant, as appropriate. With regard to the statement that an MPO has been operating under a 2-year cycle for financial audits, in accordance with the OMB Circular A–128, Single Audits of State and Local Governments, audits must be performed annually unless a constitutional or statutory requirement for less frequent audit was in effect by January 1, 1987.

One commenter stated that the requirement that a State must request a waiver of prior approval of report publication is an unnecessary and demeaning retention of FHWA authority; the State should have sole responsibility and authority to publish reports that follow accepted editorial formatting for electronic data base management and retrieval purposes; and the use of a report as evidence of work performed and approval for publication are two separate issues and should not be combined. Another commenter stated that FHWA approval of reports prior to publication is inconsistent with the intent of allowing States flexibility in managing their own programs.

With respect to "editorial formatting," the FHWA does not review reports for this purpose. The FHWA agrees that the use of a report as evidence of work performed and approval for publication are two separate issues, but does not agree that they should not be combined. This comment implies that the report should be submitted to the FHWA *after* publication for acceptance as evidence of work performed. In addition to determining if the proposed work that was approved as part of the grant was performed, the FHWA should have an opportunity to determine if the contents of the report are supported by the work performed since the published report will include a credit reference to the FHWA. Also, submission prior to publication allows a State to use FHWA expertise, if desired, to identify any necessary technical corrections prior to publication and distribution. If, based on past performance, an FHWA field office is satisfied that prior review is unnecessary and a State requests a waiver of the prior review requirement, the field office may grant the waiver for all reports or for selected categories (e.g., State planning, MPO planning, all research, or bridge research). A waiver may be granted for an indefinite period of time, annually, or any other appropriate period. Whether or not a waiver is approved, appropriate reports that document work performed with FHWA planning and research funds must be prepared, the reports must include a credit reference and disclaimer statement, and copies must be provided to the FHWA as evidence of work performed.

Section 420.119 Fiscal Procedures

This section includes fiscal requirements for administration, matching, and payment for FHWA planning and research funds. Paragraph (c) specifies that the statewide and, if appropriate, metropolitan transportation improvement program provisions of 23 CFR Part 450 need to be met for the use of NHS, STP, MA, or HBRRP funds for planning or RD&T purposes. Paragraph (d) includes provisions for waiver of matching requirements for SPR and PL

funds (this option is not applicable for optional use of STP, NHS, MA, or HBRRP funds for planning or RD&T activities). If the FHWA determines that the interests of the Federal-aid program would be best served without matching, it may waive the matching requirement for individual activities or regional or national pooled-fund studies.

Two commenters stated that authority to approve 100 percent Federal funding should be delegated to the FHWA regional offices.

The approval authority for 100 percent Federal funding will remain with the Associate Administrator for Program Development (for planning activities) and the Associate Administrator for Research and Development (for RD&T activities) since these offices are in the best position to determine whether the interests of the Federal-aid highway program would be best served and whether the proposed work can be more effectively addressed if the matching requirement is waived.

Several commenters stated that limiting the cost to a minimum of $50,000 for cooperatively (pooled) funded projects and requiring an agency's contribution to be at least $10,000 were inappropriate.

Due to administrative costs and the time involved in coordinating pooled-fund studies, proposed national studies costing less than $50,000 will not be accepted. In response to the comments, the minimum agency contribution of $10,000 has been deleted. Agencies contributing less than $10,000 to a national pooled-fund study may participate in the technical committee meetings, but will not be reimbursed from the pooled funds for their expenses to attend the meetings. At the discretion of the FHWA regional offices and participating agencies, regional pooled-fund studies of less than $50,000 may be undertaken and travel costs may be reimbursed from the regional pooled funds for expenses for attendance at technical committee meetings of representatives of agencies that contribute less than $10,000.

Section 420.121 Other Requirements

This section contains, mostly by cross reference, other legislative or regulatory requirements applicable to FHWA planning and research fund grants. Except as noted below, this section is unchanged from the NPRM.

With respect to paragraph (d), one commenter stated that it appears that the regulation does not differ from present procedures with respect to the acquisition of research equipment. It was suggested that more latitude be given to the States for the purchase of research equipment with SPR funds when the equipment will clearly be devoted to research at a facility largely supported by SPR funds.

In accordance with governmentwide grant management procedures and cost principles, equipment is eligible if the cost is necessary, reasonable, and it benefits the grant. Individual items of equipment must be identified in the grant application (i.e., the work program) and will be reviewed for eligibility on a case-by-case basis. In general, if the equipment will be used only for FHWA funded work, all of the cost may be eligible. If the equipment will be used for work funded by other sources, the cost should be shared on an equitable basis or through the establishment of rental/use rates.

As noted above under the heading General Comments and Responses, paragraph (o) has been added to this section. This new paragraph specifies that subawards to institutions of higher education, hospitals, and other nonprofit organizations will be administered by the State in accordance with the provisions of OMB Circular A–110 (58 FR 62992) and the U.S. DOT's implementing regulations, 49 CFR part 19 (59 FR 15657). (Copies of OMB Circular A–110 and 49 CFR part 19 are available for review and copying in the file for FHWA docket number 93–18 at the address specified above under the caption FOR FURTHER INFORMATION CONTACT.)

A new paragraph (p) has been added to specify that reports and other documents prepared under FHWA planning and research funded grants or subgrants awarded after the effective date of this regulation must be in metric units.

Subpart B—Research, Development, and Technology Transfer Program Management

General Comments and Responses

Comment: Several commenters requested clarification concerning various aspects of the peer review process, including the purpose and use of the results of the reviews, funding of travel for review team members, and frequency of the reviews.

Response: It is the State's responsibility to initiate a peer review of its RD&T management process. An initial peer review should be undertaken sometime during the first three years after the State's management process has been approved by the FHWA Division Office.

The peer review is intended to review a State's management process, not the content of its RD&T program. It will not be used for compliance or certification. Peer reviews should help in identifying, reinforcing, and conveying effective program approaches across the country and enable a nationwide sharing of successful practices and policies. The purpose of providing the peer review report and a written response to the report findings to the FHWA Division Administrator is primarily to keep the Division Administrator informed of the status of the State's program and what efforts are being taken to improve the program.

The members of the peer review team will be selected by the State. The FHWA will establish criteria for team members and will develop and maintain a list of qualified individuals who will be available to serve on the teams. At least two members of the peer review team must be selected from this list.

A State may include a line item in its work program to pay for the peer review of its RD&T program with FHWA planning and research funds. The FHWA will consider establishing a national pooled-fund project if there is sufficient interest from the States and if it would expedite the peer review process.

The "periodic basis" for conducting peer reviews has been determined by the FHWA to be once every three years. After experience has been gained operating under the new procedures, consideration will be given to extending the time period between reviews.

Comment: Comments were mixed on whether the proposed rule should be mandatory for all States or whether a State could continue to submit individual RD&T studies for Federal approval.

Response: The option to submit individual studies for Federal approval (i.e., to continue operating under current procedures) has not been included in the final rule. The regulations are mandatory for all States. The final regulation provides a State with considerable latitude in developing and managing its RD&T activities and supports the intent of ISTEA to move the decisionmaking process to the State level.

The FHWA is available, at a State's request, to assist in reviewing any RD&T activities that are highly technical or require special expertise.

Comment: One commenter stated that the FHWA's intent concerning the degree of RD&T program interaction within State agencies should be more clearly stated. Specifically, expectations regarding the degree of management involvement at various organizational levels should be disclosed.

Response: Due to the different organizational structures of the States, it is not possible to be specific concerning the degree of management involvement. Each State should involve those management levels that are necessary to develop and implement an RD&T program that addresses high priority transportation issues.

Comment: One commenter stated that the NPRM implies that the FHWA is going to require a uniform format for State work programs since the information will be entered into a national data base.

Response: There is no intent to require a uniform work program format. The FHWA will encourage the States to include summary sheets listing all studies and costs followed by more detailed information on individual studies in their work programs. Also, as part of its management process, each State is required to use the Transportation Research Board's Transportation Research Information Services (TRIS) for reporting its active RD&T activities. It will be the State's responsibility to enter its new RD&T activities into the TRIS data base. Since uniform entries will be required for the data base, it could reasonably result in the States' work programs becoming more uniform to simplify data entry.

Comment: Several commenters expressed concern about the requirement that each State implement a program of RD&T activities for planning, design, construction, and maintenance of highways, public transportation, and intermodal transportation systems. The concerns were that the budgets for the smaller States are not sufficient to support activities in all of these areas; the FHWA is requiring the States to set up separate groups of funding for highway, transit, and intermodal research; and the term "program of RD&T activities" is not defined.

Response: The ISTEA *allows* the use of FHWA planning and research funds for RD&T activities noted in § 420.207. The regulation reflects the types of activities that may be conducted, but does not mandate that particular types be conducted. Each State is to develop a program that addresses its highest priority transportation research needs. The priorities will vary from State to State depending on such factors as the size of the State, its population, and the size and number of urban areas. This regulation does not establish separate groups of funds for highway, transit, or intermodal research.

Comment: One commenter stated that the conditions for grant approval appear to require more paperwork than currently required.

Response: Initially, for some States, it may require additional effort to document the State's RD&T management process. Once the management process has been documented and approved by the FHWA the amount of paperwork between the State and the FHWA should be reduced substantially. Paperwork on individual RD&T activities essentially will be eliminated.

Comment: One commenter was concerned that without additional explanation each FHWA Division Office would have a different interpretation of the requirement that a State have procedures to determine the effectiveness of its RD&T program.

Response: Guidelines for implementing subpart B are being developed. These guidelines will expand on the requirements in § 420.207. As a minimum, a State should develop a follow-up procedure to determine if the RD&T results have been incorporated into the State's standard plans, specifications, practices, or procedures. A more detailed process could involve benefit/cost ratios or other effectiveness measures.

Comment: One commenter stated that to list individual studies in the work program reduced the State's ability to be responsive to research needs as they arise during the year. According to the commenter this will cause a delay in the start of new research by having to wait for the next program approval or for approval of an amended program.

Response: A listing of individual studies in the work program is necessary for the FHWA Division Office to determine if the items are eligible for FHWA planning and research funds. Addition or deletion of individual studies is a programmatic change that requires prior FHWA approval. Such prior approval may be waived by the FHWA division office; however, the total FHWA planning and research funds authorized for the work program cannot be exceeded without FHWA prior authorization. It is anticipated that once a State has demonstrated that it has an adequate RD&T management process that meets the requirements of this rule, the FHWA Division Office would consider a request for waiver of prior approval of programmatic changes in the work program.

Section-by-Section Analysis

Section 420.201 Purpose and Applicability

This section states the purpose of subpart B. It indicates that the requirements are applicable to RD&T activities performed by the States and their subrecipients with FHWA planning and research funds. It references the provisions of subpart A. This section is unchanged from that proposed in the NPRM.

Section 420.203 Definitions

This section includes the definitions in 23 U.S.C. 101(a) and subpart A and provides additional definitions for terms used in this subpart.

Several commenters stated that the definition of "peer review" in the NPRM could be misinterpreted to require participation of representatives of specific organizations listed in the definition and that the definition should be revised to clearly state what is intended. The definition has been revised to indicate that a "peer review" is a review of a State's RD&T program conducted by persons who are knowledgeable in RD&T management and operation and to clarify that the peer review team *may* include, and is not limited to, representatives of another State, the FHWA, the American Association of State Highway and Transportation Officials, the Transportation Research Board, universities, or the private sector.

Commenters suggested that definitions of the terms "RD&T activity" and "intermodal RD&T" be included to provide an indication of individual or categories of activities that are included in these terms that are used in other sections of the rule.

The FHWA has added definitions of these two terms.

Section 420.205 Policy

This section explains the FHWA's intent to allow States maximum flexibility and discretion in managing and directing their FHWA planning and research funded RD&T activities while ensuring proper utilization of Federal funds and avoiding unnecessary duplication of effort.

Except for removal of paragraph (h), this section is unchanged from the NPRM. Paragraph (h) includes the nondiscrimination provisions of title VI of the Civil Rights Act of 1964 and DOT and FHWA implementing regulations. Most of this paragraph was redundant of § 420.121(m), which applies to RD&T as well as planning programs. The citation to 23 CFR part 200 that was in this paragraph has been moved to § 420.121(m).

Section 420.207 Conditions for Grant Approval

This section outlines the conditions that a State must meet for approval of

FHWA planning and research funds for its RD&T activities.

Paragraph (b) has been revised to indicate that a State's work program "may" include a line item for the costs associated with a peer review of its RD&T program.

The FHWA will establish criteria and develop and maintain a list of qualified individuals who will be available to serve on peer review teams. A requirement has been added to paragraph (b) providing that at least two members of the peer review team must be selected from the FHWA list.

The last sentence in paragraph (c) has been rewritten to eliminate the impression that the peer review team is under the direction of the FHWA.

Section 420.209 RD&T Work Program

This section outlines the items that must be included in a State's work program and incorporates by reference § 420.115 for approval and authorization procedures. The title of this section has been changed from "State work program" to "RD&T work program" since it includes provisions applicable to the RD&T program. A requirement to include a summary, listing the major items and estimated cost, has been added to this section. The summary will provide a quick overview of the content of a State's RD&T program.

Section 420.211 Eligibility of Costs

This section indicates eligible costs for FHWA participation in RD&T activities and references § 420.113 for other eligible costs. Paragraph (c) was revised to conform with § 420.113(b).

Section 420.213 Certification Requirements

This section provides the format for a State's certification indicating (1) State compliance with the requirements of this subpart; (2) the condition under which a new certification is required; and (3) the due date for the initial certification.

Several commenters noted that some States may not be able to comply with the proposed January 1, 1995, certification date. The date for certification has been changed to June 30, 1995. In addition, a provision has been added that allows the FHWA Division Administrator to grant conditional approval of a State's RD&T management process for a State unable to achieve full compliance by June 30, 1995. A conditional approval would cite those areas of the State's management process that are deficient and that all deficiencies would need to be corrected by January 1, 1996.

Questions were asked on how often a certification needs to be submitted and if a State could begin operating under the new procedures prior to proposed date of January 1, 1995. The certification is a one-time submittal, unless a State significantly changes its RD&T management process. A copy of the State's certification is to be submitted with its work program. A State may begin operating under these procedures as soon as its RD&T management process is approved by the FHWA.

Section 420.215 Procedure for Withdrawal of Approval

This section outlines the procedures used and penalties imposed if a State is not complying with the requirements of this subpart or is not performing in accordance with its RD&T management process.

Paragraph (d) in the NPRM proposed that, for any State not in compliance, the FHWA would withdraw the State's ability to approve RD&T activities and require the State to submit individual studies for FHWA approval. This approval requirement is similar to current procedures and would have provided little incentive for a State to correct deficiencies in its program. Therefore, paragraph (d) has been revised to indicate that an adverse decision shall result in the immediate withdrawal of FHWA planning and research funding for the State's RD&T activities until the State is in full compliance.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This action amends requirements for administration of FHWA planning and research funds to be consistent with legislative changes made by the ISTEA. Also, this rulemaking establishes a mandatory State certification process and a Federal and peer review process to determine annually whether each State complies with the standards for State RD&T management in subpart B. The economic costs of this rulemaking will be insignificant and will consist only of the costs associated with preparation of the grant applications and State development of procedures for RD&T management. The cost savings that will be realized by the States due to the reduction in time to initiate and conduct RD&T activities under the State RD&T management provisions will more than offset the one-time cost of development of the procedures.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This rule addresses the administrative procedures and requirements that States must comply with when using FHWA planning and research funds provided under title 23, U.S.C. This rule does not impose any direct requirement on small entities that would result in increased economic costs. Based on this evaluation, the FHWA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Although this rule relates to requirements that States must meet to be eligible for FHWA planning and research funds, federalism implications, though unavoidable, would be minimized. Nothing in this rule preempts any State law or regulation. The rule provides States increased authority and flexibility to manage their federally assisted State planning and research programs. This increase in authority and flexibility is in concert with the principles and criteria contained in Executive Order 12612 for the implementation of express statutory provisions. Accordingly, the FHWA certifies that this rule does not have sufficient Federalism implications to warrant the preparation of a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements referenced in § 420.105(b) have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–

3520) and have been assigned OMB control numbers 2125–0028 and 2125–0032. The information collection requirements in §§ 420.111 (a), (b), and (c), and 420.117 (b) and (c) for metropolitan planning areas have been approved by the OMB and assigned control number 2132–0529. The information collection requirements in §§ 420.111 (a), (b), and (c), 420.117 (b) and (c), and 420.213 (a) and (b) for State planning and RD&T activities have been submitted to the OMB for approval.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

For the reasons set out in the preamble, and under the authority of 23 U.S.C. 315 and 49 CFR 1.48, title 23, Code of Federal Regulations, is revised as set forth below.

List of Subjects in 23 CFR Parts 420 and 511

Accounting, Grant programs—transportation, Highways and roads, Planning, Reporting and recordkeeping requirements, Research.

Issued on: July 18, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Chapter I of title 23, Code of Federal Regulations, by revising the heading of subchapter E, by revising part 420, and by removing and reserving part 511 as set forth below.

SUBCHAPTER E—PLANNING AND RESEARCH

1. The heading of subchapter E is revised as set forth above.

2. Part 420 is revised to read as follows:

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Subpart A—Administration of FHWA Planning and Research Funds

Sec.
420.101 Purpose and applicability.
420.103 Definitions.
420.105 Policy.
420.107 SPR minimum research, development, and technology transfer expenditure.
420.109 Distribution of PL funds.
420.111 Work program.
420.113 Eligibility of costs.
420.115 Approval and authorization procedures.
420.117 Program monitoring and reporting.
420.119 Fiscal procedures.
420.121 Other requirements.

Subpart B—Research, Development and Technology Transfer Program Management

Sec.
420.201 Purpose and applicability.
420.203 Definitions.
420.205 Policy.
420.207 Conditions for grant approval.
420.209 State work program.
420.211 Eligibility of costs.
420.213 Certification requirements.
420.215 Procedure for withdrawal of approval.

Authority: 23 U.S.C. 103(i), 104(f), 115, 120, 133(b), 134(n), 157(c), 303(g), 307, and 315; and 49 CFR 1.48(b).

Subpart A—Administration of FHWA Planning and Research

§ 420.101 Purpose and applicability.

This part prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken by States and their subrecipients, including Metropolitan Planning Organizations (MPOs), with FHWA planning and research funds. It applies to activities and studies funded as part of a recipient's or subrecipient's work program or as separate Federal-aid projects that are not included in a work program. This subpart also is applicable to the approval and authorization of research, development, and technology transfer (RD&T) work programs; additional policies and procedures regarding administration of RD&T programs are contained in subpart B of this part. The requirements in this part supplement those in 49 CFR Part 18 which are applicable to administration of these funds.

§ 420.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Grant agreement means a legal instrument between an awarding agency and recipient where the principal purpose is to provide funds to the recipient to carry out a public purpose of support or stimulation authorized by law.

FHWA planning and research funds means:

(1) State planning and research (SPR) funds (the 2 percent funds authorized under 23 U.S.C. 307(c)(1));

(2) Metropolitan planning (PL) funds (the 1 percent funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134(a));

(3) National highway system (NHS) funds authorized under 23 U.S.C. 104(b)(1) used for transportation planning in accordance with 23 U.S.C. 134 and 135, highway research and planning in accordance with 23 U.S.C. 307, highway-related technology transfer activities, or development and establishment of management systems under 23 U.S.C. 303;

(4) Surface transportation program (STP) funds authorized under 23 U.S.C. 104(b)(3) used for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and

(5) Minimum allocation funds authorized under 23 U.S.C. 157(c) used for carrying out, respectively, the provisions of 23 U.S.C. 307(c)(1) (up to 1½ percent) and 23 U.S.C. 134(a) (up to ½ percent).

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

National pooled-fund study means a planning or RD&T study or activity expected to solve problems of national significance, usually administered by the FHWA headquarters office in cooperation with States and/or MPOs, that is funded by State and/or MPO contributions of FHWA planning and research funds, with or without matching funds.

Procurement contract means a legal instrument between an awarding agency and recipient where the principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

Regional pooled-fund study means a planning or RD&T study expected to solve problems of regional significance,

usually administered by an FHWA region office in cooperation with a lead State and/or MPO, that is funded by State and/or MPO contributions of FHWA planning and research funds, with or without matching funds.

State transportation agency (STA) means the State highway department, transportation department, or other State transportation agency to which Federal-aid highway funds are apportioned.

Work program means a periodic statement of proposed work and estimated costs that document the eligible activities to be undertaken with FHWA planning and research funds during the next 1 or 2-year period by STAs and/or their subrecipients.

§ 420.105 Policy.

(a) Within the limitations of available funding and with the understanding that planning activities of national significance, identified in paragraph (b) of this section, and the requirements of 23 U.S.C. 134, 135, 303, and 307(c) are being adequately addressed, the FHWA will allow STAs and their subrecipients:

(1) Maximum possible flexibility in the use of FHWA planning and research funds to meet highway and multimodal transportation planning and RD&T needs at the national, State, and local levels while ensuring legal use of such funds and avoiding unnecessary duplication of efforts; and

(2) To determine which eligible planning and RD&T activities they desire to support with FHWA planning and research funds and at what funding level.

(b) The STAs shall provide data that support the FHWA's responsibilities to the Congress and to the public. These data include, but are not limited to, information required for: Preparing proposed legislation and reports to the Congress; evaluating the extent, performance, condition, and use of the Nation's transportation systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use, and revenues generated; and calculating apportionment factors.

(The information collection requirements in paragraph (b) of § 420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125–0028 and 2125–0032.)

§ 420.107 SPR minimum research, development, and technology transfer expenditure.

(a) In accordance with the provisions of 23 U.S.C. 307(c), not less than 25 percent of the SPR funds apportioned to a State for a fiscal year shall be expended for RD&T activities relating to highway, public transportation, and intermodal transportation systems, unless the State certifies, and the FHWA accepts the State's certification, that total expenditures by the State during the fiscal year for transportation planning under 23 U.S.C. 134 and 135 will exceed 75 percent of the amount apportioned for the fiscal year.

(b) Prior to submitting a request for an exception to the 25 percent requirement, the State shall ensure that:

(1) The additional planning activities are essential and there are no other reasonable options available for funding these planning activities (including the use of National Highway System, Surface Transportation Program, or Federal Transit Administration Section 26(a)(2) funds or by deferment of lower priority planning activities);

(2) The planning activities have a higher priority than RD&T activities in overall needs of the State for a given year; and

(3) The total level of effort by the State in RD&T (using both Federal and State funds) is adequate.

(c) If the State chooses to pursue an exception, the request, along with supporting justification, shall be sent to the FHWA Division Administrator for action by the FHWA Associate Administrator for Research and Development. The Associate Administrator's decision shall be based upon the following considerations:

(1) Whether the State has a process for identifying RD&T needs and for implementing a viable RD&T program.

(2) Whether the State is contributing to cooperative RD&T programs or activities, such as the National Cooperative Highway Research Program, the Transportation Research Board, the implementation of products of the Strategic Highway Research Program, and pooled-fund studies.

(3) Whether the State is using SPR funds for technology transfer and for transit or intermodal research and development to help meet the 25 percent minimum requirement.

(4) The percentage or amount of the State's FHWA planning and research funds that were used for RD&T prior to enactment of the 25 percent requirement and whether the percentage or amount will increase if the exception is approved.

(5) If an exception is approved for the fiscal year, whether the State can demonstrate that it will meet the requirement or substantially increase its RD&T expenditures over a multi-year period.

(6) Whether the amount of Federal funds needed for planning for the program period exceeds the total of the 75 percent limit for the fiscal year and any unexpended (including unused funds that can be released from completed projects) funds for planning from previous apportionments.

(d) If the State's request for an exception is approved, the exception will be valid only for the fiscal year in which the exception is approved. A new request must be submitted in subsequent fiscal years.

§ 420.109 Distribution of PL funds.

(a) States shall make all PL funds authorized by 23 U.S.C. 104(f) available to the MPOs in accordance with a formula developed by the State, in consultation with the MPOs, and approved by the FHWA. The State shall not use any PL funds for grant or subgrant administration.

(b) In developing the formula for distributing PL funds, the State shall consider population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law.

(c) As soon as practicable after PL funds have been apportioned by the FHWA to the States, the STAs shall inform the MPOs and the FHWA of the amounts allocated to each MPO.

(d) If the STA, in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2), determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134(a), the STA may, after considering the views of the affected MPOs and with the approval of the FHWA, use these funds to finance transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 may be made available by the MPOs to the State for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraphs (a) or (b) of this section shall be brought into conformance with such requirements as soon as possible, but no later than in time for distribution of PL funds apportioned to the State for the first

Federal fiscal year beginning after August 22, 1994.

§ 420.111 Work program.

(a) Proposed use of FHWA planning and research funds shall be documented by the STAs and subrecipients in a work program(s) acceptable to the FHWA. Statewide, metropolitan, other transportation planning activities, and transportation RD&T activities may be administered as separate programs, paired in various combinations, or brought together as a single work program. Similarly, these transportation planning and RD&T activities may be authorized for fiscal purposes as one combined Federal-aid project or as separate Federal-aid projects. The expenditure of PL funds for transportation planning outside of metropolitan planning areas under § 420.109(d) may be included in the work program for statewide transportation planning activities or in a separate work program submitted by the STA.

(b) Work program(s) that document transportation planning activities shall include a description of work to be accomplished and cost estimates for each activity. Additional information on metropolitan planning area work programs is contained in 23 CFR 450.314. Additional information on research, development, and technology transfer work program content and format is contained in subpart B of this part.

(c) The STAs that use separate Federal-aid projects in accordance with § 420.111(a) shall submit, in addition to the financial information specified below for each program, one overall summary showing the funding for the entire FHWA funded planning, research, development, and technology transfer effort. Each work program shall include a financial summary that shows:

(1) Federal share by type of fund;

(2) Matching rate by type of fund;

(3) State and/or local matching share; and

(4) Other State or local funds.

(d) The STAs and MPOs also are encouraged to include cost estimates for transportation planning, research, development, and technology transfer related activities funded with other Federal or State and/or local funds; particularly for producing the FHWA-required data specified in paragraph (b) of § 420.105, for planning for other transportation modes, and for air quality planning activities in areas designated as nonattainment for transportation-related pollutants in their work programs. The MPOs in Transportation Management Areas shall include such information in their work programs in accordance with the provisions of 23 CFR part 450.

(The information collection requirements in §§ 420.111(a), (b), and (c), and 420.117(b) and (c) for metropolitan planning areas have been approved by the OMB and assigned control number 2132–0529.)

§ 420.113 Eligibility of costs.

(a) Costs will be eligible for FHWA participation provided that the costs:

(1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;

(2) Are verifiable from the STA's or the subrecipient's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;

(4) Are included in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

(b)(1) Except as specified in paragraph (b)(2) of this section, indirect costs of an STA are not eligible for reimbursement with FHWA planning and research funds.

(2) Salaries for services rendered by STA employees who are generally classified as administrative are eligible for reimbursement for a transportation planning unit, RD&T unit, or other unit performing eligible work with FHWA planning and research funds (including development, establishment, and implementation of the management and monitoring systems required by 23 U.S.C. 303 and 23 CFR part 500) in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours.

(c) Indirect costs of MPOs and local governments are allowable if supported by a cost allocation plan and indirect cost proposal approved in accordance with the provisions of OMB Circular A–87. An initial plan and proposal must be submitted to the Federal cognizant or oversight agency for negotiation and approval prior to recovering any indirect costs. The cost allocation plan and indirect cost proposal shall be updated annually and retained by the MPO or local government, unless requested to be resubmitted by the Federal cognizant or oversight agency, for review at the time of the audit required in accordance with 49 CFR Part 90. If the MPO or local government's indirect cost rate varies significantly from the rate approved for the previous year, or if the MPO or local government changes its accounting system and affects the previously approved indirect cost allocation plan and proposal or rate and its basis of application, the indirect cost allocation plan and proposal shall be resubmitted for negotiation and approval. In either case, a rate shall be negotiated and approved for billing purposes until a new plan and proposal are approved.

(d) Indirect costs of other STA subrecipients, including other State agencies, are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted, and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the subrecipient.

§ 420.115 Approval and authorization procedures.

(a) The STA and its subrecipients shall obtain work program approval and authorization to proceed prior to beginning work on activities in the work program. Such approvals and authorizations should be based on final work program documents. The STA and its subrecipients also shall obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 and for those items of allowable costs which require prior approval in accordance with the applicable cost principles specified in 49 CFR 18.22.

(b) Except for advance construction, authorization to proceed with the work program(s) in whole or in part shall be deemed a contractual obligation of the Federal Government pursuant to 23 U.S.C. 106 and shall require that appropriate funds be available for the full Federal share of the cost of work authorized. Those STAs that do not have sufficient FHWA planning and research funds or obligation authority available to obligate the full Federal share of the entire work program(s) may utilize the advance construction provisions of 23 U.S.C. 115(a) in accordance with the requirements of 23 CFR Part 630, subpart G. The STAs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that portion of the work program(s) for which FHWA planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization shall not constitute a commitment by the FHWA to fund the remaining portion of the work program(s) should additional funds become available.

(c) A project agreement shall be executed by the STA and FHWA Division Office for each statewide

transportation planning, metropolitan planning area transportation planning, or RD&T work program, individual activity or study, or any combination administered as a single Federal-aid project. The project agreement shall be executed after the authorization has been given by the FHWA to proceed with the work in whole or in part. In the event that the project agreement is executed for only part of the work program, the project agreement shall be amended when authorization is given to proceed with additional work.

§ 420.117 Program monitoring and reporting.

(a) In accordance with 49 CFR 18.40, the STA shall monitor all activities, including those of its subrecipients, supported by FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The STA shall submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

(i) Comparison of actual performance with established goals;

(ii) Progress in meeting schedules;

(iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;

(iv) Cost overruns or underruns;

(v) Approved work program revisions; and

(vi) Other pertinent supporting data.

(2) Additional information on reporting requirements for individual RD&T studies is contained in subpart B of this part.

(c) The frequency of reports required by paragraph (b) of this section shall be annual unless more frequent reporting is determined to be necessary by the FHWA; but in no case will reports be required more frequently than quarterly. These reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the reporting period for other reports.

(d) Events that have significant impact on the work program(s) shall be reported as soon as they become known. The type of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) A provision of the Federal-Aid Project Agreement requires both the preparation of suitable reports to document the results of activities performed with FHWA planning and research funds and FHWA approval prior to publishing such reports. The STA may request a waiver of the requirement for prior approval. The FHWA's approval constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA funded work shall include appropriate credit references and disclaimer statements.

(The information collection requirements in §§ 420.117(b) and (c) for metropolitan planning areas have been approved by the OMB and assigned control number 2132–0529.)

§ 420.119 Fiscal procedures.

(a) SPR funds shall be administered and accounted for as a single fund regardless of the category of Federal-aid highway funds from which they are derived.

(b) PL funds shall be administered and accounted for as a single fund.

(c) Optional funds authorized under 23 U.S.C. 104(b)(1), 104(b)(3), and 157(c) used for eligible planning and RD&T purposes shall be identified separately in the work program(s) and shall be administered and accounted for separately for fiscal purposes. The statewide and, if appropriate, metropolitan transportation improvement program provisions of 23 CFR Part 450 must be met for the use of NHS, STP, or minimum allocation funds for planning or RD&T purposes.

(d) The maximum rate of Federal participation with funds identified in paragraphs (a) through (c) of this section shall be as prescribed in title 23, U.S.C., for the specific class of funds; unless, for funds identified under paragraph (a) or (b) of this section, the FHWA determines that the interests of the Federal-aid highway program would be best served without such match in accordance with 23 U.S.C. 307(c)(3) or 23 U.S.C. 104(f)(3). The FHWA also may waive the requirement for matching funds if national or regional high priority planning or RD&T problems can be more effectively addressed if several States and/or MPOs pool their funds. Requests for 100 percent Federal funding must be submitted to the FHWA Division Office for approval by the Associate Administrator for Program Development (for planning activities) or the Associate Administrator Research and Development (for RD&T activities).

(e) The provisions of 49 CFR 18.24 are applicable to any necessary matching of FHWA planning and research funds.

(f) Payment shall be made in accordance with the provisions of 49 CFR 18.21.

§ 420.121 Other requirements.

(a) The financial management systems of the STAs and their subrecipients shall be in accordance with the provisions of 49 CFR 18.20(a).

(b) Program income, as defined in 49 CFR 18.25(b), shall be shown and deducted to determine the net costs on which the FHWA share will be based, unless an alternative method for using program income is specified in the Federal-Aid Project Agreement.

(c) Audits shall be performed in accordance with 49 CFR 18.26 and 49 CFR Part 90.

(d) Acquisition, use, and disposition of equipment purchased by the STAs and their subrecipients with FHWA planning and research funds shall be in accordance with 49 CFR 18.32(b).

(e) Acquisition and disposition of supplies acquired by the STAs and their subrecipients with FHWA planning and research funds shall be in accordance with 49 CFR 18.33.

(f) In accordance with 49 CFR 18.34, STAs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(g) Procedures for the procurement of property and services with FHWA planning and research funds by the STAs and their subrecipients shall be in accordance with 49 CFR 18.36(a) and, if applicable, 18.36(t). The STAs and their subrecipients shall not use FHWA funds for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended in accordance with the provisions of 49 CFR Part 29, subparts A through E.

(h) The STAs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and shall ensure that the requirements of 49 CFR 18.37(a) have been satisfied. STAs shall have primary responsibility for administering FHWA planning and research funds passed through to subrecipients, for ensuring that such funds are expended for eligible activities, and for ensuring that the funds are administered in accordance with this part, 49 CFR Part 18, and applicable cost principles.

(i) Recordkeeping and retention requirements shall be in accordance with 49 CFR 18.42.

(j) The STAs and their subrecipients are subject to the provisions of 37 CFR Part 401 governing patents and inventions and shall include, or incorporate by reference, the standard patent rights clause at 37 CFR 401.14, except for § 401.14(g), in all subgrants or contracts. In addition, STAs and their subrecipients shall include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

(k) In accordance with the provisions of 49 CFR Part 29, subpart F, STAs shall certify to the FHWA that they will provide a drug free workplace. This requirement can be satisfied through the annual certification for the Federal-aid highway program.

(l) The provisions of 49 CFR Part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA planning and research funds.

(m) The nondiscrimination provisions of 23 CFR Parts 200 and 230 and 49 CFR Part 21, with respect to Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, apply to all programs and activities of recipients, subrecipients, and contractors receiving FHWA planning and research funds whether or not those programs or activities are federally funded.

(n) The STAs shall administer the transportation planning and RD&T program(s) consistent with their overall efforts to implement section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914) and 49 CFR Part 23 regarding disadvantaged business enterprises.

(o) States and their subrecipients shall administer subgrants to universities, hospitals, and other non-profit organizations in accordance with the administrative requirements of OMB Circular A-110 as implemented by the U.S. DOT in 49 CFR Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

(p) Reports and other documents prepared under FHWA planning and research funded grants or subgrants awarded after August 22, 1994, must be in metric units.

Subpart B—Research, Development and Technology Transfer Program Management

§ 420.201 Purpose and applicability.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 307 and to prescribe Federal assistance requirements for research, development, and technology transfer (RD&T) activities, programs, and studies undertaken by States with FHWA planning and research funds. The requirements of this subpart and subpart A of this part are applicable to work performed by the States and their subrecipients with FHWA planning and research funds.

§ 420.203 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and Part 420, subpart A, are applicable to this subpart. As used in this subpart:

Applied research means the study of phenomena relating to a specific known need in connection with the functional characteristics of a system; the primary purpose of this kind of research is to answer a question or solve a problem.

Basic research means the study of phenomena whose specific application has not been identified; the primary purpose of this kind of research is to increase knowledge.

Cooperatively funded study means an RD&T study or activity, administered by the FHWA, a lead State, or other agency, that is funded by some combination of a State's contribution of FHWA planning and research funds, FHWA administrative contract funds, 100 percent State funds, or funds from other Federal agencies.

Development means the translation of basic or applied research results into prototype materials, devices, techniques, or procedures for the practical solution of a specific problem in transportation.

Final report means a report documenting a completed RD&T study or activity.

Intermodal RD&T means research, development, and technology transfer activities involving more than one mode of transportation including transfer facilities between modes.

National Cooperative Highway Research Program (NCHRP) means the cooperative RD&T program directed toward solving problems of national or regional significance identified by States and the FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

Peer review means a review conducted by persons who are knowledgeable of the management and operation of RD&T programs. This may include but is not limited to representatives of another State, the FHWA, American Association of State Highway and Transportation Officials, Transportation Research Board (TRB), universities or the private sector.

RD&T activity means a basic or applied research, development, or technology transfer project or study.

Research means a systematic controlled inquiry involving analytical and experimental activities which primarily seek to increase the understanding of underlying phenomena. Research can be basic or applied.

Technology transfer means those activities that lead to the adoption of a new technique or product by users and involves dissemination, demonstration, training, and other activities that lead to eventual innovation.

Transportation Research Information Services (TRIS) means the TRB-maintained computerized storage and retrieval system for abstracts of ongoing and completed RD&T activities, including abstracts of RD&T reports and articles.

§ 420.205 Policy.

(a) It is the FHWA's policy to administer the RD&T program activities utilizing FHWA planning and research funds consistent with the policy specified in § 420.105 and the following general principles in paragraphs (b) through (g) of this section.

(b) State transportation agencies shall provide information necessary for peer reviews.

(c) States are encouraged to develop, establish, and implement an RD&T program, funded with Federal and State resources, that anticipates and addresses transportation concerns before they become critical problems. To promote effective utilization of available resources, States are encouraged to cooperate with other States, the FHWA, and other appropriate agencies to achieve RD&T objectives established at the national level and to develop a technology transfer program to promote and use those results.

(d) States will be allowed the authority and flexibility to manage and direct their RD&T activities as presented in their work programs, and to initiate RD&T activities supported by FHWA planning and research funds, subject to the limitation of Federal funds and to compliance with program conditions set forth in subpart A of this part and § 420.207.

(e) States will have primary responsibility for managing RD&T activities supported with FHWA planning and research funds carried out by other State agencies and organizations and for ensuring that such funds are expended for purposes consistent with this subpart.

(f) Each State shall develop, establish, and implement a management process that ensures effective use of available FHWA planning and research funds for RD&T activities on a statewide basis. Each State is permitted to tailor its management process to meet State or local needs; however, the process must comply with the minimum requirements and conditions of this subpart.

(g) States are encouraged to make effective use of the FHWA Division, Regional, and Headquarters office expertise in developing and carrying out their RD&T activities. Participation of the FHWA on advisory panels and in program review meetings is encouraged.

§ 420.207 Conditions for grant approval.

(a) As a condition for approval of FHWA planning and research funds for RD&T activities, a State shall implement a program of RD&T activities for planning, design, construction, and maintenance of highways, public transportation, and intermodal transportation systems. Not less than 25 percent of the State's apportioned SPR funds shall be spent on such activities, unless waived by the FHWA, in accordance with the provisions of § 420.107. In addition the State shall develop, establish, and implement a management process that identifies and implements RD&T activities expected to address highest priority transportation issues, and includes:

(1) An interactive process for identification and prioritization of RD&T activities for inclusion in an RD&T work program;

(2) Utilization, to the maximum extent possible, of all FHWA planning and research funds set aside for RD&T activities either internally or for participation in national, regional pooled, or cooperatively funded studies;

(3) Procedures for tracking program activities, schedules, accomplishments, and fiscal commitments;

(4) Support and use of the TRIS database for program development, reporting of active RD&T activities, and input of the final report information;

(5) Procedures to determine the effectiveness of the State's management process in implementing the RD&T program, to determine the utilization of the State's RD&T outputs, and to facilitate peer reviews of its RD&T Program on a periodic basis and;

(6) Procedures for documenting RD&T activities through the preparation of final reports. As a minimum, the documentation shall include the data collected, analyses performed, conclusions, and recommendations. The State shall actively implement appropriate research findings and should document benefits.

(b) Each State shall conduct peer reviews of its RD&T program and should participate in the review of other States' programs on a periodic basis. To assist peer reviewers in completing a quality and performance effectiveness review, the State shall disclose to them information and documentation required to be collected and maintained under this subpart. Travel and other costs associated with peer reviews of the State's program may be identified as a line item in the State work program and will be eligible for 100 percent Federal funding. At least two members of the peer review team shall be selected from the FHWA list of qualified peer reviewers. The peer review team shall provide a written report of its findings to the State. The State shall forward a copy of the report to the FHWA Division Administrator with a written response to the peer review findings.

(c) Documentation that describes the management process and the procedures for selecting and implementing RD&T activities shall be developed and maintained by the State. The documentation shall be submitted by the State to the FHWA Division office for FHWA approval. Significant changes in the management process also shall be submitted by the State for FHWA approval. The State shall make the documentation available, as necessary, to facilitate peer reviews.

§ 420.209 RD&T work program.

(a) The State's RD&T work program shall, as a minimum, consist of an annual or biennial description of activities and individual RD&T activities to be accomplished during the program period, estimated costs for each eligible activity, and a description of any cooperatively funded activities that are part of a national or regional pooled study including the NCHRP contribution. The State's work program should include a list of the major items with a cost estimate for each item.

(b) The State's RD&T work program shall include financial summaries showing the funding levels and share (Federal, State, and other sources) for RD&T activities for the program year. States are encouraged to include any activity funded 100 percent with State or other funds.

(c) Approval and authorization procedures in § 420.115 are applicable to the State's RD&T work program.

§ 420.211 Eligibility of costs.

(a) Unless otherwise specified in this section, the eligible costs for Federal participation in § 420.113 are applicable to this part.

(b) Costs for implementation of RD&T activities in conformity with the requirements and conditions set forth in this subpart are eligible for Federal participation.

(c) Indirect costs of a State transportation agency RD&T unit are allowable to the extent specified in § 420.113(b).

(d) Indirect costs of other State agencies and organizations are allowable if supported by a cost allocation plan and indirect cost proposal in accordance with OMB requirements.

§ 420.213 Certification requirements.

(a) Each State shall certify to the FHWA Division Administrator before June 30, 1995, that it is complying with the requirements of this subpart. For those States unable to meet full compliance by June 30, 1995, the FHWA Division Administrator may grant conditional approval of the State's RD&T management process. A conditional approval shall cite those areas of the State's management process that are deficient. All deficiencies must be corrected by January 1, 1996. A copy of the certification shall be submitted with each work program. A new certification will be required if the State significantly revises its management process for the RD&T program.

(b) The certification shall consist of a statement signed by the Administrator, or an official designated by the Administrator, of the State transportation agency certifying as follows: I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in compliance with all requirements of 23 U.S.C. 307 and its implementing regulations with respect to the research, development and technology transfer program, and contemplate no changes in statutes, regulations, or administrative procedures which would affect such compliance.

(c) The FHWA Division Administrator shall determine if the State is in compliance with the requirements of this subpart.

§ 420.215 Procedure for withdrawal of approval.

(a) If a State is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State. The notice shall set forth the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The State's reply should address the deficiencies cited in the notice and provide documentation as necessary.

(b) If the State and Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State may appeal to the Federal Highway Administrator.

(c) The Federal Highway Administrator's action shall constitute the final decision of the FHWA.

(d) An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for the State's RD&T activities until the State is in full compliance.

PART 511—RESEARCH AND DEVELOPMENT (R&D) STUDIES AND PROGRAMS; GENERAL [REMOVED]

3. Chapter I of title 23, CFR, is amended by removing and reserving part 511.

[FR Doc. 94–17908 Filed 7–21–94; 8:45 am]
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federal register

Friday
July 22, 1994

Part IV

Federal Communications Commission

47 CFR Part 24
Competitive Bidding; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93–253, FCC 94–178]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Fifth Report and Order*, the Commission adopts rules governing competitive bidding to award initial licenses in the Personal Communications Services in the 2 GHz band (broadband PCS"). This action is taken to implement Section 309(j) of the Communications Act of 1934, as amended. The new rules will promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. These rules also will promote economic opportunity and competition, and disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. This action will result in recovery for the public of a portion of the value of the public spectrum made available for commercial use.

EFFECTIVE DATE: August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Sara Seidman, Office of General Counsel, (202) 418–1700, or Jonathan Cohen, Office of Plans and Policy, (202) 418–2030.

SUPPLEMENTARY INFORMATION: This *Fifth Report and Order* in PP Docket No. 93–253, adopted June 29, 1994, and released July 15, 1994, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Paperwork Reduction Act

In the *Fifth Report and Order* in PP Docket No. 93–253, the Commission has amended 47 CFR Part 24 to add new Subparts H and I which contain rules and requirements governing the award of broadband PCS licenses through a system of competitive bidding. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically, and financially qualified to be licensed. Affected public are any member of the public who wants to become a licensee. Implementation of the rules contained in the *Fifth Report and Order* will impose reporting and recordkeeping requirements on the public. The Federal Communications Commission will submit an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0210.

Fifth Report and Order

Adopted: June 29, 1994

Released: July 15, 1994

By the Commission: Commissioners Quello, Barrett, Ness and Chong issuing separate statements.

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I. Introduction

1. In this *Fifth Report and Order*, we adopt rules to conduct auctions for the award of more than 2,000 licenses to provide personal communications services in the 2 GHz band, which we call "broadband PCS." These broadband PCS auctions will constitute the largest auction of public assets in American history and are expected to recover billions of dollars for the United States Treasury. More importantly, the auctions will lead to the introduction of an array of new telecommunications products and services that are expected to fuel our nation's economic growth and revolutionize the way in which Americans communicate.

2. We also adopt in this Order provisions to fulfill Congress's mandate that we ensure that small businesses, rural telephone companies and businesses owned by minorities and women are given the opportunity to participate in the provision of broadband PCS. These rules will provide unprecedented opportunities for these designated entities to become meaningfully involved in the provision of a new telecommunications service. This action seeks to ensure that licenses for broadband PCS are disseminated to a wide variety of applicants and to remedy the serious underrepresentation of minorities and women in the provision of telecommunications services. Further, by the actions we take today we seek to ensure that PCS is provided to all communities in this country, including rural areas.

3. Broadband PCS will provide a variety of mobile services that will

compete with existing cellular services. In addition, broadband PCS is expected to provide new mobile communications capabilities that are not currently available. These services will be provided by means of a new generation of communications devices that will include small, lightweight, multi-function portable phones, portable facsimile and other imaging devices, new types of multi-channel cordless phones, and advanced paging devices with two-way data capabilities.[1] The introduction of broadband PCS should benefit consumers by raising the overall level of competition in many already competitive segments of the telecommunications industry and by providing competition in other segments for the first time. The broadband PCS industry should also generate thousands of jobs in this country and improve the international competitiveness of the American economy.

4. Auctions for broadband PCS licenses will be conducted pursuant to Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which was enacted in August 1993. Section 309(j) granted the Commission express authority to employ competitive bidding procedures to award licenses to use the electromagnetic spectrum.[2] Section 309(j)(1) permits auctions only where mutually exclusive applications for initial licenses are accepted for filing by the Commission and where the principal use of the spectrum is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. In the *Second Report and Order* in his proceeding, we concluded that PCS as a class of service satisfies the Section 309(j)(1) criteria. *See Second Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2348, 59 FR 22980, May 4, 1994 (*Second Report and Order*), at ¶¶ 54–58. Accordingly, if mutually exclusive applications for a broadband PCS license are accepted for filing, we will award that license through competitive bidding.

5. We also concluded in the *Second Report and Order* that we could design auction procedures to govern the award of broadband PCS licenses that would promote the objectives listed in Section 309(j)(3). More specifically, in the *Second Report and Order*, we determined that the use of competitive bidding to award broadband PCS licenses, as compared with other licensing methods, would speed the development and deployment of new services to the public and would encourage efficient use of the spectrum, as required by Section 309(j)(3) (A) and (D). In this regard, we noted that auctions would generally award licenses quickly to those parties who value them most highly and who are therefore most likely to introduce service rapidly to the public. *Id.* at ¶ 57. We also concluded that competitive bidding would recover for the public a portion of the value of the spectrum, as envisioned in Section 309(j)(3)(C). *Id.* We considered a variety of methods to implement Congress's remaining objectives, set forth in Section 309(j)(3)(B), of "promoting economic opportunity" and "avoiding excessive concentration of licenses" by disseminating licenses "among a wide variety of applicants." In the *Second Report and Order*, we adopted rules which provide the Commission with a menu of options to choose from to promote these objectives with respect to particular spectrum services to be auctioned, such as broadband PCS, in service-specific rules.

6. In our *Broadband PCS Reconsideration Order*, we established bandwidth assignments and area designations for broadband PCS. *See Memorandum Opinion and Order* in GEN Docket No. 90–314, FCC 94–144, 59 FR 32830, June 24, 1994 (*"Broadband PCS Reconsideration Order"); see also Second Report and Order* in GEN Docket No. 90–314, FCC 93–451, 8 FCC Rcd 7700, 58 FR 59174, Nov. 8, 1993. In that Order, we allocated 120 MHz of spectrum for licensed broadband PCS. We divided the licensed broadband PCS spectrum into three 30 MHz blocks (blocks A, B and C) and three 10 MHz blocks (blocks D, E and F). We also designated two different service areas: 493 Basic Trading Areas ("BTAs") and 51 Major Trading Areas ("MTAs").[3] The licenses in frequency blocks A and B will be awarded on an MTA basis, and the licenses on frequency blocks C, D, E and F will be awarded on a BTA basis. A total of 2,074 broadband PCS licenses will therefore be issued.[4] The *Broadband PCS Reconsideration Order* sets forth eligibility rules for obtaining broadband PCS licenses, and establishes construction requirements to facilitate the provision of PCS services. *See Broadband PCS Reconsideration Order* at ¶¶ 102–132, 147–158. By these rules, we intend to promote competition in the wireless telecommunications market by as many different qualified providers as the spectrum can reasonably accommodate and to promote the rapid deployment of the infrastructure required to provide broadband PCS.

II. Executive Summary

7. In this *Fifth Report and Order*, we set forth the specific auction procedures for broadband PCS licenses. We have decided to conduct three auctions: the first for the 99 available PCS licenses in MTA blocks A and B, the second for the 986 PCS licenses in BTA blocks C and F, and the third for the remaining 986 PCS licenses in BTA blocks D and E. That is, the first auction will award licenses for the 30 MHz blocks for large geographic areas. The second auction will award licenses for smaller geographic areas for the two blocks that, as explained below, we have reserved for bidding by relatively small companies. In these "entrepreneurs' blocks," we have designed procedures to ensure that small businesses, rural telephone companies and businesses owned by women and minorities, which we collectively refer to as designated entities, have "the opportunity to participate in the provision" of PCS, as Congress directed in Section 309(j)(4)(D). In the third auction we will award licenses for the remaining 10 MHz blocks.

8. We intend to conduct each auction through simultaneous multiple round bidding with simultaneous stopping rules. Under that approach, no license awarded until the bidding closes on all licenses in the auction. We have determined that simultaneous multiple

[1] We already have adopted rules for competitive bidding on licenses to be awarded to provide personal communications services in the 900 MHz band (narrowband PCS), which will be used primarily to provide advanced paging services, and for licenses to provide Interactive Video and Data Service (IVDS), which will be used to provide services such as home shopping and pay-per-view programming. *See* Third Report and Order in PP Docket No. 99–253, FCC 94–98, 59 FR 26741, May 24, 1994 (narrowband PCS); and Fourth Report and Order in PP Docket No. 93–253, FCC 94–99, 59 FR 24947, May 13, 1994 (IVDS).

[2] We adopted a Notice of Proposed Rule Making to implement Section 309(j) on September 23, 1993. Notice of Proposed Rule Making in PP Docket No. 93–253, 8 FCC Rcd 7635, 58 FR 53489, Oct. 15, 1993 (hereinafter "NPRM" or "Notice"). The Commission received 222 comments, 169 reply comments and numerous *ex parte* presentations relating to this proceeding. Commenters may be referred to herein by abbreviations.

[3] The 493 BTAs and 51 MTAs used in our broadband PCS licensing rules have been adapted from the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, at 38–39.

[4] The Commission has granted pioneer's preference to three broadband PCS applicants, and stated that the parties awarded pioneer's preferences may apply for a 30 MHz MTA broadband PCS license without facing competing applications. *See* Third Report and Order in GEN Docket No. 90–314, 9 FCC Rcd 1337, 59 FR 9419, Feb. 28, 1994. If the Commission grants licenses to the three pioneer's preference grantees, three fewer licenses will be awarded through competitive bidding.

round bidding is appropriate where the value of the licenses is high compared to the cost of conducting the auction and the values of licenses are interdependent. *See Second Report and Order* at ¶106–111. We believe the former condition is met here because other government agencies project that the boardband PMS licenses will be auctioned for as much as $10.6 billion. *See id.* at ¶177. The latter condition is also satisfied because the record demonstrates, for example, that a license for the Philadelphia MTA or the Richmond MTA will likely be valued more highly if it is held in conjunction with the license for the Washington-Baltimore MTA. We are adopting a variety of rules governing bid increments and bidding activity to move the auctions toward completion in a reasonable period of time. We are also retaining the ability to use other approaches, including sequential auctions for the licenses, and to make other adjustments to the auction process as necessary.

9. As mentioned above, we establish by this Order a number of rules to implement Congress's mandate in Section 309(j)(4)(D) that we ensure that designated entities are "given the opportunity to participate in the provision of spectrum-based services" such as broadband PCS. To accomplish this objective, Congress directed us to "consider the use of tax certificates, bidding preferences, and other procedures." 47 U.S.C. § 309(j)(4)(D). We construe this congressional directive as a mandate that we take the steps that are necessary to ensure that designated entities have a realistic opportunity to obtain broadband PCS licenses. We apply that mandate in light of *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 564–565 (1990), which held that "benign race-conscious measures mandated by Congress * * * are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives." The rules we adopt also further Congress's objectives, set forth in Section 309(j)(3)(B), of "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women." Each of the steps adopted here is directly related to carrying out Congress's stated objective of promoting economic opportunity by disseminating broadband PCS licenses to a wide variety of applicants, including designated entities.

10. The record clearly demonstrates that the primary impediment to participation by designated entities is lack of access to capital. This impediment arises for small businesses from the higher costs they face in raising capital and for businesses owned by minorities and women from lending discrimination as well. In this regard, it should be noted that although auctions have many beneficial aspects, they threaten to erect another barrier to participation by small businesses and businesses owned by minorities and women by raising the cost of entry into spectrum-based services.

11. Congress has recognized that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."[5] Congress further found that women and minorities face particularly severe problems in raising capital.[6] A study of mortgage lending conducted by the Federal Reserve Bank of Boston in 1992 illustrates how problems arise. That study showed that in cases in which lenders exercised discretion in deciding whether to make a loan to a borrower who presented some problems (which includes most mortgage applicants), that discretion tended to be exercised in favor of whites. As a result, a minority applicant for a mortgage who was identical in all pertinent respects to a white applicant nevertheless was 60 percent more likely to be denied a mortgage loan.[7] At the same time, discrimination was difficult to show in any particular case, although it emerged clearly when data concerning hundreds of mortgage applications were reviewed.

12. The first measure we adopt to fulfill Congress's mandate that we ensure that designated entities have the opportunity to participate in providing broadband PCS is to reserve the 30 MHz licenses on block C and the 10 MHz licenses on block F, both of which are to be licensed in each of the 493 BTAs, for bidding by entities with annual gross revenues of less than $125 million and total assets of less than $500 million. These limits will exclude many large telecommunications companies from bidding on these two blocks. We will not allow one entity to obtain more than 10 percent (*i.e.*, 98) of the licenses on these two blocks. By excluding large companies from bidding in these two blocks and by limiting the total number of licenses that one entity can obtain in these blocks we create numerous opportunities for small entities to become PCS providers and thereby ensure that broadband PMS licenses will be disseminated "among a wide variety of applicants," as required by Section 309(j)(3)(B).

13. Reserving blocks C and F for bidding by relatively small companies will not, by itself, be sufficient to ensure that small businesses and businesses owned by members of minority groups and women have the opportunity to obtain broadband PCS licenses. Under the definition we apply or purposes of this Order, "small businesses" are those with gross revenues not exceeding $40 million, and those businesses will be at a disadvantage in competing against companies with gross revenues of as much as $125 million. In addition, businesses owned by members of minority groups and women face discrimination that poses additional obstacles for these firms. Accordingly, we take five related steps within the entrepreneurs' blocks to assist designated entities in attracting the capital necessary to obtain a broadband PCS license.

14. First, we will structure our attribution rules to allow those extremely large companies that may not bid on blocks C and F to invest in entities that bid on those blocks. More specifically, we will allow the relatively small companies eligible to bid in these blocks to obtain investment representing up to 75 percent of their passive equity from larger companies so long as each investor holds no more than a 25 percent passive equity interest. In addition, eligible businesses owned by minorities and women may choose to have a single investor, no matter how large, hold a passive equity interest up to 49.9 percent. These rules, and others that we establish in this Order, are designed to enhance access to capital by businesses owned by minorities and women.

15. Second, to encourage large companies to invest in designated entities and to assist designated entities without large investors to overcome the additional hurdle presented by auctions, we will make bidding credits available to designated entities. More specifically, small businesses will receive a 10 percent bidding credit (or a 10 percent discount on their winning bids).

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[5] Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331(a)(3), Pub. L. 102–366, Sept. 4, 1992.

[6] *Id.* Sections 112(4) and 331(a)(4).

[7] Mortgage Lending in Boston: Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92–7 (October 1992).

Businesses owned by minorities and women will receive a 15 percent bidding credit to compensate for the substantial problems they face in attracting capital. The credits will be cumulative, so that a business owned by minorities or women that also qualifies as a small business will receive a 25 percent bidding credit. Under these rules, it still will be more expensive for designated entities to participate in the provision of spectrum-based services than it was before Congress granted us authority to hold auctions, because they will have to purchase licenses. But by adopting bidding credits, which are explicitly authorized by Section 309(j)(4)(D), the Commission seeks to promote economic opportunity and to counterbalance the tendency of auctions to concentrate license ownership in the hands of several very large companies.

16. Third, we will allow most successful bidders within the entrepreneurs' blocks to pay for their licenses in installments for generally the same reasons—encouraging large companies to invest in designated entities, promoting economic opportunity by assisting designated entities in overcoming the additional hurdle presented by auctions, and ensuring that licenses are disseminated widely. In general, successful bidders will be permitted to defer payments of principal on their debt to the government for some period. Small businesses and businesses owned by minorities and women will be permitted to defer payments of principal for a longer period than other successful bidders in these blocks. Finally, businesses owned by minorities and women will be charged a lower interest rate.

17. Fourth, we will extend our tax certificate policies to promote participation by minorities and women in the provision of broadband PCS. The holder of a tax certificate is permitted to defer payment of the capital gains tax that would otherwise be recognized upon the sale of an investment. Our extension of the tax certificate policy to broadband PCS will promote involvement by minorities and women in spectrum-based services in three ways. First, initial investors in such businesses will be eligible for tax certificates upon the sale of their investments. We expect that the availability of such favorable tax treatment will enable minority- and women-owned businesses to attract investors more easily. Second, holders of broadband PCS licenses will be able to obtain tax certificates upon the sale of the business to a company controlled by minorities and women. Third, a cellular operator that sells its interest in an overlapping cellular system to a minority- or woman-owned business to come into compliance with our PCS/cellular cross-ownership rule will be eligible for a tax certificate. Both the second and third policy will further Congress' objective of ensuring that spectrum licenses are disseminated widely and, in particular, to designated entities.

18. Finally, we will reduce the upfront payment for all bidders in the entrepreneurs' block. Bidders in the other blocks will pay $0.02 per MHz per pop while winners in the entrepreneurs' blocks will receive a 25 percent discount and pay only $0.015 per MHz per pop as a pre-auction payment.

19. Congress was also concerned that rural areas not go unserved by PCS, and therefore directed us to ensure participation in auctions for spectrum-based services by rural telephone companies who have a history of service to rural areas and an established infrastructure on which to build a PCS business effectively. Thus, we establish partitioning rules in this Order that will allow them to use their existing wireline network to efficiently and expeditiously provide PCS in rural areas. In addition, most rural telephone companies will qualify to bid on the entrepreneurs' blocks, and hence will be eligible for installment payments. Those rural telephone companies that qualify as small or minority- or women-owned businesses will also be able to take advantage of the applicable bidding credits.

20. The rules that we adopt today are designed to ensure that only *bona fide* designated entities qualify for the special provisions established to ensure their participation in broadband PCS. The rules are designed to enable designated entities to attract passive equity from non-designated entities, provided that designated entities maintain control and a substantial entity stake in the ventures at all times. The Commission will not tolerate "fronts" that are controlled by supposedly passive investors, and we will be vigilant in preventing abuse of the designated entity provisions. Our rules are also designed to prevent designated entities from assigning licenses obtained through the use of these special measures or who otherwise lose their designated entity status before the end of a required five-year holding period.

21. The following sections of this *Fifth Report and Order* discuss in detail the actions we have outlined above.

III. Auctionability of Broadband PCS

22. Section 309(j)(1) of the Communications Act, as amended, 47 U.S.C. § 309(j)(1), permits auctions only where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. In the *Second Report and Order*, we concluded that PCS as a class of service would satisfy the section 309(j)(1) criteria for auctionability. *See Second Report and Order* at ¶¶ 54–58. Specifically, based on the record in this proceeding and in GEN Docket No. 90–314, we concluded that the principal use of broadband PCS spectrum satisfied these auction criteria. *Id.* at ¶ 56. Thus, if mutually exclusive applications for a broadband PCS license are accepted for filing, we will award that license through competitive bidding.[8]

23. As noted above, we concluded in the *Second Report and Order* that the criteria in Section 309(j)(3) will be satisfied by competitive bidding for broadband PCS licenses, and thus that broadband PCS should be subject to our competitive bidding procedures. We determined that the use of competitive bidding to award broadband PCS licenses, as compared with other licensing methods, will speed the development and deployment of new services to the public with minimal administrative or judicial delay, and will encourage efficient use of the spectrum as required by Section 309(j)(3) (A) and (D). We also concluded that competitive bidding would recover for the public a portion of the value of the spectrum, as envisioned in Section 309(j)(3)(C). *Id.* Finally, in accordance with Section 309(j)(3)(B), we adopted a set of open competitive bidding procedures and a menu of special

[8] In the Second Report and Order, we addressed the only commenter who argued that the Commission should not find that the principal use of PCS is likely to be for the provision of service to subscribers for compensation. *See* Second Report and Order at ¶¶ 55–56. The Commission rejected the argument of Millin Publications, a publisher of specialized information services that intends to utilize PCS frequencies on a non-subscription basis, that the Commission should refrain from making the principal use finding because PCS does not yet exist. We concluded that the overwhelming weight of the comments in this proceeding, as well as our experience with the PCS experiments that we have licensed, reflect that licensed PCS spectrum is likely to be used principally for the provision of service to subscribers for compensation. *See id.* at ¶ 56. We find no basis in the record to depart from this conclusion.

provisions designed to increase opportunities for designated entities who might otherwise face entry barriers. Our views on this matter remain unchanged since adoption of the *Second Report and Order*. We therefore affirm in this Order the use of competitive bidding procedures to award broadband PCS licenses.

IV. Competitive Bidding Design

A. General Competitive Bidding Rules

24. The *Second Report and Order* established the criteria to be used in selecting which auction design method to use for each particular auctionable service. Generally, we concluded that awarding licenses to those parties who value them most highly will foster Congress' policy objectives. In this regard, we noted that since a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum. In articulating our auction design principles we further stated that: (1) Licenses with strong value interdependencies should be auctioned simultaneously; (2) multiple round auctions, by providing bidders with information regarding other bidders' valuations of licenses, generally will yield more efficient allocations of licenses and higher revenues, especially where there is substantial uncertainty as to value; and (3) because they are relatively expensive to implement and time-consuming, simultaneous and/or multiple round auctions become less cost-effective as the value of licenses decreases. *See Second Report and Order* at ¶ 69.

25. Based on the foregoing, we concluded that where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve the Commission's goals for competitive bidding. *See Second Report and Order* at ¶¶ 109–111. We indicated that compared with other bidding mechanisms, simultaneous multiple round bidding will generate the most information about license values during the course of the auction and provide bidders with the most flexibility to pursue back-up strategies. Thus, we concluded that simultaneous multiple round bidding is most likely to award interdependent licenses to the bidders who value them the most. We also indicated that this method will facilitate efficient aggregation of licenses across spectrum bands, thereby resulting in vigorous competition among several strong service providers who will be able rapidly to introduce a wide variety of services highly valued by end users. *Second Report and Order* at ¶ 106. In addition, we concluded that because of the superior information and flexibility it provides, this method is likely to yield greater revenues than other auction designs. Thus, we found that the use of simultaneous multiple round auctions would generally be preferred. *Id.*

26. However, because simultaneous multiple round bidding is likely to be more administratively complex and costly both for bidders and for the FCC than sequential or single round bidding, we indicated that we would use this auction design only where license values are interdependent and the expected value of the licenses to be auctioned is high relative to the costs of conducting a simultaneous multiple round auction. *See Second Report and Order* at ¶¶ 110–111.

B. Competitive Bidding Design for Broadband PCS Licenses

27. In the *Second Report and Order* we considered several auction methods including simultaneous multiple round bidding, sequential bidding, and combinatorial bidding. We discuss each of these below. We have chosen to adopt simultaneous multiple round auctions as our auction methodology for broadband PCS licenses. We believe that for broadband licenses this method will best meet Congress' goals in authorizing competitive bidding in section 309(j) of the Communications Act.

1. Simultaneous Multiple Round Auctions

28. There is considerable support in the record for the use of simultaneous multiple round auctions, in which two or more licenses are put up for bid at the same time, and there are multiple bidding rounds in which bidders have the opportunity to top the high bids from the previous round. Several comments and studies in the record by academic auction experts advocate simultaneous multiple round bidding for broadband PCS. *See* comments of PacTel Corporation, Attachment of R. Preston McAfee; comments of Pacific Bell and Nevada Bell, Attachment of Paul R. Milgrom and Robert B. Wilson; comments of NYNEX, Attachment by Robert G. Harris and Michael L. Katz. NTIA also recommends simultaneous multiple round bidding.[9] Comments of NTIA at 14–16. Other experts recommend using some combination of sequential and simultaneous bidding. *See* comments of Bell Atlantic Personal Communications, Inc., Attachment by Barry Nalebuff and Jeremy Bulow; and comments of Telephone and Data Systems, Attachment by Robert J. Weber. Some commenters who originally expressed no opinion on the issue or supported other methods in their comments supported proposals for simultaneous bidding in their reply comments. *See* reply comments of AT&T, GTE Service Corp. and Community Service Telephone Co.

29. The analysis in the *Second Report and Order* also supports simultaneous multiple round bidding for broadband PCS auctions. We concluded that multiple round bidding is generally superior to single round bidding, and that when licenses are interdependent, simultaneous bidding is generally superior to sequential bidding. As we noted in the *Second Report and Order*, multiple-round auctions have the advantage over single-round auctions insofar as they provide more information to bidders about the value that other bidders place on licenses, increasing the likelihood that the licenses are acquired by those who value them most highly and increasing the revenue likely to be gained from the auction. Multiple-round auctions are also more likely to be perceived as open and fair. The disadvantage of multiple round auctions is that they have higher administrative costs than single round auctions. *Second Report and Order* at ¶¶ 82–85.

30. As noted in the *Second Report and Order*, simultaneous auctions are more likely than sequential auctions to award interdependent licenses efficiently because they provide more information about the value of interdependent licenses and allow the use of that information because all licenses remain available throughout the bidding process. Simultaneous auctions are also likely to raise more revenue than sequential auctions for two reasons. First, they increase the value of the licenses by facilitating efficient aggregation. Second, because they provide more information about the value of interdependent licenses they reduce the propensity of sophisticated bidders to bid cautiously in order to avoid the "winner's curse"—the tendency for the winner to be the bidder

[9] NTIA also supports all-or-nothing bids on groups of licenses, *i.e.*, combinatorial bidding, in conjunction with simultaneous multiple round bidding.

who most overestimates the value of the item up for bid. Simultaneous auctions also eliminate the need to choose the order in which licenses will be auctioned. The advantage offered by simultaneous auctions depends on how much interdependence exists among licenses. *Second Report and Order* at ¶¶ 89–94. The disadvantages of simultaneous multiple round auctions appear to be that they may be difficult to implement and there is little experience in their use. *Second Report and Order* at ¶ 95.

31. We agree with commenters who support simultaneous multiple round bidding for awarding broadband PCS licenses. Estimates of total PCS revenues by the Office of Management and Budget and the Congressional Budget Office indicate that the value of broadband PCS licenses will likely be sufficiently high to warrant the use of simultaneous auctions.[10] We further believe that the values of most broadband PCS licenses will be significantly interdependent because of the desirability of aggregation across spectrum blocks and geographic regions and because there is a high degree of substitutability among licenses with the same amount of spectrum and covering the same geographic area. *See Second Report and Order* at ¶¶ 90–91. Compared with other bidding mechanisms, simultaneous multiple round bidding generates the most information about license values during the course of the auction and provides bidders with the most flexibility to pursue back-up strategies, and is therefore most likely to award licenses to the bidders who value them the most. Simultaneous multiple round auctions will also facilitate efficient aggregation across spectrum bands, where permitted, thereby enhancing competition among wireless products and services.

32. We recognize, however, that simultaneous multiple round bidding may involve a greater degree of complexity than other competitive bidding methods, and that it may present greater operational difficulties both for the FCC and for bidders, especially where many bidders are expected to participate. Therefore, we will use a sequence of simultaneous auctions. Licenses that are highly interdependent will be grouped together and auctioned simultaneously.

2. Sequential Auctions

33. In a pure sequential auction, whether oral or electronic, licenses are put up for bid one at a time, so that bidding ends on one item before it begins on the next item. Sequential multiple round oral or electronic auctions generate valuable information about earlier auctioned licenses, which can assist bidders in valuing later auctioned licenses. If license values are interdependent, however, sequential oral or electronic auctions are less likely than simultaneous auctions to award interdependent licenses to the parties who value them most highly and to result in the efficient aggregation of licenses, because bidders for licenses that are auctioned early must bid with less information about the value of licenses to be auctioned later, and they will have less opportunity to pursue backup bidding strategies. For these reasons, we conclude that sequential multiple round auctions are less preferred in the award of broadband PCS licenses than simultaneous multiple round auctions. Nevertheless, if, as a result of our auction experience, we determine that the operational costs or complexities associated with simultaneous multiple round auctions outweigh their benefits, we may decide instead to employ pure sequential oral or electronic (multiple round) auctions or a sequence of single combined oral auctions in which bidding is combined for all licenses in a given band with the same bandwidth and the same geographic service area. If such a change becomes necessary, the auction method will be announced by Public Notice before each auction.

34. If we should decide in the future to use sequential oral or sequential electronic bidding for relatively homogeneous licenses, we will employ a single combined auction design. Under this approach, the Commission will combine bidding for all licenses in the same band with the same amount of spectrum and same geographic service area.[11] Licenses will be awarded market by market to the highest bidders until all the available licenses are exhausted, *e.g.*, two relatively homogeneous licenses would be awarded to the two highest bidders. Because broadband PCS licenses may not be perfectly homogeneous (*i.e.*, bidders may prefer one frequency over another within the same geographic region for purposes of efficient aggregation), winning bidders will be given the opportunity to choose among licenses for which bidding is combined in descending order of their bid amounts (*i.e.*, the highest bidder will pick first).

3. Combinatorial Bidding

35. In general terms, combinatorial bidding allows bidders to bid for multiple licenses as all-or-nothing packages.[12] Combinatorial bidding can be implemented with either simultaneous or sequential auction designs. Although we recognized in the *Second Report and Order* that there may be significant benefits associated with combinatorial bidding, especially in terms of efficient aggregation of licenses, we concluded that simultaneous multiple round auctions offer many of the same advantages without the same degree of administrative and operational complexity and without biasing auction outcomes in favor of combination bids. *See Second Report and Order* at ¶¶ 101–105. On balance, we believe that the advantages of combinatorial bidding appear unlikely to outweigh the disadvantages. While broadband PCS licenses are likely to be worth more to some bidders as a part of a package, we believe that simultaneous multiple round bidding will provide these bidders with ample opportunity to express the value of interdependent licenses. Moreover, we conclude that there will not be any extreme discontinuity in value if some licenses in a package are not obtained. We believe that the opportunity to acquire licenses in post-auction transactions and the ability to withdraw bids (upon payment of the bid withdrawal penalty) will limit the risks associated with failing to acquire all of the licenses in a desired package. Nevertheless, if, based on our experience with the initial simultaneous multiple round auctions and auction experiments, we determine that such auctions do not result in efficient aggregation of licenses, and if there are significant advances in the development of combinatorial auctions,

[10] A study by the Congressional Budget Office estimated that an auction for PCS licenses on two 25 MHz nationwide blocks of spectrum could raise $1.3 billion to $5.7 billion in revenues. Congressional Budget Office, *Auctioning Radio Spectrum Licenses*, at 23 (March 1992). The Office of Management and Budget estimated that auctioning broadband PCS licenses would generate $12.6 billion in revenues. *Budget of the United States Government, Analytical Perspective, Fiscal Year 1995*, at 220 (February 1994).

[11] This approach was proposed by Bell Atlantic. *See* comments of Bell Atlantic Personal Communications Inc., Attachment by Barry Nalebuff and Jeremy Bulow at 4–5. Single combined auctions are used by the U.S. Department of the Treasury to sell U.S. securities.

[12] In combinatorial bidding, if a bid for a group of licenses exceeds the sum of the highest bids for the individual licenses that comprise the package, then the package bid would win. In the Second Report and Order we also indicated that if we were to utilize combinatorial bidding we might institute a premium so that the combinatorial bid would win only if it exceeded the sum of the bids for individual licenses by a set amount. *See* Second Report and Order at ¶ 114. NTIA is the main advocate of combinatorial bidding. *See* comments of NTIA, and *ex parte* submission of NTIA in PP Docket No. 93–253, February 28, 1994.

we may, by public notice prior to a specific auction, choose to use combinatorial bidding techniques in conjunction with simultaneous multiple round auctions.

C. Bidding Procedures

1. Grouping of Licenses

36. In the *Second Report and Order*, the Commission concluded that highly interdependent licenses should be grouped together and put up for bid at the same time in a multiple round auction. *See Second Report and Order* at ¶¶ 106–107. This will facilitate awarding licenses to the bidders who value them most highly because it will provide bidders information about the prices of complementary and substitutable licenses while such licenses are still up for bid. The magnitude of the benefit of auctioning a group of licenses together in a simultaneous multiple round auction increases with the degree of interdependence among the licenses. On the other hand, the *Second Report and Order* also noted that the cost and complexity, both for the FCC and for bidders, of auctioning a very large number of interdependent licenses simultaneously may outweigh the informational and bidding flexibility advantages. *See Second Report and Order* at ¶ 107. Accordingly, although we believe that all broadband PCS licenses are interdependent, we will not auction them all simultaneously. Instead, we will divide the licenses into three groups by combining those licenses that are most closely related so that there will be limited interdependence across groups. Then we will sequentially conduct a separate simultaneous multiple round auction for each group. We formed the three groups in two conceptual steps. First, we separated the "entrepreneurs' " blocks (C and F) from all other blocks.[13] Then, we separated the large unrestricted blocks (A and B, with 30 MHz of spectrum and MTA geographic scope) from the small ones (D and E, with 10 MHz of spectrum and BTA geographic scope).

37. In the first auction, the 99 available MTA licenses in blocks A and B will be put up for bid. In the second auction, the 986 BTA licenses in blocks C and F will be put up for bid. And in the last auction, the 986 BTA licenses in blocks D and E will be put up for bid. As explained below, we believe that this grouping strikes a proper balance among the competing concerns of awarding licenses to the parties who value them most highly, keeping the auction process simple and manageable, minimizing administrative delay, and fostering designated entity participation.

38. Separating the entrepreneurs' blocks (C and F) from all other blocks entails little loss of efficiency because most firms are likely to be interested in licenses in either the entrepreneurs' blocks or the non-restricted blocks, but not both. Large firms cannot bid on entrepreneurs' licenses, although they may partner with firms that can. Small firms can bid on all blocks, but are likely to be most interested in the entrepreneurs' blocks because on these blocks they would not be placed in the position of bidding against large firms.

39. In addition to reducing the complexity of the auctions, auctioning block C licenses after the block A and B licenses is likely to further another objective of auction design—fostering designated entity participation—by enabling designated entities to more easily attract partners. Many potential partners may be unwilling to commit themselves to a partnership arrangement with designated entities prior to the auction of licenses on the A and B blocks. So, designated entities that are unable to raise independent financing for at least the required upfront and down payments may have difficulty participating in an auction in which block C is put up for bid simultaneously with blocks A and B. If, however, block C is auctioned after blocks A and B, we expect that non-designated entities who are unsuccessful in acquiring MTA licenses on blocks A and B will want to become partners with or make investments in designated entities so as to gain an interest in 30 MHz licenses on block C. In addition, the auction on blocks A and B will produce price information that would be valuable to designated entities in their business planning.

40. The efficiency loss associated with separating the large unrestricted blocks (A and B) from the small ones (D and E) depends on the degree of substitutability and complementarity between licenses in these two groups. Auctioning licenses on the D and E blocks separately from those on the A and B blocks may make it more difficult for bidders to pursue a back-up strategy of combining two 10 MHz licenses in the same geographic areas as an alternative to acquiring 30 MHz licenses in the A or B blocks. We believe, however, that this is not likely to be a widely used strategy, because the licenses are defined on a BTA basis while the licenses on the A and B blocks are defined on a MTA basis. It is also possible that some bidders may wish to combine a 10 MHz license with a 30 MHz license in the same geographic area. Although this approach would be easier to pursue if blocks A, B, D and E were auctioned together, we believe that in most cases the amount bidders would be willing to pay for a block A or B license would not be strongly affected by whether they were able to acquire a complementary block D or E license. So auctioning blocks D and E after blocks A and B would not significantly hinder combining 30 MHz and 10 MHz licenses. We conclude that the benefits of administrative simplicity from auctioning license on blocks A and B separately from those on blocks D and E are likely to outweigh the possible loss of efficiency.

2. Bid Increments

41. In using simultaneous multiple round auctions to award broadband PCS licenses, it is important to specify minimum bid increments.[14] The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous closing rule. In that case, all markets remain open until there is no bidding on any license, and a delay in closing one market will delay the closing of all markets.

42. Because we plan to use simultaneous multiple round auctions to award broadband PCS licenses, we believe that it is necessary to impose a minimum bid increment to ensure that the broadband PCS auctions conclude within a reasonable period of time. Commenters addressing the issue generally supported a minimum bid increment of 5 percent. PacTel, for example, argues that this amount will provide a reasonable compromise

[13] As explained in more detail below, we establish economic eligibility criteria for bidders in blocks C and F.

[14] *See* Second Report and Order at ¶¶ 124–126. Commenters who addressed the issue supported minimum bid increments. *See* comments of Telephone and Data Systems, Inc. at 24; comments of PacTel Corporation, Attachment of R. Preston McAfee at 16, 18; comments of Pacific Bell and Nevada Bell, Attachment of Paul R. Milgrom and Robert B. Wilson at 19; reply comments of Telephone and Data Systems, Inc., Attachment of Robert J. Weber at 11; reply comments of PacTel Corporation, Attachment of R. Preston McAfee at 10; reply comments of Pacific Bell and Nevada Bell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 8, 9.

between the goal of completing the auction quickly and that of revealing information about the distribution of valuations among bidders.[15] As we recognized in the *Second Report and Order*, it is important in establishing the amount of the minimum bid increment to express such increment as the greater of a percentage and fixed dollar amount. *See Second Report and Order* at ¶ 126. This will ensure a timely completion of the auction even if bidding begins at a very low dollar amount. Accordingly, we will impose a minimum bid increment of some percentage of the high bid from the previous round or a dollar amount per MHz per pop, whichever is greater, in broadband PCS auctions where multiple round bidding is used.[16]

43. PacTel also suggests, in the context of simultaneous auctions, that the Commission should vary the bid increment, reducing it as the number of active bidders declines.[17] Similarly, PacBell suggests that the bid increment depend on the stage of the auction, with a 5 percent increment in stage I, 2 percent in stage II, and 1 percent in stage III.[18] This would move the auction quickly at the beginning, when prices have limited informational content and there is little benefit to either bidders or the Commission of refined price movements, while allowing bidders to express small differences in valuations as the auction nears a close, increasing both efficiency and auction revenues. Small bid increments also reduce the chances of ties. Where a tie does occur, the high bidder will be determined by the order in which the bids were received by the Commission.[19]

44. Accordingly, we will start the auction with large bid increments, and reduce the increments as bidding activity falls. The minimum bid increment in stage I of the auction will be 5 percent of the high bid in the previous round or $.02 per MHz per pop, whichever is greater.[20] We will reduce the minimum bid increment as we move through the auction stages, with a minimum bid increment of the greater of 2 percent or $.01 per MHz per pop in stage II, and the greater of 1 percent or $.005 per MHz per pop in stage III.[21] The Commission, however, retains the discretion in broadband PCS auctions to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of an auction if the auction is not moving at an appropriate pace.

45. In addition, the Commission will establish a suggested minimum bid on each license. Bids below the suggested minimum bid will count as activity under the activity rule (see *infra*) only if no bids at or above the suggested minimum bid are received. Initial bids must be above the minimum bid increment of $.02 per MHz per pop, but may be below the suggested minimum bid. Once a bid has been received on a license, the suggested minimum bid is no longer applicable in subsequent rounds. The amount of the suggested minimum bid may vary by market size, with a larger minimum bid in larger markets, and will be announced by public notice prior to each auction. We will establish suggested minimum bids at no less than $.05 per MHz per pop and not more than $.20 per MHz per pop. The suggested minimum bid provides bidders an incentive to start bidding at a substantial fraction of the final prices of licenses, thus ensuring a rapid conclusion of the auction, while still allowing for bidding on licenses whose market values are below the suggested minimum bids.[22]

3. Stopping Rules for Multiple Round Auctions

46. We also noted in the *Second Report and Order* that with multiple round auctions a stopping rule must be established for determining when the auction is over.[23] In simultaneous multiple round auctions, bidding may close separately on individual licenses, simultaneously on all licenses, or a hybrid approach may be used. Under an individual, license-by-license approach, bidding closes on each license after one round passes in which no new acceptable bids are submitted for that particular license. With a simultaneous stopping rule, bidding remains open on all licenses until there is no new acceptable bid on any license. This approach has the advantage of providing bidders full flexibility to bid for any license as more information becomes available during the course of the auction, but it may lead to very long auctions, unless an activity rule (*see* discussion *infra*) is imposed. A hybrid approach combines the first two stopping rules. For example, we may use a simultaneous stopping rule (along with an activity rule designed to expedite closure for licenses subject to the simultaneous stopping rule) for the higher value licenses. For lower value licenses, where the loss from eliminating some back-up strategies is less, we may use simpler license-by-license closings. In the *Second Report and Order* we recognize that such a hybrid approach might simplify and speed up the auction process without significantly sacrificing efficiency or expected revenue. *Id.*

47. For broadband PCS we believe that a simultaneous stopping rule is preferable for all MTA licenses. MTA licenses are expected to have relatively

[15] *See* comments of PacTel, Exhibit by R. Preston McAfee, Auction Design for Personal Communications Services at 16. Milgrom and Wilson also recommend a minimum bid increment of 5 percent (subject to a dollar minimum and maximum) for stage I of the auction, and smaller percentages for stages II and III. Reply comments of PacBell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 8, 9.

[16] "Pop" refers to each member of the population of the license service area and "MHz" refers to the amount of spectrum, in megahertz, that the licensee is permitted to use. For example, for a 30 MHz license with a population of 10 million, if the minimum bid increment were the greater of 5 percent or $0.02 per MHz per pop, the minimum bid increment would be $6 million ($0.02×30 MHz×10,000,000) when the high bid from the previous round is less than $120 million. If the high bid from the previous round exceeds $120 million, the minimum bid would be 5 percent of the value of that bid (since 5 percent of a bid over $120 million is greater than $6 million).

[17] *See* comments of PacTel, Exhibit by R. Preston McAfee, *Auction Design for Personal Communications Services*, at 18.

[18] *See* reply comments of PacBell, Appendix to Exhibit by Paul Milgrom and Robert Wilson, *auction Rules and Procedures*, at 8–9. For a discussion of auction stages in simultaneous multiple round auctions see the section on activity rules *infra*.

[19] *See* Second Report and Order at ¶ 125.

[20] $0.02 per MHz per pop would represent almost 6 percent of the value of a license based on an extrapolation from the $10.6 billion estimated value of the 120 MHz of broadband PCS spectrum to be licensed. *See* Second Report and Order at ¶ 177.

[21] In oral or electronic sequential auctions the auctioneer may within his or her sole discretion establish and vary the amount of the minimum bid increment in each round of bidding.

[22] If the Commission were to preclude bidding below a starting minimum bid, a bidder who is interested in only a single license for which the minimum bid is set above the market value would be forced to use an activity rule waiver or drop out of the auction under the activity rules adopted *infra*.

[23] *See* Second Report and Order at ¶ 127. Commenters agreed on the importance of the appropriate stopping rule. PacTel proposes that bidding on an individual license close if there are no new bids on that license within a given round, or if there are fewer than two bids greater than a "suggested minimum bid." Comments of PacTel, Attachment of R. Preston McAfee at 16–18. Pacific Bell recommends simultaneous closing of bidding on all licenses when there are no new acceptable bids on any license. Comments of PacBell, Attachment of Paul Milgrom and Robert Wilson at 19; reply comments of PacBell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 5. Bell Atlantic Personal Communications, on the other hand, asserts that in simultaneous auctions, no stopping rule can prevent strategic delays. They provide no evidence for this, however, and do not discuss any closing rule in detail. In discussing the Milgrom-Wilson closing rule they fail to account for the Milgrom-Wilson activity rule, which will reduce the likelihood of delay, and the fail-safe closing mechanism proposed by Milgrom and Wilson. Reply comments of Bell Atlantic Personal Communications, Inc., Attachment of Barry J. Nalebuff and Jeremy I. Bulow at 12.

high values and are fewer in number than BTA licenses, which will reduce the complexity of implementing a simultaneous stopping rule. Since we intend to impose an activity rule (as discussed below), we believe that allowing simultaneous closing for all licenses will afford bidders flexibility to pursue back-up strategies without running the risk that bidders will hold back their bidding until the final rounds. We also intend to use a simultaneous stopping rule for BTA licenses. However, because of the large number of BTA licenses, we retain the discretion either to use a hybrid stopping rule or to allow bidding to close individually for these licenses if as we gain experience with auctions we determine that simultaneous stopping rules are too complex to implement for very large numbers of licenses. The specific stopping rule for ending bidding on BTA licenses will be announced by Public Notice prior to auction.

48. In addition, we will retain the discretion to declare at any point after 40 rounds in a simultaneous multiple round auction that the auction will end after some specified number of additional rounds.[24] This gives the Commission a means to prevent bidders from continuing to bid on a few low value licenses solely to delay the closing for all licenses in an auction with a simultaneous closing rule. This will also ensure that the Commission can end the auction if it determines that the benefits from ending the auction, and hence issuing licenses more rapidly, exceeds the possible efficiency loss from cutting off bidding on a few low value licenses. If we exercise this option, we favor the use of three final rounds. Allowing more than one additional round provides some opportunity for counter-offers, thus reducing the risk that a license will not be awarded to the party that values it most highly.

49. Moreover, if this fail-safe mechanism is used, we will accept bids in the final round(s) only for licenses on which the highest bid increased in at least one of the preceding three rounds. No new bids will be accepted for other licenses.[25] There are two reasons not to take bids on licenses on which there has been no recent bidding. First, the fact that bidding on an individual license may close will provide an additional incentive to bid actively and thus speed the conclusion of the auction. If bids are accepted on all licenses in the final round(s) there is less cost to a bidder in holding back. Second, closing bidding on licenses for which activity has ceased ensures high bidders for those licenses that they will not lose a license without having an opportunity to make a counter-offer.[26] This reduces the uncertainty associated with aggregating licenses that are worth more as a package than individually. If final bids are accepted on all licenses, a high bidder on an aggregation of licenses may unexpectedly lose a critical part of the aggregation and have no chance to regain it except in the post-auction market, where bargaining or other transaction costs may be high.

4. Duration of Bidding Rounds

50. In simultaneous multiple round auctions for large numbers of interdependent high-value licenses, bidders may need a significant amount of time to evaluate back-up strategies and consult with their principals. For this reason, PacBell proposes one bidding round per day and PacTel proposes three business days per bidding round for broadband PCS.[27] We will provide bidders with a single business day to submit bids, and conduct one round of bidding each business day.[28] However, we reserve the discretion to vary, by public notice or announcement, the duration of bidding rounds or the interval at which bids are accepted (*e.g.*, run two or more rounds per day rather than one), in order to move the auction toward closure more quickly. We are more likely to conduct more than one round per day early in an auction than towards the end of an auction. At early stages of an auction prices will be low and contain relatively little information, so bidders will need less time to deliberate. It is in the final stages of an auction, when the consequences of bidding decisions are greatest, that bidders need the most time to deliberate. We will indicate either by Public Notice prior to an auction, or by announcement during an auction any changes to the duration of and intervals between bidding rounds.

5. Activity Rules

51. As discussed above, in order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period of time and to increase the information conveyed by bid prices during the auction, we believe that it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because simultaneous stopping rules generally keep all licenses open for bidding as long as anyone wishes to bid, they also create an incentive for bidders to hold back until prices approach equilibrium before making a bid. As noted above, this could lead to very long auctions. Delaying serious bidding until late in the auction also reduces the information content of prices during the course of an auction. Without an activity rule, bidders cannot know whether a low level of bidding on a license means that the license price is near its final level or if instead many serious bidders are holding back and may bid up the price later in the auction.[29] An activity rule is less important when licenses close one-by-one because failure to participate in any given round may result in losing the opportunity to bid at all, if that round turns out to be the last.

52. In the *Second Report and Order* we adopted the Milgrom-Wilson activity rule as our preferred activity rule where a simultaneous stopping rule is used. *See Second Report and Order* at ¶¶ 144–145. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of MHz-pops, and make an upfront payment equal to $0.02 per MHz-pop.[30] (*See* discussion of upfront payments *infra.*) That is, in each round bidders will be limited to bidding on licenses encompassing no more than the number of MHz-pops covered by their upfront payment. Licenses on which a bidder is the high bidder from the previous round count against this

[24] PacBell proposed that in case of inordinate delays in the auction the Commission should have the ability to conclude the auction at any time after 40 rounds by issuing a call for final bids on the following business day for each of those licenses for which the highest bid increased in at least 1 of the preceding 3 rounds. *See* reply comments of PacBell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 5.

[25] *See* reply comments of PacBell, Appendix to attachment by Milgrom and Wilson at 5. *See also* Second Report and Order at ¶ 130, n. 106.

[26] Either the auction will close only when bidding ceases on all licenses, so the high bidder will have an opportunity to respond to any new bids, or the Commission will call for final bids but not accept new bids on licenses on which there have been no new bids in the previous three rounds, so no other bidder will have the opportunity to outbid the high bidder in a final round.

[27] Comments of PacBell, Attachment by Milgrom and Wilson at 19; comments of PacTel, Attachment by McAfee at 16.

[28] With one round per day, the auction may take weeks to complete. This should not impose an excessive burden on bidders, however, because bids may be submitted by telephone or by a computer connected to a telephone line, so bidders need not have a representative in Washington throughout the auction.

[29] *See ex parte* presentation by Paul Milgrom on behalf of PacBell, June 21, 1994.

[30] The number of "MHz-pops" is calculated by multiplying the population of the license service area by the amount of spectrum authorized by the license. We use the terms "per MHz-pop" and "per MHz per pop" interchangeably.

bidding limit. Under this approach, bidders will have the flexibility to shift their bids among any licenses for which they have applied so long as, within each round, the total MHz-pops encompassed by those licenses does not exceed the total number of MHz-pops on which they are eligible to bid. Bidders will be able to secure the option to participate at whatever maximum level they deem appropriate by making a sufficient upfront payment. To preserve their maximum eligibility, however, bidders will be required to maintain activity during each round of the auction. A bidder is considered active on a license in the current round if the bidder has submitted an acceptable bid for that license in the current round, or has the high bid for that license from the previous round, in which case, the bidder does not need to bid on that license in the current round to be considered active on that license.

53. Under the Milgrom-Wilson proposal, the minimum activity level, measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction.[31] Milgrom and Wilson divide the auction into three stages. During the first stage of the auction, a bidder is required to be active on licenses encompassing one-third of the MHz-pops for which it is eligible. The "penalty" for falling below that activity level is a reduction in eligibility. At this stage, bidders will lose three MHz-pops in eligibility for each MHz-pop below the minimum required activity level.[32] In the second stage, bidders are required to be active on two-thirds of the MHz-pops for which they are eligible. The penalty for falling below that activity level is a loss of 1.5 MHz-pops in eligibility for each MHz-pop below the minimum required activity level. In the third stage, bidders are required to be active on licenses encompassing all of the MHz-pops for which they are eligible. The penalty for falling below that activity level is a loss of one MHz-pop in eligibility for each MHz-pop below the minimum required activity level. Thus in the final stage, each bidder retains eligibility (for the next round) equal to the MHz-pops for which it is an active bidder in the current round.

54. The auction will start in stage I and move from stage I to stage II when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the spectrum (measured in terms of MHz-pops) being auctioned.[33] The auction will move from stage II to stage III when the high bid has increased on 5 percent or less of the spectrum being auctioned (measured in terms of MHz-pops), in each of three consecutive rounds of bidding in stage II.[34] In order to speed up an auction, the Commission may also announce, at any time after the initial 15 rounds, that the next stage of the auction (with a higher minimum participation level) will begin in the next bidding round.[35] Moreover, if as the Commission gains experience with auctions that use activity rules it determines that such auctions tend to move too slowly, it may, by public notice prior to a specific auction, increase the activity levels at which that auction moves between stages. Conversely, if the Commission determines that auctions tend to move too quickly, depriving bidders of sufficient time to deliberate and pursue back-up strategies, it may decrease the activity levels at which an auction moves between stages.

55. Finally, to avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission on a particular day, Milgrom and Wilson recommend permitting each bidder to request and automatically receive a waiver of the activity rule once every three rounds. We believe that some waiver procedure is a critical element of the Milgrom-Wilson activity rule, since the Commission would not wish to reduce a bidder's eligibility due to an accidental act or circumstances not under the bidder's control.

56. We believe that the Milgrom-Wilson approach will best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. Accordingly, we plan to impose such an activity rule in conjunction with a simultaneous stopping rule to award higher value broadband PCS licenses. We intend, however, to use a simpler waiver procedure than that proposed by Milgrom and Wilson. We will permit bidders one automatic waiver from the activity rule during each stage of an auction. A waiver will permit a bidder to maintain its eligibility at the same level as in the round for which the waiver is submitted.[36] A waiver may be submitted either in the round in which bidding falls below the minimum required level to maintain (for the next round) the same eligibility as in that round, or prior to submitting a bid in the next round. If an activity rule waiver is entered in a round in which no other bidding activity occurs, the auction will remain open.[37] However, an activity rule waiver entered after a round in which no other bidding activity occurs will not reopen the auction. If, as we gain both experimental and actual auction experience, we determine that permitting one automatic waiver per auction stage is insufficient to prevent the inadvertent reduction in eligibility of serious bidders, we may, by public notice prior to a specific broadband auction, increase the number of automatic activity rule waivers, or instead allow one automatic waiver

[31] Absent waivers (discussed *infra*), a bidder's eligibility (in terms of MHz-pops) in the current round is determined by the bidder's activity level and eligibility in the previous round. In the first round, however, eligibility is determined by the bidder's upfront payment and is equal to the upfront payment divided by $.02 per MHz-pop.

[32] An alternative way to state the rule for determining eligibility in stage I of an auction is that each bidder will be eligible to bid in the next round on three times the MHz-pops for which it is an active bidder in the current round, or the MHz-pops for which it is eligible in the current round, whichever is less.

[33] The transition rule may also be defined in terms of the "auction activity level"—the sum of the MHz-pops of those licenses whose highest bid increased in the current round, as a percentage of the total MHz-pops of all licenses in that auction. (Note that this definition differs slightly from that used by Milgrom and Wilson. *See* reply comments by PacBell, Appendix to attachment by Milgrom and Wilson at 1.) The auction moves from stage I to stage II when the auction activity level is less than or equal to 10 percent for three consecutive rounds in stage I. The auction moves from stage II to stage III when the auction activity level is less than or equal to 5 percent for three consecutive rounds in stage II. For example, if two nationwide 30 MHz blocks of spectrum are put up for bid and the national population is approximately 250 million, a total of approximately 15,000 million MHz-pops would be available in the auction. If in stage I of the auction, the high bid increases on licenses encompassing less than 1,500 million MHz-pops for three consecutive rounds, the auction moves to stage II. This would be the case, for example, if in three consecutive rounds new bids were received on only a license for the New York MTA (26 million pops) and a license for the Los Angeles MTA (19 million pops), since the two licenses encompass a total of 1,350 million MHz-pops. Once in stage II, if in each of three consecutive rounds new acceptable bids are received on licenses encompassing less than 750 million MHz-pops, the auction would move to stage III.

[34] Once an auction is in stage II, it cannot revert to stage I. Once an auction is in stage III, it remains there.

[35] Moving to stage II prematurely might result in an auction moving too quickly to allow adequate time for consideration and may excessively limit the ability of bidders to pursue alternative backup strategies. *See Second Report and Order* at ¶ 142.

[36] An activity rule waiver cannot be used to correct an error in the amount bid.

[37] If, however, we determine, based on evidence from experimental and actual auctions, that this is likely to excessively delay the close of an auction or result in other adverse strategic manipulation of an auction, we any announce by public notice prior to a specific broadband auction that submission of a waiver will not keep an auction open under any circumstances.

during a specified number of bidding rounds.

57. Furthermore, if, as we gain experience with auctions, we determine that the Milgrom-Wilson three stage activity rule is too complicated or costly to administer, we may alternatively impose a less complex activity rule. *See Second Report and Order* at ¶ 144. We will announce by Public Notice before each auction the activity rule that will be employed in that particular auction.

V. Procedural, Payment, and Penalty Issues

A. Pre-Auction Application Procedures

58. In the *Second Report and Order*, the Commission established general competitive bidding rules and procedures which we noted may be modified on a service-specific basis. *See* 47 CFR Part 1, subpart Q. As discussed below, we will generally follow the procedural, payment and penalty rules established in the *Second Report and Order* with certain minor modifications designed to address the particular characteristics of the broadband PCS service. These rules are structured to ensure that bidders and licensees are qualified and will be able to construct systems quickly and other service to the public. By ensuring that bidders and license winners are serious, qualified applicants, these rules will minimize the need to re-auction licenses and prevent delays in the provision of broadband PCS service to the public. In addition, as we proposed in the Notice at ¶ 129, we adopt general procedural and processing rules based on Part 22 of the Commission's Rules.

59. Section 309(j)(5) provides that no party may participate in an auction "unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing." 47 U.S.C. § 309(j)(5). Moreover, "[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to [Section 309(a)] and Sections 308(b) and 310" of the Communications Act. *id.* As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and applications not meeting those requirements may be dismissed prior to the competitive bidding. *See* H.R. Rep. No. 111, 103d Cong., 1st Sess. 258 (1993) (H.R. Rep. No. 103–111).

60. In the MPRM, we proposed that all parties interested in participating in an auction for spectrum licenses would be required to file a short-form application (modeled on the Commission's "Transmittal Sheet for Cellular Applications"), and asked whether applicants should also be required to submit a long-form application prior to the auction, or whether the long-form application should be submitted subsequent to the auction. NPRM at ¶ 97. The comments generally agreed that we should require only a short-form application prior to competitive bidding, and that only winning bidders should be required to submit a long-form license application after the auction. Because we believed that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest, we incorporated these requirements into the rules adopted in the *Second Report and Order*. *See* 47 CFR §§ 1.2105 and 1.2107. We will extend the application of these rules to the competitive bidding process for broadband PCS.

61. We will be guided by the following procedures in conducting broadband PCS auctions. The Commission will release an initial Public Notice announcing that it will accept applications for specific broadband PCS licenses. This initial Public Notice will specify the licenses and identify the time and place of an auction in the event that mutually exclusive applications are filed. The Public Notice also will specify the method of competitive bidding to be used, including applicable bid submission procedures, stopping rules and activity rules, as well as the deadline by which short-form applications must be filed, and the amounts and deadlines for submitting the upfront payment. *See Second Report and Order* at ¶ 164. We will not accept applications filed before or after the dates specified in Public Notices. Applications submitted before release of a Public Notice announcing the availability of particular license(s), or before the opening date of the filing window specified therein, will be returned as premature. Applications submitted after the deadline specified by Public Notice will be dismissed, with prejudice, as untimely. Soon after release of the initial Public Notice, an auction information package will be made available to prospective bidders.

62. Bidders will be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), together with any applicable filing fee[38] by the date specified in the initial Public Notice.[39] The short-form applications will require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's Rules, 47 CFR § 1.2105(a)(2). Specifically, each applicant will be required to specify on its Form 175 applications certain identifying information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust or other), the markets and frequently blocks for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf. In addition, applicants will be required to provide detailed ownership information (*see* Section 24.813(a) of the Commission's Rules) and identify all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Applicants will also be required to certify that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. In addition, applicants for licenses in the entrepreneurs' blocks will be required, as part of their short-form applications, to certify that they are eligible to bid on and win licenses in those blocks. Among other things, this means that they are in compliance with our PCS-cellular and PCS–PCS cross-ownership limitations. As we indicated in the *Second Report and Order*, if the Commission receives only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, the Commission by Public Notice will

[38] Because Section 8 of the Communications Act, 47 U.S.C. § 158, does not currently afford the Commission authority to charge an application fee in connection with PCS applications, broadband PCS applicants will not be required to submit a fee with their short-form application. However, the Commission has requested that Congress amend Section 8 of the Communications Act to provide a specific application fee for PCS services. If the Commission receives application fee authority, the general rules governing submission of fees will apply. *See* 47 CFR § 1.1101 *et seq.* These rules currently provide for dismissal of an application if the application fee is not paid, is insufficient, is in improper form, is returned for insufficient funds or is otherwise not in compliance with our fee rules. Whenever funds are remitted to the Commission, applicants also must file FCC Form 159.

[39] Applicants should submit one paper original and one microfiche original of their application, as well as two microfiche copies.

cancel the auction for this license and establish a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny. *See Second Report and Order* at ¶ 165.

63. A number of commenters in this proceeding objected to our original tentative conclusion that short-form applications should be judged by a letter-perfect standard. *See* NPRM at ¶ 100. Parties proposed that the Commission allow a brief period for correcting errors in short-form applications. *See, e.g.*, comments of AT&T at 30–31, BellSouth at 36–37. As we stated in the *Second Report and Order*, we believe that the public interest would be better served by encouraging maximum bidder participation in auctions. *See Second Report and Order* at ¶ 167. Therefore, we will provide applicants with an opportunity to correct minor defects in their short-form applications (*e.g.*, typographical errors, incorrect license designations, etc.) prior to the auction. Applicants will not be permitted until after the auction, however, to make any major modifications to their applications, including cognizable ownership changes or changes in the identification of parties to bidding consortia. In addition, applications that are not signed will be dismissed as unacceptable.

64. After reviewing the short-form applications, the Commission will issue a second Public Notice listing all defective applications, and applicants whose applications contain minor defects will be given an opportunity to cure defective applications and resubmit a correction version.[40] After reviewing the corrected applications, the Commission will release a third Public Notice announcing the names of all applicants whose applications have been accepted for filing. These applicants will be required to submit an upfront payment to the Commission, as discussed below.

B. Upfront Payment

65. The comments in this proceeding generally supported the Commission's proposal to require prospective bidders to make substantial upfront payments prior to auction. *See, e.g.*, comments of Comcast at 18, PacBell at 28, Nextel at 16, and AWCC at 31–32. Consistent with the weight of the comments, we concluded in the *Second Report and Order* that a substantial upfront payment prior to the beginning of an auction is necessary to ensure that only serious and qualified bidders participate. *See Second Report and Order* at ¶ 171. By requiring such a payment we also help to ensure that any bid withdrawal or default penalties are paid. These considerations apply to broadband PCS auctions. We will therefore require all broadband PCS auction participants to tender in advance to the Commission a substantial upfront payment as a condition of bidding.

66. In the Notice, we proposed to require upfront payments based on a $0.02 per MHz per pop formula. Though some commenters favor a fixed upfront payment set by the Commission prior to the auction,[41] most support the Commission's proposed $0.02 per MHz per pop formula, which would enable prospective bidders to tailor their upfront payment to their bidding strategies.[42] Commenters suggest that there should be some fixed minimum on the amount of upfront payment made prior to auction (suggestions range from $2,500 to $100,000 for different services).[43] Some commenters also favor setting a maximum upfront payment, pointing out that our proposed formula yields very high payments in the broadband PCS context.[44]

67. We believe that the standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding is appropriate for broadband PCS services.[45] Using this formula will provide bidders with the flexibility to change their strategy during an auction and to bid on a larger number of smaller licenses or a smaller number of larger licenses, so long as the total MHz-pops combination does not exceed that amount covered by the upfront payment. For example, when we auction licenses covering the nation simultaneously, a bidder would not be required to file an upfront payment representing national coverage unless it intended to bid on licenses covering the entire nation in a single bidding round. The $0.02 per MHz per pop formula also works well with the Milgrom-Wilson activity rule that we plan to employ in broadband PCS auctions, as described in Section III above. In the initial Public Notice issued prior to each auction, we will announce population information corresponding to each license to enable bidders to calculate their upfront payments.

68. As we indicated in the *Second Report and Order*, we will not set a maximum on upfront payments.[46] We decline to do so because we wish to ensure that those bidding on large numbers of valuable broadband PCS licenses are bidding in good faith and are financially capable of constructing those systems quickly. We recognize that upfront payments for broadband PCS licenses may amount to millions of dollars, but we do not believe that it is unreasonable to expect prospective bidders to tender such sums given the expected overall value of some of these licenses and the expected financial requirements to construct the systems. Indeed, such a requirement is necessary to ensure the seriousness of bidders for these valuable licenses.

69. In the *Second Report and Order*, we accepted commenters' suggestions and established a general minimum upfront payment of $2,500 to ensure that the use of our preferred formula would result in a substantial enough payment that bidders would be deterred from making frivolous bids.[47] Such a minimum upfront payment is needed in connection with auctions where the $0.02 per MHz per pop formula would yield a comparatively small upfront payment (such as those for narrowband PCS licenses in BTAs). Because of the wider bandwidth of broadband PCS licenses, however, this minimum upfront payment will not be relevant in auctions for this service.[48]

70. For broadband PCS auctions, we will follow the procedures for submission of upfront payments outlined in the *Second Report and Order*. Applicants whose short-form applications have been accepted for filing will be required to submit the full amount of their upfront payment to the Commission's lock-box bank by a date

[40] On the date set for submission of corrected applications that on their won discover minor errors in their applications also will be permitted to file corrected applications.

[41] *See, e.g.*, comments of Edward M. Johnson at 2; and LuxCel Group, Inc. at 8.

[42] *See, e.g.*, comments of PacBell at 28; Telocator (now PCIA) at 13; CTIA at 30; and Rochester Telephone Corporation at 13.

[43] *See, e.g.*, comments of Telocator at 20–21; Cellular Communications, Inc. at 15; AT&T at 34; and BellSouth at 41.

[44] *See, e.g.*, comments of Southwestern Bell at 38–40 (arguing generally for a maximum deposit of $50 million for all markets) and AT&T at 34 (supporting a maximum upfront payment of $5 million, with a down payment following the auction).

[45] As discussed in Section VII, *infra*, designated entities will be subject to a lesser upfront payment requirement of $0.015 per MHz per pop. Further, we retain the flexibility to consider using a simpler payment requirement if circumstances warrant.

[46] *See Second Report and Order* at ¶ 179.

[47] *Id.* at ¶ 180.

[48] The smallest bandwidth that a broadband PCS licensee will be authorized to use is 10 MHz, so a $2,500 upfront payment would result for a license area with a population of only 12,500 persons. The least populous BTA in the United States (Williston, North Dakota) has a population of approximately 27,500, and the upfront payment for a 10 MHz license in that BTA would be approximately $5,500.

certain, which will be announced in a Public Notice and generally will be no later than 14 days before the scheduled auction.[49] After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a Public Notice announcing the names of all applicants that have been determined to be qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned will not be identified on this Public Notice as a qualified bidder, and it will be prohibited from bidding in the auction. That is, we will require that applicants for broadband PCS licenses submit a sufficient upfront payment to reflect the MHz-pops of the smallest license being put up for bid in a particular auction.[50]

71. Although it would be simpler to require the submission of upfront payments at the same time short-form applications are filed, we agree with those commenters that argued that they should not be required to commit the large sums that will likely be involved in broadband PCS upfront payment for longer than is necessary. Accordingly, applicants will not be required to tender upfront payments with their short-form applications. Instead, as noted above, upfront payments will be due by a date specified by Public Notice, but generally no later than 14 days before a scheduled auction. This period should be sufficient to allow the Commission adequate time to process upfront payment data and release a Public Notice listing all qualified bidders, but not so long as to impose undue burdens upon bidders. The rules set forth in Section 1.2106 of the Commission's Rules concerning upfront payments will be applicable in broadband PCS auctions. Each qualified bidder will be issued a bidder identification number and further information and instructions regarding the auction procedures. During an auction, bidders will be required to provide their bidder identification numbers when submitting bids.

[49] Upfront payments must be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

[50] For example, in our first broadband PCS auction (the 30 MHz MTA licenses on blocks A and B), the smallest upfront payment that may be submitted to qualify an applicant to bid will be calculated by multiplying the population of the least populous MTA (American Samoa: population 47,000) times 30 times two cents, or $28,200. It should be noted, however, that this minimal upfront payment will entitle the bidder to bid only on a license to serve American Samoa.

C. Payment and Procedures for Licenses Awarded by Competitive Bidding

1. Down Payment

72. The *Second Report and Order* established a 20 percent down payment by winning bidders to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. We concluded that a 20 percent down payment was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system, while at the same time not being so onerous as to hinder growth or diminish access. Most of the commenters addressing this issue generally support our proposal that winning bidders increase their deposits with the Commission up to an amount equalling 20 percent of their winning bid or bids. *See, e.g.*, comments of BellSouth at 43–44, PageNet at 35–36, and Telocator at 13. Some commenters feel that a 20 percent down payment requirement would be too high. *See* comments of Sprint at 18 (prefers a 10 percent down payment).

73. We believe that the reasoning that led us to conclude that 20 percent is the appropriate down payment applies to broadband PCS auctions. We therefore will require that, with the exception of bidders eligible for installment payments in the entrepreneurs' blocks (*see* Section VII, *infra*), winning bidders in broadband PCS auctions supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).[51] Winning bidders will be required to submit the required down payment by cashier's check or wire transfer to our lock-box bank by a date to be specified by Public Notice, generally within five (5) business days following the close of bidding. All auction winners will generally be required to make full payment of the balance of their winning bids within five (5) business days following award of the license. Grant of the license will be conditioned on this payment.

74. An auction winner that is eligible to make payments through an installment plan (*see* Section VII, *infra*) will be subject to different payment requirements. Such an entity will be required to bring its deposits with the Commission up to only 5 percent of its winning bid after the bidding closes, and will pay an additional 5 percent of its winning bid to the Commission after a license is granted.

2. Bid Withdrawal and Default Penalties

75. As we discussed in the *Second Report and Order*, it is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or default on payment of a balance due. There was substantial support in the comments for the notion that the Commission is authorized to and should order forfeiture of upfront and down payments if the auction winner later defaults or is disqualified. *See, e.g.*, comments of CTIA at 29–30, AT&T at 35, n.43, PageNet at 35–36, Cook Inlet at 47, and BellSouth at 42–44. We concluded, however, that forfeiture of all amounts that a bidder may have on deposit with the Commission may, in some circumstances, be too severe a penalty and would not necessarily be rationally related to the harm caused by withdrawal, default or disqualification. *See Second Report and Order* at ¶ 197.

76. This logic applies to broadband PCS auctions, so for these auctions we will employ the bid withdrawal, default and disqualification penalties adopted in the *Second Report and Order*, which are reflected in Sections 1.2104(g) and 1.2109 of the Commission's Rules. Any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.[52] No withdrawal

[51] If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default penalties due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default penalties due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted but the amount of the penalty cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the penalty, any excess deposit will be refunded. Upfront payments will be applied to such deposits and to bid withdrawal and default penalties due before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire.

[52] If a license is re-offered by auction, the "winning bid" refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay a penalty equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is

penalty will be assessed if the subsequent winning bid exceeds the withdrawn bid. After bidding closes, a defaulting auction winner (*i.e.*, a winner who fails to remit the required down payment within the prescribed time, fails to pay for a license, or is otherwise disqualified) will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. *See* 47 CFR §§ 1.2104(g) and 1.2109. The additional three percent penalty is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. We will hold deposits made by defaulting or disqualified auction winners until full payment of the penalty.[53] We believe that these penalties will adequately discourage default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements. As we explained in the *Second Report and Order*, we further believe that this approach is well within our authority under both Section 309(j)(4)(B) and Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), as it is clearly necessary to carry out the rapid deployment of new technologies through the use of auctions.[54]

77. In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See Second Report and Order* at ¶ 198.

3. Re-Offering Licenses When Auction Winners Default

78. In the event that an auction winner defaults or is otherwise disqualified, the Commission must determine whether to hold a new auction or simply offer the license to the second-highest bidder. Parties commenting on this issue generally favored re-auctioning the license, pointing out that changing market and even technological developments since the initial auction may change the amounts that bidders are willing to pay for a license, especially if the intervening period is relatively long. They urge that any re-auction be open to new bidders, arguing that such a procedure would reduce the incentive of losing bidders to file unmeritorious petitions to deny against the auction winner. *See, e.g.*, comments of BellSouth at 37, Utilities Telecommunications Council at 21.

79. As we stated in the *Second Report and Order*, we believe that, as a general rule, when an auction winner defaults or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the license. *See Second Report and Order* at ¶ 204. Although we recognize that this may cause a brief delay in the initiation of service to the public, during the time between the original auction and the disqualification circumstances may have changed so significantly as to alter the value of the license to auction participants as well as to parties who did not participate. In this situation, awarding licenses to the parties that value them most highly can best be assured through a re-auction. However, if the default occurs within five (5) business days after the bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at the final bid levels.[55]

80. If a new auction becomes necessary because of default or disqualification more than five (5) business days after bidding has ended, the Commission will afford new parties an opportunity to file applications. One of our primary goals in conducting auctions is to assure that all serious interested bidders are in the pool of qualified bidders at any re-auction. We believe that allowing new applications will promote achievement of this goal, which outweighs the short delay that we recognize may result from allowing new applications in a re-auction. Indeed, if we were not to allow new applicants in a re-auction, interested parties might be forced into an after-market transaction to obtain the license, which would itself delay service to the public and may prevent the public from recovering a reasonable portion of the value of the spectrum resource.

4. Long-Form Application

81. If the winning bidder makes the down payment in a timely manner, a long-form application filed on FCC Form 401 (as modified), or such other form as may be adopted for Commercial Mobile Radio Service use in GEN Docket No. 93–252, will be required to be filed by a date specified by Public Notice, generally within ten (10) business days after the close of bidding.[56] After the Commission receives the winning bidder's down payment and the long-form application, we will review the long-form application to determine if it is acceptable for filing. In addition to the information required in the long-form application of all winning bidders, each winning bidder on licenses in frequency blocks C and F will be required to submit evidence of its eligibility to bid on licenses in these blocks, as well as evidence to support its claim to any special provisions made available to designated entities. This information may be included in an exhibit to FCC Form 401, and must include the gross revenues and total assets of the applicant and all attributable investors in the applicant, and a certification that the personal net worth of each individual investor does not exceed the eligibility limitation. This information will enable the Commission, and other interested parties, to ensure the validity of the applicant's certification of eligibility to bid in blocks C and F (submitted as part of its FCC Form 175) and its eligibility for any bidding credits, installment payment options, or other special provision. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is

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the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the "winning bid" refers to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, *i.e.*, they may decline without penalty. We wish to encourage losing bidders in simultaneous multiple round auctions to bid on other licenses, and therefore we will not hold them to their losing bids on a license for which a bidder has withdrawn a bid or on which a bidder has defaulted.

[53] In rare cases in which it would be inequitable to retain a down payment, we will entertain requests for waiver of this provision.

[54] *See* Second Report and Order at ¶ 198.

[55] If only a small number of relatively low-value licenses are to be re-auctioned and only a short time has passed since the initial auction, the Commission may choose to offer the license to the highest losing bidders because the cost of running another auction may exceed the benefits.

[56] Schedule B to FCC Form 401 will not be required to be submitted by broadband PCS applicants. However, applicants for broadband PCS licenses proposing to use any portion of broadband PCS spectrum to offer service on a private mobile radio service basis must overcome the presumption that PCS is a commercial mobile radio service. *Regulatory Treatment of Mobile Services*, Second Report and Order in GEN Docket No. 93–252, 9 FCC Rcd 1411, 1460–63, 59 FR 18493, Apr. 19, 1994; 47 CFR § 20.9(a)(11), (b). Applicants (or licensees) seeking to dedicate a portion of the spectrum for private mobile radio service will be required to attach as an exhibit to the Form 401 application a certification that it will offer PCS service on a private mobile radio basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in Section 20.3 of the Commission's Rules. *Id.*

qualified, the license(s) will be granted to the auction winner.

5. Processing and Procedural Rules

82. In the Notice, we proposed to adopt general processing and procedural rules for broadband PCS based on Part 22 of the Commission's Rules. One commenter, AIDE, argues that the Commission's reference to proposed PCS rules is vague and legally insufficient for a Notice of Proposed Rule Making. Comments of AIDE at 16–17. AIDE also asserts that the adoption of PCS processing and procedural rules is beyond the scope of the Notice in this rule making proceeding. *Id.* We disagree. The Notice sought comment on specific rule sections contained in Part 22 of our Rules and asked commenters to indicate what modifications should be made to those rules to adapt them for PCS services. *See* Notice at ¶ 128. In addition, the Notice specifically requested comment on the general procedural, processing and petition to deny procedures that should be used for auctionable services. The Notice's proposal to adopt processing rules based on Part 22 of the Commission's Rules, with any appropriate modifications for PCS services, clearly indicated to commenters the terms of the proposed rules, as is required by 5 U.S.C. § 553 and 47 CFR § 1.413(c). Accordingly, we believe that the Notice's description of the proposed rules was sufficiently specific to alert interested parties to the substance of our proposal and to provide an adequate opportunity for comment on those proposals. Moreover, we conclude that these issues are well within the scope of the Notice.

83. As we proposed, we adopt for broadband PCS a modified version of the application processing rules contained in Part 22 of the Commission's Rules. These rules, which will comprise Subpart I of Part 24 of our Rules, will govern application filing and content requirements, waiver procedures for return of defective applications, regulations regarding modification of applications, and general application processing rules. We also adopt petition to deny procedures based on Section 22.30 of the Commission's Rules. In addition, as we proposed in the Notice, we adopt rules similar to Sections 22.927, 22.928 and 22.929 of our existing rules (47 CFR §§ 22.927, 22.928, 22.929) to prevent the filing of speculative applications and pleadings (or threats of the same) designed to extract money from sincere broadband PCS applicants. In this regard, we limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

84. With regard to petitions to deny, we adopt expedited procedures consistent with the provisions of Section 309(i)(2) of the Communications Act to resolve substantial and material issues of fact concerning qualifications.[57] This provision requires us to entertain petitions to deny the application of the auction winner if petitions to deny are otherwise provided for under the Communications Act or our Rules.

85. As we indicated in the *Second Report and Order*, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination. *See Second Report and Order* at ¶ 202. In the event that the Commission identifies substantial and material issues of fact in need of resolution, Section 309(i)(2) of the Communications Act permits in any hearing the submission of all or part of evidence in written form and allows employees other than administrative law judges to preside over the taking of written evidence. We will incorporate these principles into our broadband PCS procedural rules.

D. Procedures in Alternative Auction Design

86. If we decide to employ a sequential auction design (using either oral or electronic bid submission), the same general rules and procedures described above will be used with certain modifications to fit the oral or electronic auction format. In the case of oral auctions, bidders would be required to follow the procedures described above, including the submission of the standard upfront payment of $0.02 per MHz-pop prior to the auction. Applicants would submit a sufficient upfront payment to cover the total number of MHz-pops they desire to win. Once a bidder has won the maximum number of MHz-pops covered by its upfront payment, that bidder will be precluded from further bidding in the auction.[58] Immediately after bidding closes on a license, the winning bidder (*i.e.*, the high bidder on a license on which bidding has closed) will be asked to sign a bid confirmation form. No other license will be put up for bid until a bid confirmation form is signed by a high bidder on the previous license.[59] Because we recognize that in an oral auction the chances of a bidder accidentally placing a high bid are greater than in other auction methods, and because the harm will be limited if the license is immediately re-offered, we will not impose a penalty on a high bidder who withdraws a high bid by refusing to sign the bid confirmation form. Thus, in an sequential oral auction in which a high bidder declines to sign the bid confirmation form, the license will be immediately put up for bid again. If, however, a high bidder signs a bid confirmation form but subsequently fails to submit the 20 percent down payment or otherwise defaults, the standard default penalties (described *supra*) will apply.[60]

87. If we decide to use sequential electronic bidding, bidders would again follow the general procedures described above including the submission of the standard upfront payment amount of $0.02 per MHz per pop prior to the auction. Applicants would submit a sufficient upfront payment to cover the total number of MHz-pops they desire to win. An applicant will not be eligible to bid on a license for which it has not applied or which contains more MHz-pops than the total MHz-pops covered by the bidder's upfront payment less any MHz-pops already won by that bidder. Once a bidder has won licenses representing the maximum number of MHz-pops reflected in its upfront payment, that bidder will be precluded from further bidding in the auction. Each bidder's eligibility will be computed and tracked by the auction software and bids placed by ineligible bidders will not be accepted. After the auctioneer declares bidding on a license closed and the high bidder has been notified, that bidder will be asked to confirm its high bid. If the high bidder in a sequential electronic auction declines to confirm its high bid, the license will be immediately re-auctioned and no penalty will be imposed. No other licenses will be put up for bid until a bid confirmation form is signed by a high bidder on the previous license.[61] As with sequential oral auctions, if a high bidder signs a bid confirmation form but subsequently

[57] The adoption of such procedures is necessary because Section 309(j)(5) of the Communications Act forbids the granting of licenses through competitive bidding unless the Commission determines that the applicant is qualified.

[58] This is similar to the procedure adopted in the Fourth Report and Order for the oral auctioning of IVDS licenses. *See* Fourth Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2330, 59 FR 24947, May 13, 1994.

[59] If we use single combined bidding, described *supra*, no other licenses will be put up for bid until a bid confirmation form is signed for each license put up for bid together in a combined auction.

[60] *See* 47 CFR §§ 1.2104 and 1.2109.

[61] *See also* n. 59, *supra*.

fails to submit the 20 percent down payment or otherwise defaults, the standard default penalties (described *supra*) will apply.

VI. Regulatory Safeguards

A. Transfer Disclosure Requirements

88. In Section 309(j), Congress directed the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits." 47 U.S.C. § 309(j)(4)(E). In the *Second Report and Order*, the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied. *See Second Report and Order* at ¶¶ 210–226 and 258–265.

89. In the *Second Report and Order* (at ¶ 214), we stated our belief that it is important to monitor transfers of licenses awarded by competitive bidding in order to accumulate the data necessary to evaluate our auction designs and to judge whether "licenses [have been] issued for bids that fall short of the true market value of the license." H.R. Rep. No. 103–111 at 257. Therefore, we imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not. *See* 47 CFR § 1.2111(a). We believe that the transfer disclosure requirements contained in Section 1.2111(a) of the Commission's Rules should apply to all broadband PCS licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant will be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license. As we indicated in the *Second Report and Order*, we will give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, in order to determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. *See Second Report and Order* at ¶ 214.[62]

[62] We note that these transfer disclosure provisions are in addition to the limitations on transfers that we have adopted in the Broadband PCS Reconsideration Order (with respect to spectrum disaggregation) or elsewhere in this Order (with respect to transfers of licenses in the entrepreneurs' block).

B. Performance Requirements

90. The Budget Act requires the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."[63] In the *Second Report and Order* we decided that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. The broadband PCS service rules already contain specific performance requirements, such as the requirement to construct within a specified period of time. *See, e.g.*, 47 CFR § 24.203. Failure to satisfy these construction requirements will result in forfeiture of the license. Accordingly, we do not see the need to adopt any additional performance requirements in this Report and Order.

C. Rules Prohibiting Collusion

91. In the *Second Report and Order*, we adopted a special rule prohibiting collusive conduct in the context of competitive bidding. *See* 47 CFR § 1.2105(c). We referred to the Notice, wherein we indicated our belief that such a rule would serve the objectives of the Budget Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders. *See Second Report and Order* at ¶ 221. We believe that this rule is nowhere more necessary than with respect to broadband PCS auctions, where we expect bidder interest to be high and the incentives to collude to be great. Thus, Section 1.2105(c) will apply to broadband PCS auctions. This rule provides that from the time the short-form applications are filed until the winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. In addition, as discussed in Section IV, *supra*, bidders will be required by Section 1.2105(a)(2) of the Commission's Rules to identify on their Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders will also be required to certify that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

92. Winning bidders in broadband PCS auctions will also be subject to Section 1.2107 of the Commission's Rules, which among other things requires each winning bidder to attach as an exhibit to the Form 401 long-form application a detailed explanation of the terms and conditions and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement they had entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of short-form applications. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount and revocation of their license(s), and they may be prohibited from participating in future auctions.

VII. Treatment of Designated Entities

A. Overview and Objectives

93. Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. § 309(j)(4)(D). To achieve this goal, the statute requires the Commission to "consider the use of tax certificates, bidding preferences, and other procedures." Thus, while providing that we charge for licenses, Congress has ordered that the Commission design its auction procedures to ensure that designated

[63] *See* Section 309(j)(4)(B) of the Communications Act, as amended.

entities have opportunities to obtain licenses and provide service. For that purpose, the law does not mandate the use of any particular procedure, but it specifically approves the use of "tax certificates, bidding preferences, and other procedures." The use of any such procedure is, in our view, mandated where necessary to achieve Congress's objective of ensuring that designated entities have the opportunity to participate in broadband PCS.

94. In addition to this mandate, the statute sets forth various congressional objectives. For example, it provides that in establishing eligibility criteria and bidding methodologies the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. § 309(j)(3)(B); *see also id.* § 309(j)(4)(C) (requiring the Commission when prescribing area designations and bandwidth assignments, to promote "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women).[64] Further, Section 309(j)(4)(A) provides that to promote the statute's objectives the Commission shall "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods."

95. To satisfy these statutory mandates and objectives, we established in the *Second Report and Order* eligibility criteria and general rules that would govern the special measures for small businesses, rural telephone companies, and businesses owned by members of minority groups and women. We also identified several measures, including installment payments, spectrum set-asides, bidding credits and tax certificates, that we could choose from in establishing rules for auctionable spectrum-based services. We stated that we would decide whether and how to use these special provisions, or others, when we developed specific competitive bidding rules for particular services. In addition, we set forth rules designed to prevent unjust enrichment by designated entities who transfer ownership in licenses obtained through the use of these special measures or who otherwise lose their designated entity status.

96. We intend in the new broadband personal communications service to meet fully the statutory mandate of Section 309(j)(4)(D), as well as the objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. As explained more fully in this Order, in some respects it is necessary to do more to ensure that businesses owned by members of minority groups and women have a meaningful opportunity to participate in the provision of personal communications services than is necessary to ensure participation by other designated entities. In particular, we have concluded that steps such as adoption of bidding credits, tax certificates, alternate payment plans and relaxed attribution rules, must be taken to encourage investment in minority and women-owned businesses. These special provisions are tailored to address the major problem facing minorities and women desiring to offer PCS—lack of access to capital. Moreover, because broadband PCS licenses in many cases are expected to be auctioned for large sums of money in the competitive bidding process, and because buildout costs are likely to be high, it is necessary to do more to ensure that designated entities have the opportunity to participate in broadband PCS than is necessary in other, less costly spectrum-based services. In our view, these steps and the others we adopt are required to fulfill Congress' mandate that designated entities have the opportunity to participate in the provision of PCS. The measures we adopt today will also increase the likelihood that designated entities who win licenses in the auctions become strong competitors in the provision of broadband PCS service.

97. In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was well aware of the difficulties these groups encounter in accessing capital. Indeed, less than two years ago, Congress made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."[65] Because of these problems, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns."[66]

98. Congress also recognized that these funding problems are even more severe for minority and women-owned businesses, who face discrimination in the private lending market. For example, Congress explicitly found that businesses owned by minorities and women have particular difficulties in obtaining capital and that problems encountered by minorities in this regard are "extraordinary."[67] A number of studies also amply support the existence of widespread discrimination against minorities in lending practices. In October 1992, the year prior to passage of the auction law, the Federal Reserve Bank of Boston released an important and highly-publicized study demonstrating that a black or Hispanic applicant in the Boston area is roughly 60 percent more likely to be denied a mortgage loan than a similarly situated white applicant.[68] The researchers measured every variable mentioned as important in numerous conversations with lenders, underwriters, and examiners and found that minority applicants are more likely to be denied mortgages even where they have the same obligation ratios, credit history, loan to value and property characteristics as white applicants. The lending discrimination that occurs, the study found, does not involve the application of specific rules, but instead occurs where discretionary decisions are made. Based on the Boston study, it is reasonable to expect that race would affect business loans that are based on more subjective criteria to an even greater extent than the mortgage loan

[64] As noted in the Second Report and Order, the statute also requires the Commission to promote the purposes specified in Section 1 of the Communications Act, which include, among other things, "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151; Second Report and Order at n. 3.

[65] Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331(a)(3), Pub. Law 102–366, Sept. 4, 1992.

[66] *Id.*, Section 331(b) (2), (3).

[67] *Id.*, Sections 112(4), 331(a)(4).

[68] Mortgage Lending in Boston: Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92–7 (October 1992).

process, which uses more standard rules.

99. Importantly, the Boston study also found that, because most loan applicants have some negative attributes, most loan denials will appear legitimate by some objective standard. Accordingly, the study stated, the lending discrimination that occurs is very difficult to document at the institution level, so legal remedies may be largely ineffective. Indeed, Congress had already attempted to address discriminatory lending practices through laws that bar discrimination in lending, such as the Equal Credit Opportunity Act, enacted in 1974 and amended many times since then. Congress, therefore, could reasonably assume, based on the Boston study, and its legislative experience regarding discriminatory lending practices, that minority applicants for licenses issued in spectrum auctions would face substantial (albeit subtle) barriers to obtaining financing. Any legal remedies, even if effective, would, moreover, come too late to ensure that minorities are able to participate in spectrum auctions and obtain licenses.

100. Similar evidence presented in testimony before the House Minority Enterprise Subcommittee on May 20, 1994 indicates that African American business borrowers have difficulty raising capital mainly because they have less equity to invest, they receive fewer loan dollars per dollar of equity investment, and they are less likely to have alternate loan sources, such as affluent family or friends. Assuming two hypothetical college educated, similarly-situated male entrepreneurs, one black, one white, the testimony indicated that the white candidate would have access to $1.85 in bank loans for each dollar of owner equity invested, while the black candidate would have access to only $1.16. According to the testimony, the problems associated with lower incomes and intergenerational wealth, as well as the discriminatory treatment minorities receive from financial institutions, make it much more likely that minorities will be shut out of capital intensive industries, such as telecommunications. This testimony also noted that African American representation in communications is so low that it was not possible to generate meaningful summary statistics on underrepresentation.[69]

101. The inability to access capital is also a major impediment to the successful participation of women in broadband PCS auctions. In enacting the Women's Business Ownership Act in 1988, Congress made findings that women, as a group, are subject to discrimination that adversely affects their ability to raise or secure capital.[70] As AWRT documents, these discriminatory barriers still exist today. Indeed, AWRT reports that while venture capital is an important source of funding for telecommunications companies, women-owned companies received only approximately one percent of the $3 billion invested by institutional venture capitalists in 1993. Citing a 1992 National Women's Business Council report, AWRT further argues that even successful women-owned companies did not overcome these financing obstacles after they had reached a level of funding and profitability adequate for most other businesses.[71]

102. A study prepared in 1993 by the National Foundation for Women Business Owners (NFWBO) further illustrates the barriers faced by women-owned businesses. For example, it finds that women-owned firms are 22 percent more likely to report problems dealing with their banks than are businesses at large. In addition, the NFWBO study finds that the largest single type of short-term financing used by women business owners is credit cards and that over half of women-owned firms use credit cards for such purposes, as compared to 18 percent of all small to medium-sized businesses, which generally use bank loans and vendor credit for short-term credit needs. With regard to long-term financing, the study states that a greater proportion of women-owned firms are turning, or are forced to turn, to private sources, and to a wider variety of sources, to fulfill their needs. Based on these findings, the NFWBO study concludes that removal of financial barriers would encourage stronger growth among women-owned businesses, resulting in much greater growth throughout the economy.[72]

103. If we are to meet the congressional goals of promoting economic opportunity and competition by disseminating licenses among a wide variety of providers, we must find ways to counteract these barriers to entry. Over the years, both Congress and the Commission have tried various methods to enhance access to the broadcast and cable industries by minorities and women. For example, in the late 1960s, the FCC began to promote nondiscriminatory employment policies by broadcast licensees. These equal employment opportunity efforts have taken the form of Commission rules and policies that require licensees not to discriminate, to report hiring and promotion statistics, and to implement affirmative action programs.[73] The Commission also has adopted similar equal employment rules for licensees in the common carrier, public mobile, and international fixed public radio communication services,[74] as well for cable operators.[75] The cable EEO rules were recently revised as part of the implementation of the Cable Act of 1992, and they now apply to cable entities, satellite master antenna television operators serving 50 or more subscribers and any multichannel video programming distributor.[76]

104. A decade after it first addressed discriminatory hiring practices, the Commission began to look into the serious underrepresentation of minorities among owners of broadcast stations. Recognizing that it could play an important role in alleviating this problem through the licensing process, the Commission adopted its tax certificate and distress sale policies in 1978 to encourage minority ownership of broadcast facilities.[77] It noted that full minority participation in the ownership and management of broadcast facilities would result in a more diverse selection of programming and would inevitably enhance the diversity of control of a

[69] Testimony of Dr. Timothy Bates, Visiting Fellow, The Woodrow Wilson Center, before the U.S. House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance, and Urban Development (House Minority Enterprise Subcommittee), May 20, 1994.

[70] Pub. L. 100–533 (1988). In 1991, Congress enacted the Women's Business Development Act of 1991 to further assist the development of small businesses owned by women. *See* Pub. L. 102–191 (1991).

[71] *See* Letter of AWRT to the Honorable Kweisi Mfume, Chairman, House Minority Enterprise Subcommittee, June 1, 1994.

[72] *See* The National Foundation for Women Business Owners, Financing the Business, A Report on Financial Issues from the 1992 Biennial Membership Survey of Women Business Owners, October 1993.

[73] 47 CFR § 73.2080 (broadcasters must "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of the station's employment policy and practice").

[74] 47 CFR §§ 21.307, 22.307, 23.55.

[75] 47 CFR §§ 76.71–76.79.

[76] *See* 47 U.S.C. § 554. In addition, the Commission has proposed adopting EEO requirements for all CMRS licensees, including PCS licensees. Regulatory Treatment of Mobile Services, Further Notice of Proposed Rule Making, GN Docket 93–252, FCC 94–100, 59 FR 28042, May 31, 1994.

[77] *See* Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982) (1982 Policy Statement); *see also* Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978) (1978 Policy Statement).

valuable resource, the electromagnetic spectrum.[78]

105. In implementing these ownership policies, the Commission identified lack of access to capital as one of the principal barriers to minority entry. Thus, in 1981, the Commission created the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications (the "Rivera Committee") to investigate financing methods and to give recommendations to the FCC on ways to encourage minority ownership of telecommunications facilities.[79] The Rivera Committee confirmed that the shortage of capital is a principal problem facing minorities seeking ownership opportunities and further found that this shortage was due to minority inexperience in obtaining financial institution misconceptions about potential minority borrowers, and marketplace structural problems, such as high interest rates and low broadcast industry earnings growth. Among other things, the Rivera Committee suggested educational and outreach programs and expanding the tax certificate program to nonbroadcast properties such as common carrier and land mobile. In response to this recommendation, the FCC submitted draft legislation to Congress proposing to broaden the scope of the Commission's authority to issue tax certificates in connection with the sale or exchange of any type of telecommunications facilities.[80] On March 24, 1983, The Minority Telecommunications Ownership Tax Act of 1983, H.R. 2331, which incorporated the Commission's proposals, was introduced in the House of Representatives.[81]

106. Congress also took steps to address the problem of minority underrepresentation in communications. In 1982, it mandated the grant of a "significant preference" to minority applicants participating in lotteries for spectrum-based services. 47 U.S.C. § 309(i)(3)(A). And, in 1988 and each fiscal year thereafter, Congress attached a provision to the FCC appropriations legislation, which precluded the Commission from spending any appropriated funds to examine or change its minority broadcast preference policies.[82]

107. These efforts have met with limited success. The record shows that women and minorities have not gained substantial ownership representation in either the broadcast or non-broadcast telecommunications industries. For example, a 1993 report conducted by the National Telecommunications and Information Administration's (NTIA) Minority Telecommunications Development Program shows that, as of August 1993, only 2.7 percent of commercial broadcast stations were owned by minorities. Another study commissioned by the Commerce Department's Minority Business Development Agency in 1991 found that only one half of one percent of the telecommunications firms in the country were minority owned. The study also identified only 15 minority cable operators and 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging or messaging services in the United States.[83] And, according to the last available U.S. Census, only 24 percent of the communications firms in the country were owned by women, and these women-owned firms generated only approximately 8.7 percent of the revenues earned by communications companies.[84] When companies without paid employees are removed from the equation, firms with women owners represent only 14.5 percent of the communications companies in the country.[85] One result of these low numbers is that there are very few minority or women-owned businesses that bring experience or infrastructure to PCS. They thus face an additional barrier relative to many existing service providers.

108. Small businesses also have not become major participants in the telecommunications industry. For instance, one commenter asserts that ten large companies—six Regional Bell Operating Companies (RBOCs), AirTouch (formerly owned by Pacific Telesis), McCaw, GTE and Sprint—control nearly 86 percent of the cellular industry. This commenter further contends that nine of these ten companies control 95 percent of the cellular licenses and population in the 50 BTAs that have one million or more people.[86]

109. Congress directed the Commission to ensure that, together with other designated entities, rural telephone companies have the opportunity to participate in the provision of PCS. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Therefore, service to these areas may not be a priority for many PCS licensees. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas profitably. We, therefore, have adopted special provisions to encourage their participation, increasing the likelihood of rapid introduction of service to rural areas.

110. In the new auction law, Congress directed the Commission to remedy this serious imbalance in the participation by certain groups, especially minorities and women. The record indicates that, in the absence of meaningful efforts to assist designated entities, there would be good reason to think that participation by these groups, particularly businesses owned by women and minorities, would continue to be severely limited. Indeed, the auction law itself envisions a process that requires payment of funds to acquire an initial license, unlike existing licensing methods such as comparative hearings or lotteries. It is therefore possible that participation by those with limited access to capital could be further diminished by operation of the statute, absent affirmative provisions to create competitive opportunity for designated entities. The measures we adopt in this *Fifth Report and Order* thus will carry out Congress's directive to provide meaningful opportunities for small

[78] Because of the role of cable television systems in retransmitting broadcast signals, the Commission has also issued tax certificates in connection with sales of cable systems. *See* Statement of Policy on Minority Ownership of CATV Systems, FCC 82–524, released December 22, 1982.

[79] Strategies for Advancing Minority Ownership Opportunities in Telecommunications, The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission, May 1982 (Rivera Committee Report).

[80] *See* Federal Communications Draft Legislation Revising Section 1071 of the Internal Revenue Code of 1994 (January 17, 1983).

[81] The Minority Telecommunications Ownership Tax Act of 1983, H.R. 2331, 98th Congress, 1st Sess., March 24, 1983.

[82] *See* Continuing Appropriations Act for Fiscal Year 1988, Pub. L. 100–102, 101 Stat. 1329–31; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1994, Pub. L. 103–121, 107 Stat. 1167.

[83] *See* Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the House Minority Enterprise Subcommittee, May 20, 1994. In his testimony at this same hearing, FCC Chairman Reed Hundt cited some of these statistics and noted that in light of this serious underrepresentation, there remains "a fundamental obligation for both Congress and the FCC to examine new and creative ways to ensure minority opportunity." Testimony of Reed E. Hundt, Chairman, Federal Communications Commission, before the House Minority Enterprise Subcommittee, May 20, 1994.

[84] *See* Women-Owned Businesses, 1987 Economic Censuses, U.S. Department of Commerce, issued August 1990, at 7, 147. The census data includes partnerships, and subchapter S corporations. We have no statistics regarding women representation among owners of larger communications companies.

[85] *Id.*

[86] *Ex parte* filing of DCR Communications, May 31, 1994.

entities, rural telephone companies, and businesses owned by women and minorities to provide broadband PCS services. The rules also are expressly designed to address the funding problems that face these groups and that are their principal barriers to entry.

111. We also intend that designated entities who win licenses have the opportunity to become strong competitors in this service. While the new broadband PCS service presents tremendous opportunities for designated entities to participate in the provision of the next generation of innovative wireless mobile telecommunications services, it is expected to be a highly competitive service, and the estimated costs of acquiring a license and constructing facilities are substantial. In the *Broadband PCS Reconsideration Order*, which was adopted June 9, 1994, we took specific steps to assist designated entities to become viable competitors in the provision of broadband PCS. For example, we modified the PCS spectrum allocation plan by shifting all channels blocks to a contiguous lower segment of the "emerging technologies band" in part to bolster the ability of designated entities to obtain more competitively viable licenses. In addition, we relaxed some of the ownership and attribution rules with respect to cellular operators' participation in PCS to foster investment in designated entity ventures,[87] and we also relaxed the PCS/cellular cross-ownership rule for designated entities with cellular holdings to allow them to further expand their opportunities in broadband PCS.[88] Further, we took steps that will result in lower capital costs for designated entities that obtain PCS licenses, including adoption of a band plan that will reduce the costs of clearing the PCS spectrum of incumbent microwave users as well as relaxing the construction requirements.

112. The measures we establish today to encourage the entry of designated entities also are designed to promote strong, long-term *bona fide* competitors. For example, we have revised the definition of a small business set forth in the *Second Report and Order* to include entities with up to $40 million in gross revenues, and we will allow these small businesses to pool their resources and form consortia to bid in the entrepreneurs' blocks. We also adopt rules that allow entrepreneurial businesses, small businesses, and businesses owned by women and minorities to raise capital by attracting passive equity investors. At the same time, we have designed these rules to ensure that the special provisions adopted for such businesses accrue to the intended beneficiaries.

B. Summary of Special Provisions for Designated Entities

113. As discussed more fully below, many commenters in this proceeding believe that the inability of designated entities to obtain adequate funding has a profoundly adverse effect on the potential for these businesses to bid successfully in auctions against very large, established businesses. Therefore, we take a number of steps in this Order to help address this imbalance.

- We establish two "entrepreneurs' blocks" (frequency blocks C and F) in which large companies (those with $125 million or more in annual gross revenues or $500 million or more in total assets) will be prohibited from bidding.
- Bidding credits will be granted both to small businesses and to businesses owned by women and minorities in the entrepreneurs' blocks to provide them with a better opportunity to compete successfully in broadband PCS auctions.
- Certain winning bidders in frequency blocks C and F will be permitted to pay the license price in installments, and the interest rate and moratorium on principal payments will be adjusted to assist small businesses and women and minority-owned businesses.
- We adopt a tax certificate program for minority and women-owned businesses, which will provide additional assistance in their efforts to attract equity investors.
- Rural telephone companies will be allowed to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas to provide them more flexibility to serve rural subscribers.[89]
- Bidders in the entrepreneurs' blocks will be required to pay an upfront payment of only $0.015 per MHz per pop, in contrast to the $0.02 per MHz per pop required in the other blocks.

114. The following chart highlights the major provisions adopted for businesses bidding in the entrepreneurs' blocks.[90]

	Bidding credits (percent)	Installment payments	Tax certificates for investors
Entrepreneurial Businesses ($40 MM–$125 MM in revenue and less than $500 MM in total assets).	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than $75 MM, available only in top 50 markets).	No.
Small Businesses (less than $40 MM revenues)	10	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%.	No.
Businesses Owned by Minorities and/or Women ($40 MM–$125 MM in revenues).	15	Interest only for 3 years; rate equal to 10-year Treasury note.	Yes.
Small Businesses Owned by Minorities and/or Women (less than $40 MM revenues).	25	Interest only for 5 years; rate equal to 10-year Treasury note.	Yes.

[87] Broadband PCS Reconsideration Order at ¶ 127.

[88] *Id.* at ¶ 125.

[89] In a Further Notice of Proposed Rule Making in this docket, we will seek comment on whether a partitioning option for small businesses or businesses owned by women or minorities, as suggested by some of the commenters, may be appropriate. In that Further Notice, we also will seek comment or whether the Commission should impose a restriction on the assignment or transfer of control of partitioned licenses by rural telephone companies or other designated entities for some period of time.

[90] This table is not comprehensive and therefore it does not present all the provisions established for designated entities, especially those available outside the entrepreneurs' blocks.

C. Summary of Eligibility Requirements and Definitions

1. Entrepreneurs' Blocks and Small Business Eligibility

115. The following points summarize the principal rules regarding eligibility to bid in the entrepreneurs' blocks and to qualify as a small business. In addition, they summarize the attribution rules we will use to assess whether an applicant satisfies the various financial thresholds. More precise details are discussed in the subsections that follow.

Financial Caps

- *Entrepreneurs' Blocks:* To bid in the entrepreneurs' blocks, the applicant, including attributable investors and affiliates, must cumulatively have less than $125 million in gross revenues and less than $500 million in total assets. No individual attributable investor or affiliate may have $100 million or more in personal net worth.
- *Small Business:* To qualify for special measures accorded a small business, the applicant, including attributable investors and affiliates, must cumulatively have less than $40 million in gross revenues. No individual attributable investor or affiliate may have $40 million or more in personal net worth.

Attribution Rules

- *Control Group.* The gross revenues, total assets and personal net worth of certain investors are not considered so long as the applicant has a "control group" consisting of one or more individuals or entities that control the applicant, hold at least 25 percent of the equity and, for corporations, at least 50.1 percent of the voting stock.
- The gross revenues, total assets and personal net worth of each member of the control group are counted toward the financial caps.
- *Other Investors.* Where the applicant has a control group, the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds 25 percent or more of the applicant's passive equity (which, for corporations, includes as much as 5 percent of the voting stock).
- *Passive Equity.* Passive equity is limited partnership or non-voting stock interests or voting stock interests of 5 percent or less of the issued and outstanding voting stock.
- *Option for Minority or Woman-Owned Applicants.* If the control group (considering entirely of women and/or minorities) owns at least 50.1 percent of the equity and, for corporations, at least 50.1 percent of the voting stock, then the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds more than 49.9 percent of the applicant's passive equity (which, for corporations, includes as much as 5 percent of the voting stock).
- *Affiliates.* The gross revenues, assets and personal net worth of outside interests held by the applicant (and the attributable investors in the applicant) are counted toward the financial caps if the applicant (or the attributable investors in the applicant) control or have power to control the outside interests or if the applicant (or the attributable investors in the applicant) is under the control of the outside interests. The financial interests of spouses are also attributed to each other.

2. Definition of Women and/or Minority-Owned Business

116. The points below summarize the two structural options available to firms that wish to qualify for the special provisions adopted for businesses owned by minorities and women. These options will be discussed in more detail in the text that follows.

50.1% Equity Option

If women and/or minority principals control the applicant and own at least:
- 50.1 percent of the equity
- and 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
- not more than 49.9 percent of the passive equity (which, for corporations, includes as much as 5 percent of the voting stock).

25% Equity Option

If women and/or minority principals control the applicant and own at least:
- 25 percent of the equity
- and 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
- less than 25 percent of the passive equity (for corporations, any other investor also may hold not more than 5 percent of the voting stock).

117. We also have imposed numerous strict requirements to deter shams and fronts and to prevent abuse of the incentives for designated entities. The Commission intends to enforce vigorously each of these requirements. All licensees in the entrepreneurs' blocks are prohibited from voluntarily assigning or transferring their licenses for three years after grant of the application and for the next two years may assign or transfer licenses only to other entities that satisfy the financial criteria to bid in the entrepreneurs' blocks. Furthermore, a business that seeks to acquire a license from an entity paying in installments during the license period will be required, as a condition of the grant, to pay according to the installment payment terms for which it qualifies, unless they are more favorable in which case the existing terms apply. If the purchaser is not qualified for any installment payment plan, we will require payment of the unpaid balance in full before the sale will be approved. We also adopt rules to ensure that the value of the bidding credit is returned to the government in the event of a transfer of control or assignment of the license to an entity not qualifying for bidding credits or not qualifying for as high a bidding credit as the seller. In addition, we impose a one-year holding period on licenses received through the benefit of a tax certificate. We will also random audits to ensure that designated entities *de facto* and *de jure* control. These steps and our eligibility and affiliation rules will help to ensure that the measures we adopt are utilized only by *bona fide* eligible entities and to deter winning bidders seeking only to make a quick profit on the sale of PCS licenses. Ultimately, we believe that we will best fulfill our statutory mandate by creating powerful incentives for *bona fide* designated entities to attract the capital necessary to compete both in auctions for broadband PCS and in the provision of service, and be requiring a strict holding period to ensure that the public receives the benefit of this diverse ownership.

D. The Entrepreneurs' Blocks

118. As discussed above, because the auction process itself requires additional expenditures of capital to acquire licenses, this new licensing procedure in many respects holds the potential to erect an additional barrier to entry that had not existed even under the Act's previous licensing methods, comparative hearings and lotteries. As reflected in the House Committee Report, Congress was well aware of that possibility and wanted to ensure that competitive bidding should not exclude smaller entities from obtaining licenses.[91] The inability of small businesses and businesses owned by women and minorities to obtain adequate private financing creates a serious imbalance between these companies and large businesses in their prospects for competing successfully in broadband PCS auctions.

119. In addition, commenters contend that, at the outset, a small PCS business and a large local exchange carrier would value a license very differently. DCR

[91] *See* H.R. Rep. No. 103-111 at 255.

Communications, for example, argues that a local telephone company would have much lower costs of construction and operation through equipment volume discounts, existing billing, accounting, order entry and processing, and customer service systems. Furthermore, DCR contends, the telephone company might decide to use its PCS system simply as an adjunct to a cellular system it owns in a nearby market and market wireless handsets that operate in both frequencies. DCR concludes that the telephone company could justify paying the higher value for the license because it has more ready access to capital.[92]

120. This concern is echoed by a number of commenters. NTIA agrees that capital formation is a major barrier to full participation by small and minority-owned firms, asserting that capital-constrained firms are likely to assign lower values to PCS licenses than other bidders and are therefore less likely to obtain licenses in an open bidding market.[93] Another party, Impulse Telecommunications Corporation, states that "giants" can justify huge bids because they have billions of dollars of capital as well as an existing administrative, billing, operating and marketing infrastructure. In addition, Impulse asserts that PCS licenses are likely to hold strategic value for large long distance and local telephone companies, for such purposes as critical wireless access.[94] Similarly, Tri-State Radio Company states that the allocation of substantial amounts of spectrum to services such as broadband PCS has generated extensive industry expectation and speculation. With the financial stakes so high, Tri-State argues that designated entities will have little ability to bid successfully against "communications behemoths with almost unlimited financial resources."[95]

121. We agree that small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies, particularly large telephone, cellular and cable television companies. If one or more of these big firms targets a market for strategic reasons, there is almost no likelihood that it could be outbid by a small business. In the Notice, we proposed that one means to address such problems would be to set aside specific spectrum blocks in broadband PCS that would be reserved for bidding purposes to the designated entities.[96] In this Order, we have decided to adopt a modification of this proposal, which should greatly enhance the ability of all designated entities to enter auctions and bid successfully for broadband PCS licenses. Specifically, we establish two entrepreneurs' blocks, C and F, in which eligibility to bid is limited to entities that, together with their affiliates and certain investors, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million. In addition, we will prohibit an applicant from bidding in these blocks if any one individual investor in the applicant has $100 million or greater in personal net worth. Together with a reduced upfront payment requirement, we believe this proposal will encourage smaller entities to enter the auctions for broadband PCS licenses and will ensure that "entrepreneurial" businesses are granted nearly half of all the broadband PCS licenses being auctioned.

122. NTIA strongly supports this measure, arguing that it "would be the most direct mechanism for preserving opportunities for small companies in an auction environment." According to NTIA, reserving two entrepreneurs' blocks helps significantly in satisfying the congressional directive that competitive bidding not result in an increase in concentration in the telecommunications industries.[97] Similarly, Columbia PCS contends that establishment of entrepreneurs' blocks "provides a good balance between Congress's clear mandate to provide opportunities for designated entities and avoid undue concentration of PCS licenses on the one hand with the goal of capturing the value of allocated spectrum for the American public on the other."[98]

123. The $125 million gross revenue/ $500 million asset caps have the effect of excluding the large companies that would easily be able to outbid designated entities and frustrate Congress's goal of disseminating licenses among a diversity of licensees. At the same time, this restriction does not exclude many firms that, while not large in comparison with other telecommunications companies, nevertheless are likely to have the financial ability to provide sustained competition for the PCS licensees on the MTA blocks. For example, the $125 million gross revenue figure corresponds roughly to the Commission's definition of a Tier 2, or medium-sized, local exchange carrier,[99] and would include virtually all of the independently owned rural telephone companies. Limiting the personal net worth of any individual investor or affiliate of the applicant to $100 million will prevent a very wealthy individual from leveraging his or her personal assets to allow the applicant to circumvent the size limitations of the entrepreneurs' blocks.

124. As noted previously, many commenters asked us to reserve spectrum blocks for bidding only by designated entities. The entrepreneurs' blocks plan adopted herein is similar in concept to the set-aside proposals set forth by the commenters. Therefore, in determining which of the blocks in each market should constitute the entrepreneurs' blocks, we paid close attention to the concerns of those who had advocated set-asides in the first instance. Although the broadband PCS band plan has changed since the Commission first proposed set-asides in the Notice and parties first submitted their proposals in this docket, the general concerns of these parties about

[92] *Ex parte* filing of DCR Communications, May 31, 1994.

[93] NTIA Comments at 26.

[94] *Ex parte* filing of Impulse Telecommunications Corporation, May 27, 1994.

[95] Tri-State Comments at 11. *See also* comments of NAMTEC (designated entities should not have to compete against "more entrenched parties"), National Rural Telecom Association (the only way small entities can have real opportunity is if they do not have to bid against "extremely 'deep pocket' applicants"), The Small Business PCS Association (it will not be possible for designated entities "to compete in an auction against some of the largest companies and wealthiest individuals in the United States"), JMP (without preferences for designated entities, large telecommunications firms will "monopolize" the auctions), Minority PCS Coalition at 6, Telephone Association of Michigan at 9–10, Iowa Network at 9, AWRT at 8, Telephone Electronics at 7–8, Sloan at 2.

[96] Notice at ¶ 121.

[97] *Ex parte* filing of NTIA, June 21, 1994.

[98] *Ex parte* filing of Columbia PCS, June 2, 1994. Columbia PCS further states that this measure would spur investment in designated entities and increase their ability to compete against one another and others. *Id.*

[99] Local exchange carriers are categorized as Tier 1 and Tier 2 companies by applying the criterion that Sections 32.11(a) and 32.11(e) of the Commission's Rules use to distinguish Class A and Class B companies, respectively. Class A companies are those companies having annual revenues from regulated telecommunications operations of $100 million or more; Class B companies are those companies having annual revenues from regulated telecommunications operations of less than $100 million. The initial classification of a company is determined by its lowest annual operating revenues for the five immediately preceding years. A company's classification is changed when its annual operating revenue exceeds or is under the $100 million mark in each of five consecutive years. The Commission imposes more relaxed regulatory requirements on Tier 2 LECs than on Tier 1 LECs. *See* Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, 2 FCC Rcd 5770, 5772, 52 FR 35918, Sept. 24, 1987; Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060 n. 3 (Comm. Carr. Bur. 1994); Commission Requirements for Cost Support Material to be Filed with Access Tariffs on March 1, 1985, Public Notice, Mimeo No. 2133 (Comm. Carr. Bur. released Jan. 25, 1985).

the amount of spectrum and geographic territory necessary to compete effectively remain pertinent. Moreover, we adopted the revised broadband PCS band plan in advance of this Order, which afforded interested parties the opportunity to make additional presentations on designated entity incentives in light of the new band plan.

125. A number of commenters approved of the Notice's proposal to set aside one 20 MHz BTA block and one 10 MHz BTA block. The Small Business PCS Association asserted, moreover, that implementation of the set-aside proposal would offer "a major opportunity" for small businesses, that a 20 MHz block is "probably ideal" for development by small entrepreneurs, and that even a 10 MHz block could sustain a viable PCS System.[100] Telepoint makes similar assertions.

126. A considerable number of commenters, however, contended that the Commission's proposal to set aside a 20 MHz block and a 10 MHz block would be inadequate. Telephone Electronics and AWCC asserted, for instance, that a provider operating with only a 10 MHz or 20 MHz license could not offer a full range of PCS services with quality equivalent to the like offerings of a provider operating with a 20 MHz license. Unique and AWCC thus argued that PCS licensees in the set-aside spectrum would consequently be unable to obtain commercial funding on terms as favorable to those available to operators with 30 MHz licenses. Independent Cellular Network maintained that the competitive disadvantages of the proposed set-aside channels, due to their lesser bandwidth, could not be obviated through aggregation, because of the greater transaction costs that would be incurred above those associated with acquisition of a single 30 MHz license.

127. We believe that designating frequency blocks C and F as entrepreneurs' blocks meets the concerns of most of the designated entity commenters. Frequency block C provides 30 MHz of spectrum and, thus, satisfies the concerns of those parties who believe they must have this amount of bandwidth to compete effectively. The MHz block F license, on the other hand, fulfills the needs of other designated entities who argued in favor of small blocks. Moreover, since the C and F blocks are adjacent, they can be aggregated efficiently by one or more licensees. This plan also makes available to eligible bidders in the entrepreneurs' blocks 986 licenses, or slightly under 50 percent of all broadband PCS licenses. Finally, it does not foreclose opportunities for other parties. Bidders ineligible for the entrepreneurs' blocks will have the opportunity to bid on 99 30 MHz MTA licenses throughout the country, as well as 986 10 MHz BTA licenses nationwide.

128. *Five-Year Holding and Limited Transfer Period.* In establishing the entrepreneurs' blocks, we recognize the congressionally mandated objective will not be served if parties take advantage of bidding in these blocks and immediately assign or transfer control of the authorizations to other entities. Such a practice could unjustly enrich the auction winners and would undermine the congressional goal of giving designated entities the opportunity to provide spectrum-based services. Therefore, we will prohibit licensees in the entrepreneurs' blocks from voluntarily assigning or transferring control of their licenses for a period of three years from the date of the license grant.[101] And, for the next two years of the license term, we will permit the licensee to assign or transfer control of its authorization only to an entity that satisfies the entrepreneurs' blocks entry criteria.[102] During this five-year period, licensees will continue to be bound by the financial eligibility requirements, as set forth below.[103] In addition, a transferee or assignee who receives a C or F block license during the five-year period will remain subject to the transfer restrictions for the balance of the holding period.[104] The Commission will conduct random pre and post-auction audits to ensure that applicants receiving preferences are in compliance with the FCC's rules.

129. Our goals are to create significant opportunities for entrepreneurs, small businesses, and businesses owned by minorities and women to compete in auctions for licenses and attract sufficient capital to build-out those licenses and provide service. We recognize the critical need to attract capital, which requires flexibility. We are very concerned, however, that such flexibility not undermine our more fundamental objective, which is to ensure that designated entities retain *de facto* and *de jure* control of their companies at all times. We believe that the five-year holding and limited transfer period, which we have adopted in this Order, will help to promote this objective. Some question remains, however, as to whether a longer holding period (*e.g.*, seven years) would more fully meet this goal.

E. Bidding Credits

130. In the Notice, we indicated that we might use spectrum set-asides for designated entities in the broadband PCS service but did not expressly propose to use bidding credits. For two other services, IVDS and narrowband PCS, however, we did conclude recently that the use of bidding credits in auctions would be an effective tool to ensure that women and minority-owned businesses have opportunities to participate in the provision of those services.[105] On further reflection, and based on the many comments in the record favoring this approach, we believe that bidding credits are necessary to ensure that women and minority-owned businesses and small businesses participate in broadband PCS. Accordingly, we adopt a bidding credit plan for winning bidders in the entrepreneurs' blocks that gives small businesses a 10 percent credit, women and minority-owned businesses a 15 percent credit, and small businesses owned by women and minorities an aggregate credit of 25 percent.

131. At the outset, we note that we are confining the bidding credit option to the entrepreneurs' blocks because, given the extremely capital intensive nature of

[100] The Small Business PCS Association stated that a small business operating in a single BTA service region could effectively compete with large companies operating in larger service areas. This is so, it contended, mainly because PCS providers with large service areas would not realize such great economies of scale as many have supposed and because small firms could counter such advantages by forming buying cooperatives. Comments of Small Business PCS Association at 2–3.

[101] We will consider exceptions to this three-year holding period rule on a case-by-case basis in the event of a judicial order decreeing bankruptcy or a judicial foreclosure if the licensee proposes to assign or transfer its authorization to an entity that meets the financial thresholds for bidding in the entrepreneurs' blocks. In addition, we note that a transfer is considered "involuntary" if it is made pursuant to a court decree requiring the sale or transfer of the licensee's stock or assets. *Paramount Pictures, Inc.*, 43 FCC 453 (1949); *C.f. William Penn Broadcasting*, 16 FCC 2d 1050 (1969).

[102] We note that a licensee assigning its authorization pursuant to this limited transfer period might be subject to the repayment provisions associated with installment payments and bidding credits. *See infra* ¶¶ 134, 141. We also clarify that rural telephone companies receiving partitioned licenses in the entrepreneurs' blocks are subject to this five-year holding and limited transfer period.

[103] *See infra* ¶¶ 156–168. In addition, for purposes of the installment payment and bidding credit provisions set forth below, licensees will continue to be bound by the financial eligibility requirements throughout the term of the license.

[104] For example, if a C-block authorization is assigned to an eligible business in year four of the license term, it will be required to hold that license until the original five-year period expires, subject to the same exceptions that applied to the original licensee.

[105] *See* Third Report and Order, FCC 94–98, 59 FR 26741, May 24, 1994; Fourth Report and Order, 9 FCC Rcd 2330, 59 FR 24947, May 13, 1994.

broadband PCS, we do not think bidding credits in an uninsulated block would have a meaningful effect.[106] Indeed, in *ex parte* presentations to the Commission, many commenters have indicated that, without spectrum set-asides for broadband PCS, bidding credits would not be sufficient to assist designated entities in outbidding very large entities who are likely to bid for licenses in this service. DCR Communications states, for example, that all of the existing large telecommunications carriers can justify must larger payments for licenses than could an individual entrepreneur, regardless of a bidder's credit. Therefore, it believes no entrepreneur will win a bid for any PCS market that is desirable to any of the large companies.[107] Many other commenters echo this concern.[108] Some state that, if bidding credits alone are used, extraordinarily large credits, even on the order of 50 percent or more, would be ineffective.[109] As described above, in order to afford designated entities a realistic opportunity to obtain licenses in the broadband PCS service, we have taken measures to exclude very large businesses from bidding for licenses in the C and F blocks. These measures will enhance the value of the bidding credits for small businesses and businesses owned by minorities and women. In this context, we believe that bidding credits will have a significant effect on the ability of small businesses and businesses owned by women and minorities to participate successfully in auctions for licenses in these blocks.

132. As explained above, the capital access problems faced by small firms and women and minority-owned firms make special provisions like bidding credits appropriate for these designated entities in broadband PCS.[110] In effect, the bidding credit will function as a discount on the bid price a firm will actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. Moreover, as noted previously, women and minorities face discrimination in lending and other barriers to entry not encountered by other firms, including other designated entities. Therefore, as one of the measures designed to counter these increased capital formation difficulties, we will provide them with a slightly higher bidding credit than that granted to small businesses. Thus, women and minorities will receive a 15 percent payment discount that is applied against the amounts they bid on licenses. Absent such measures targeted specifically to women and minorities, it would be virtually impossible to assure that these groups achieve any meaningful measure of opportunity for actual participation in the provision of broadband PCS. Similarly, it is reasonable to assume that small firms owned by women and minorities suffer the problems endemic to both groups and that a cumulative bidding credit of 25 percent is therefore appropriate. We believe that these measures will help women and minorities to attract the capital necessary for obtaining a license and constructing and operating a broadband PCS system, consistent with the intent of Congress.

133. The definition of a minority or women-owned firm and of a small business are set forth below.[111] To receive a 10 percent bidding credit, a small business must satisfy a gross revenue test. As explained more fully below in the small business definition section, a consortium consisting entirely of small businesses also is eligible for a 10 percent bidding credit even if the combined gross revenues of the consortium exceed the small business gross revenues threshold. In addition, a small business that is owned by women and minorities must satisfy the definition of a business owned by minorities and women as well as the small business definition to receive a 25 percent bidding credit. Finally, a consortium of small firms owned by women and/or minorities is eligible for a 25 percent bidding credit, provided that each member of the consortium meets the definition of a small business and a minority and/or women-owned firm.

134. *Unjust Enrichment Applicable to Bidding Credits.* To ensure that bidding credits benefit the parties to whom they are directed, we adopt strict repayment penalties. If, within the original term, a licensee applies to assign or transfer control of a license to an entity that is not eligible for as a high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify must be paid to the U.S. Treasury as a condition of approval of the transfer. For example, an assignment of a license from a small minority-owned firm to a women-owned firm with revenues greater than $40 million would require repayment of 10 percent of the original bid price (25 percent less 15 percent) to the Treasury. A sale to an entity that would not qualify for bidding credits will entail full payment of the bidding credit as a condition of transfer. Small businesses also will be bound by the financial eligibility rules during the entire license term as set forth below. Thus, if after licensing an investor purchases an "attributable" interest in the business and, as a result, the gross revenues of the firm exceed the $40 million small business cap, this repayment provision will apply.[112] These repayment provisions apply throughout the original term of the license to help promote the long-term holding of licenses by those parties receiving bidding credits.

F. Installment Payments

135. A significant barrier for most businesses small enough to qualify to bid in the entrepreneurs' blocks will be access to adequate private financing to ensure their ability to compete against larger firms in the PCS marketplace.[113] In the *Second Report and Order*, we concluded that installment payments are an effective means to address the inability of small businesses to obtain financing and will enable these entities to compete more effectively for the auctioned spectrum. We also determined that small businesses eligible for installment payments would only be required to pay half of the down payment (10 percent of the winning bid, as opposed to 20 percent) five days after the auction closes, with the remaining 10 percent payment deferred until five days after grant of the license. Finally, we indicated that installment payments should be made available to small

[106] We also are concerned that allowing bidding credits in the MTA blocks would increase substantially the incentive for businesses to engage in shams and fronts.

[107] *Ex parte* filing of DCR, May 31, 1994, at 4–5.

[108] *See ex parte* filings of DigiVox Corporation, May 31, 1994, at 3 (the use of bidding credits to the exclusion of frequency set-asides will not fulfill the objectives of Section 309(j)), Communications International Wireless Corp., May 27, 1994, at 1 (bidding credits alone cannot level the playing field between designated entities and members of the Fortune 100 companies), CWCC, May 27, 1994, at 2 (bidding credits alone cannot level the playing field for designated entities).

[109] *Ex parte* filings of AWCC, May 26, 1994 at 2, Columbia PCS, June 2, 1994 at 2.

[110] Although we did not grant bidding credits to small businesses in the narrowband PCS or IVDS services, we believe that, given the exponentially greater expense likely to be incurred in acquiring broadband PCS licenses and construct the systems, bidding credits are a proper means to ensure that these firms have the opportunity to participate in this service. We note that for narrowband PCS and IVDS, the cost of license acquisition and implementation of service is anticipated to be considerably more modest.

[111] *See infra* ¶¶ 172–192.

[112] *See infra* ¶¶ 158–168, for a discussion of which investor interests are "attributable" for purposes of calculating the gross revenues caps.

[113] *See e.g.*, comments of SBA Chief Counsel of Advocacy at 6, 20–21. NTIA at 27; SBAC Report at 2 (September 15, 1993).

businesses at an interest rate equal to the rate for U.S. Treasury obligations. *See Second Report and Order* at ¶¶ 236–240.

136. In light of the expected substantial capital required to acquire and construct broadband PCS licenses, we conclude that installment payments are an appropriate measure for most businesses that obtain broadband PCS licenses in the entrepreneurs' blocks. By allowing payment in installments, the government is in effect extending credit to licensees, thus reducing the amount of private financing needed prior to and after the auction. Such low cost government financing will promote long-term participation by these businesses, which, because of their smaller size, lack access to sufficient capital to compete effectively with larger PCS licensees. Under the rules we adopt today, installment payments are available to small entities that do not technically qualify as small businesses for purposes of other measures we have adopted, such as bidding credits. We believe, however, that, given the enormous costs of broadband PCS and the likelihood of very large participants in the other blocks, this option is fully consistent with the congressional intent in enacting Section 309(j)(4)(A) to avoid a competitive bidding program that has the effect of favoring incumbent providers of other communications services, with established revenue streams, over smaller entities.[114]

137. Under the plan we adopt here, all licensees that satisfy the gross revenues, total assets and personal net worth criteria to bid in the entrepreneurs' blocks will be allowed to pay in installments for licenses granted in those blocks in the 50 largest BTAs. In the smaller BTAs, however, only businesses owned by women and minorities and those licensees with less than $75 million in gross revenues will be able to use installment payments.[115] This distinction is based on the expected lower costs to acquire licenses and construct systems in the smaller BTAs. Thus, with the exception of companies owned by women or minorities, which face additional problems accessing capital, we do not think that a firm with gross revenues exceeding $75 million will require government financing to be competitive in the small BTAs.[116]

138. The installment payment option will enable qualified businesses to pay their winning bid over time. These businesses must make the applicable upfront payment in full before the auction, but are required to make a post-auction down payment equaling only ten percent of their winning bids, half of which will be due five business days after the auction closes. Payment of the other half of the down payment will be deferred until five business days after the license is granted. In general, the remaining 90 percent of the auction price will be paid in installments with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Under this general rule, only payments of interest will be due for the first year with principal and interest payments amortized over the remaining nine years of the license. Timely payment of all installments will be a condition of the license grant and failure to make sure timely payment will be grounds for revocation of the license.[117]

139. *Enhanced Installment Payments.* As explained previously, small businesses and businesses owned by minorities and women face capital access difficulties not encountered by other firms and, thus, require special measures to ensure their opportunity to participate in broadband PCS. Accordingly, we will provide an "enhanced" installment payment plan for these entities. Pursuant to this enhanced installment payment plan, small businesses (as defined below) who win licenses in the entrepreneurs' blocks will be required to pay interest only for the first two years of the license term at the same interest rate as set forth in the general rule. Businesses owned by women and/or minorities will be able to make interest-only payments for three years. Interest will accrue at the Treasury note rate without the additional 2.5 percent.[118] And, finally, businesses that are both small and owned by women and/or minorities will be required to pay only interest for five years. Interest will accrue at the Treasury note rate.

140. These enhanced installment payments are narrowly tailored to the needs of the various designated entities, as reflected in the record in this proceeding. We believe that varying the moratorium on principal in the early years of the loan and varying the interest rate based on these needs will allow small businesses and companies owned by women and/or minorities to bid higher in auctions, thereby increasing their changes for obtaining licenses. In addition, it will allow them to concentrate their resources on infrastructure build-out and, therefore, it will increase the likelihood that they become viable PCS competitors.

141. *Unjust Enrichment Applicable to Installment Payments.* To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, we will use the unjust enrichment provisions adopted in the *Second Report and Order* applicable to installment payments. Specifically, if a licensee that was awarded installment payments seeks to assign or transfer control of its license to an entity not meeting the applicable eligibility standards set out above during the term of the license, we will require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer. *See Second Report and Order* at ¶ 263; 47 CFR 1.2111(c). Moreover, if an entity seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan, if any, for which the acquiring entity qualifies will become effective immediately upon transfer. Thus, a higher interest rate and earlier payment of principal may begin to be applied. For example, a transfer of a license in the fourth year after license grant from a small minority-owned firm to a small non-minority owned firm would require that the firm begin principal payments and the balance would begin accruing interest at a rate 2.5 percent above the rate that had been in effect.[119] Finally, if an investor

[114] *See* H.R. Rep. No. 103–111 at 255 (Commission has the authority to design alternative payment schedules in order that the auction process does not inadvertently favor only those with "deep pockets" over new or small companies).

[115] We will apply the same $500 million total assets and $100 million personal net worth standards for purposes of determining eligibility for installment payments in all BTAs. The attribution rules set forth with regard to eligibility to bid in the entrepreneurs' blocks also will apply in all BTAs. *See infra* ¶¶ 158–168.

[116] We note that a consortium of small businesses is eligible for installment payments in any market so long as each member of the consortium satisfies the definition of a small business, as set forth in Section VII.J.2, *infra*.

[117] As described in the Second Report and Order, the Commission may, on a case-by-case basis, permit a three to six month grace period within which a licensee may seek a restructuring of the payment plan.

[118] To be eligible for these "enhanced" installment payments, a firm must satisfy either of the two alternative definitions of a woman or minority-owned business, as set forth in ¶¶ 181–192, *infra*, as well as the applicable financial caps.

[119] We recognize that because of the five-year holding and limited transfer requirements in the entrepreneurs' blocks, these unjust enrichment provisions have limited applicability during the first five years of the license term. Nevertheless, there are some situations in which licensees are permitted to assign or transfer their licenses during this period and the provisions would then apply if the buyer would not have been qualified for installment payments or as favorable an installment payment plan. Furthermore, the unjust enrichment

subsequently purchases an "attributable" interest in the businesses and, as a result, the gross revenues or total assets of the business exceed the applicable financial caps, this unjust enrichment provision will also apply.[120]

G. Tax Certificates

142. Congress instructed the Commission to consider the use of tax certificates to help ensure designated entity participation in spectrum-based services. *See* 47 U.S.C. § 309(j)(4)(D). In the *Second Report and Order* we observed that tax certificates could be useful as a means of attracting investors to designated entity enterprises and to encourage licensees to assign or transfer control of licenses to designated entities in post-auction transactions. We stated further that we would examine the feasibility of using this measure in subsequent service-specific auction rules. *Second Report and Order* at ¶ 251.

143. We believe that tax certificates, which allow the recipients to defer capital gains taxes made on sales, are an appropriate tool to assist women and minority-owned businesses to attract start-up capital from non-controlling investors in broadband PCS. As explained above, due to discrimination in private lending markets and other factors, these designated entities face added obstacles in accessing capital. Therefore, in order to ensure that such businesses have a meaningful opportunity to participate in auctions, it is necessary to adopt measures to encourage investment in minority and woman-owned companies. Moreover, because of the severe underrepresentation of women and minorities in telecommunications, we believe that it is appropriate to give PCS licensees the incentive, through the grant of tax certificates, to assign or transfer their authorizations to such entities in post-auction sales. This measure will provide added assurance that minority and women-owned entities have the opportunity to participate in broadband PCS services, as mandated by Congress. Accordingly, we will issue tax certificates to non-controlling initial investors in minority and women-owned broadband PCS applicants (in any frequency block), upon the sale of their non-controlling interests. We will also issue tax certificates to broadband PCS licensees (in any frequency block) who assign or transfer control of their licenses to minority and women-owned entities.

144. We have used tax certificates over the years to encourage broadcast licensees and cable television operators to transfer their stations and systems to minority buyers.[121] We also have granted tax certificates to shareholders in minority-controlled broadcast or cable entities who sell their shares, when such interests were acquired to assist in the financing of the acquisition of the facility.[122] These broadcast and cable tax certificates are issued pursuant to the Internal Revenue Code, 26 U.S.C. § 1071. While Congress' goal in authorizing tax certificates under Section 309(j)(4)(D) of the Act is somewhat different, and focuses on ensuring the opportunity for designated entities to participate in auctions and spectrum-based services, we think that tax certificates will be equally valuable in the broadband PCS context. Issuance of tax certificates to investors in minority and women-owned businesses and licensees that sell to minorities and women will augment the other measures we adopt today to encourage minorities and women to participate in broadband PCS and will increase the ability of these entities to access financing for that purpose.

145. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors meeting the criteria outlined here to defer the gain realized upon a sale by: (1) Treating it as an involuntary conversion under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property; or both. Tax certificates will be available to initial investors in minority and woman-owned businesses who provide "start-up" financing, which allows these businesses to acquire licenses at auction or in the post-auction market, and those investors who purchase interests within the first year after license issuance, which allows for the stabilization of the designated entities' capital base. The definition of a minority or women-owned entity is set forth below[123] and, with regard to our investor tax certificate policy, the entity in which the investment is made must satisfy that definition at the time of the original investment as well as after the investor's shares are sold. For post-auction market sales, tax certificates will be issued only to licensees who sell to entities that meet that definition. Tax certificates will be granted only upon completion of the sale, although parties may request a declaratory ruling from the Commission regarding the tax certificate consequences of prospective transactions.

146. *One-Year Holding Period.* As with our other tax certificate policies, we are concerned about avoiding "sham" arrangements to obtain tax certificates and, pursuant to Section 309(j)(4)(E), thus adopt measures to prevent abuses. As in our existing tax certificate program,[124] we will impose a one-year holding requirement on the transfer of control or assignment of broadband PCS licenses by women and minority-owned businesses who obtained such licenses through the benefit of tax certificates. We believe that the rapid resale of such licenses at a profit would subvert our goal of ensuring the opportunity to participate by minority or woman-owned businesses. If the buyer itself is a women or minority-owned business, however, our objectives still will be satisfied. Thus, as an exception to the holding requirement, we will permit the assignment or transfer of control of licenses during this period to other qualified minority and women-owned businesses. We note, however, that the assignee or transferee who receives this license before the end of the original one-year holding period will also be subject to a one-year holding requirement, from the date of consummation of the assignment or transfer.

147. Finally, in the *Broadband PCS Reconsideration Order*, we indicated that we would address in this proceeding proposals for issuing tax certificates to cellular operators who divest their cellular holdings in order to come into compliance with our rules governing cellular operators' participation in broadband PCS. Several commenters argued that tax certificates should be issued to all such companies who divest their holdings.[125] To accomplish the directive in Section 309(j)(4)(D) that minority groups and women are given the opportunity to

provisions are applicable for the full ten-year license term.

[120] *See infra* ¶¶ 158–168, for a discussion of which investor interests are "attributable" for purposes of calculating the gross revenues and total assets thresholds.

[121] *See* 1982 Policy Statement; 1978 Policy Statement. We have also employed tax certificates as a means of encouraging fixed microwave operators to relocate from spectrum allocated to emerging technologies. *See* Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92–9, 8 FCC Rcd 6589, 58 FR 46547, Sept. 2, 1993.

[122] *See* 1982 Policy Statement, 92 FCC 2d at 855–58.

[123] *See infra* ¶¶ 181–192.

[124] *See* Amendment of Section 73.3597 of the Commission's Rules, Memorandum Opinion and Order, 99 FCC 2d 971, 974 (1985).

[125] *See, e.g.,* Petitions for Reconsideration of GTE Service Corporation and Comcast Corporation of Second Report and Order in GEN Docket 90–314.

participate in the provision of spectrum-based services, we have decided to issue tax certificates to such cellular companies so long as their cellular interests are divested to businesses owned by minorities and/or women, as defined in this order. In this manner, we can further implement Congress's goal to facilitate the participation of minorities and women in spectrum-based services. We will also impose a one-year holding period requirement on the assignment or transfer of control of cellular licenses obtained by women and minority-owned businesses through the benefit of this tax certificate policy.

H. Provisions for Rural Telephone Companies

148. After the release of the *Second Report and Order*, rural telephone companies made numerous *ex parte* presentations concerning how we can best ensure that rural areas are provided broadband PCS. In addition, we have received several petitions for reconsideration of the *Second Report and Order* that address our definition of rural telephone companies in the generic auction rules. In this Order, we address the treatment of rural telephone companies for purposes of competitive bidding for broadband PCS licenses and address below some of the issues raised in petitions for reconsideration of the *Second Report and Order* concerning the definition of these entities.

149. In the *Broadband PCS Reconsideration Order*, we adopted an important measure that will help rural telephone companies become viable providers of PCS services. In response to numerous requests from rural telephone company interests, we increased from 20 percent to 40 percent the cellular attribution threshold for rural telephone companies with non-controlling cellular interests in their areas. *See Broadband PCS Reconsideration Order* at ¶ 125. This action increases the number of rural telephone companies that will be eligible to hold PCS licenses. In taking this action, we recognized that their existing infrastructure makes rural telephone companies well suited to introduce PCS services rapidly into their service areas and adjacent areas. Thus, this action will help speed service to rural areas, which tend to be less profitable to serve for companies without existing infrastructure than more densely populated urban areas.

150. We suggested in the *Second Report and Order* that allowing broadband PCS licenses to be geographically partitioned may be a means to permit rural telephone companies to hold licenses to provide service in their telephone service areas.[126] Many rural telephone companies proposed some form of partitioning in their comments, arguing that if they were required to bid on entire BTA or MTA licenses to obtain licenses covering their wireline service areas, they would be effectively barred from entering the broadband PCS industry. They contend that under a partitioning plan, they would be able to serve areas in which they already provide service, while the remainder of the PCS service area could be served by other providers. Such a plan, they argue, would encourage rural telephone companies to take advantage of existing infrastructure in providing PCS services, thereby speeding service to rural areas.[127] We believe that these proposals have merit, and therefore we now adopt a license partitioning system to provide these designated entities the enhanced opportunity to participate in the provision of broadband PCS and to deploy broadband PCS in their rural services areas rapidly.

151. Our partitioning system will allow rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas. These companies will be permitted to acquire partitioned broadband PCS licenses in either of two ways in any frequency blocks: (1) They may form bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partition the licenses won among consortia participants, and (2) they may acquire partitioned broadband PCS licenses from other licensees through private negotiation and agreement either before or after the auction. Each rural telephone company member of a consortium will, following the auction, be required to file a long-form application for its respective, mutually agreed-upon geographic area. If rural telephone company consortia are formed to bid on licenses in the entrepreneurs' blocks, the eligibility rules for those blocks will apply (*i.e.*, the cumulative gross revenues and assets of the consortium members may not exceed the financial caps for eligibility in these blocks).[128] We will require that partitioned areas conform to established geopolitical boundaries (such as county lines) and that each area include all portions of the wireline service area of the rural telephone company applicant that lies within the PCS service area. In addition, if a rural telephone company receives a partitioned license post-auction from another PCS licensee, the partitioned area must be reasonably related to the rural telephone company's wireline service area that lies within the PCS service area.[129] We recognize that rural telephone companies will require some flexibility in fashioning the areas in which they will receive partitioned licenses, so we do not adopt a strict rule concerning the reasonableness of the partitioned area. Generally, we will presume as reasonable a partitioned area that contains no more than twice the population of that portion of a rural telephone company's wireline service area that lies within the PCS service area. Each licensee in each partitioned area will be responsible for meeting the build-out requirements in its area.

152. Allowing partitioning of rural areas served by rural telephone companies provides a viable opportunity for many of these designated entities who desire to offer PCS to their customers as a complement to their local telephone services. For example, rural telephone companies who cannot afford or do not desire to bid for or construct PCS systems for an entire BTA can thus acquire licenses in areas they wish to serve or form bidding consortia and partition the entire BTA among themselves. We believe that rural partitioning is an efficient method of getting a license in the hands of an entity that will provide rapid service to rural areas.

153. We have decided not to adopt any other auction-related measures specifically for rural telephone companies in this Order. We believe that the partitioning plan we are adopting will provide rural telephone companies with substantial capabilities to acquire licenses to provide broadband

[126] *See* Second Report and Order at ¶ 243, n. 186. We note that although we stated in n. 186 that we would consider partitioning for rural telephone companies in the reconsideration of the broadband PCS service rules, we have concluded that this issue should be addressed along with other issues concerning designated entities. *See* Broadband PCS Reconsideration Order at ¶ 83, n. 113. In our deliberations on this issue, we incorporate into this proceeding the record developed in GEN Docket No. 90–314.

[127] *See, e.g.*, comments of GVNW at 2–4, Rural Cellular Association at 16, U.S. Intelco at 16.

[128] As discussed below, we will permit a consortium consisting entirely of small businesses to exceed the entrepreneurs' blocks financial thresholds. *See infra* ¶¶ 179–180. Therefore, if each member of a consortium of rural telephone companies also satisfies the definition of a small business, we will allow the consortium to bid in the entrepreneurs' blocks even if it exceeds the gross revenues and total assets caps.

[129] This provision will not apply when rural telephone companies form consortia only among themselves and then partition the license area. In this circumstance, one or more partitioned areas may have to be larger in order for the entire PCS service area to be served.

PCS in their rural telephone service areas, consistent with our statutory mandate. In addition, our eligibility criteria for bidding in the entrepreneurs' blocks, discussed below, will permit virtually all telephone companies whose service areas are predominantly rural to bid on licenses in frequency blocks C and F without competition from the large telephone companies and other deep-pocketed bidders. Thus, virtually all rural telephone companies will be able to bid for broadband PCS licenses and defer payment in accordance with the installment payment plans we are adopting for the entrepreneurs' blocks. We also note that if a rural telephone company meets the definition of a small business or a business owned by minorities and/or women, it would enjoy a bidding credit and "enhanced" installment payments applicable to those groups when bidding on licenses in these blocks. We do not think that any other measures are necessary in order to satisfy the statute's directive that we ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services, and to satisfy our goals to ensure that PCS is provided to all areas of the country including rural areas.

I. Upfront Payments

154. Upfront payment requirements are designed to ensure that bidders are qualified and serious and to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal penalties.[130] The upfront payment ensures that bids during the course of the auction are *bona fide* and convey information about the value of the underlying licenses. Our standard upfront payment for broadband PCS is $0.02 per MHz per pop, which is equivalent to roughly six percent of the license value, based on an estimate in a Congressional Budget Office report of the total value of the auctionable spectrum.[131] A number of commenters assert that the Commission could enhance the opportunity of designated entities to participate in competitive bidding by reducing the required upfront payment for those applicants.[132] We agree that the $0.02 per MHz per pop upfront payment requirement might impose a barrier for smaller entities wishing to participate in the auctions. Moreover, we note that most bidders in the entrepreneurs' blocks will be entitled to pay for their licenses in installments, which requires a down payment of only five percent of the winning bid. We are concerned that requiring an upfront payment that may be larger than the down payment that the winning bidder is required to tender could discourage auction participation.

155. For these reasons, we will reduce the upfront payment requirement to $0.015 per MHz per pop for bidders in the entrepreneurs' blocks. This 25 percent discount should facilitate auction participation by capital-constrained companies and permit them to conserve resources for infrastructure development after winning a license. Moreover, since the upfront payment is still substantial, ranging from slightly below $20,000 for a 30 MHz license in the smallest BTAs to more than $10 million for the New York BTA, insincere bidding will be discouraged and the Commission will have access to funds if it must collect default or bid withdrawal penalty payments.

J. Definitions and Eligibility

1. Eligibility to Bid in the Entrepreneurs' Blocks

156. As noted previously, eligibility to bid in the two entrepreneurs' blocks, C and F, is limited to companies that, together with their affiliates and investors, had gross revenues of less than $125 million in each of the last two years and have total assets of less than $500 million at the time their short form applications are filed. In addition, we will prohibit an applicant from bidding in these blocks if any one individual investor or principal in the applicant has $100 million or greater in personal net worth at the short form application filing date.

157. In determining whether an applicant satisfies these financial thresholds, we will count the gross revenues and total assets of the applicant as well as those of its investors with "attributable" interests. The subsection that follows discusses what interests are attributable for these purposes. In addition, it sets forth exceptions to these attribution rules for minority and women-owned applicants and for publicly-traded companies.

a. Attribution Rules for the Entrepreneurs' Blocks

158. *Qualified "Entrepreneurs".* As a general rule, the gross revenues and total assets of all investors in, and affiliates of, an applicant are counted on a cumulative, fully-diluted basis for purposes of determining whether the $125 million/$500 million thresholds have been exceeded, and on an individual basis regarding the $100 personal net worth standard.[133] There are two exceptions to this rule, however. First, applicants that meet the definition of a small business may, as discussed below, form consortia of small businesses that, on an aggregate basis, exceed the gross revenue/total asset caps. Second, the gross revenues, total assets, personal net worth, and affiliations of any investor in the applicant are not considered so long as the investor holds less than 25 percent of the applicant's passive equity. For corporations, we shall use the term passive equity investors to mean investors who hold only non-voting stock or *de minimis* amounts of voting stock that include no more than five percent of the voting interests. Where different classes of stock are held, however, the total amount of equity must still be less than 25 percent to meet this requirement. For partnerships, the term means limited partnership interests that do not have the power to exercise control of the entity.[134] The passive investor exception will be available, however, only so long as the applicant remains under the control of one or more entities or individuals (defined as the "control group") and the control group holds at least 25 percent of the applicant's equity and, in the case of corporate applicants, at least 50.1 percent of the voting stock.[135] In the case of partnership applicants, the control group must hold all the general partnership interests. Winning bidders are required to identify on their long-form applications the identity of the members of this control group and the means of ensuring control (such as a voting trust agreement). The gross revenues, total assets and personal net worth (if applicable) of each member of the control group and each member's affiliates will be counted toward the $125 million gross revenues/$500 million total assets thresholds or the individual $100 million personal net worth standard, regardless of the size of

[130] Second Report and Order, ¶¶ 169–80.

[131] *Id.* at ¶ 177.

[132] *See e.g.*, comments of AWCC at 31–32, Minnesota Equal Access at 2, NAMTEC at 20, Rural Cellular Corp. at 2, U.S. Intelco at 22–23.

[133] By "fully-diluted," we mean the agreements such as stock options, warrants and convertible debentures will generally be considered to have a present effect and will be treated as if the rights thereunder already have been fully exercised.

[134] Applicants must be prepared to demonstrate that the limited partners do not have influence over the affairs of the applicant that is inconsistent with their roles as passive investors. For purposes of our rules, we presume that any general partner has the power to control a partnership. Therefore, each general partner in a partnership will be considered part of the partnership's control group.

[135] So long as the applicant remains under the *de jure* and *de facto* control of the control group, we shall not bar passive investors from entering into management agreements with applicants.

the member's total interest in the applicant.

159. The attribution levels we have selected here are intended to balance the competing considerations that apply in this particular context and may differ from those we have used in other circumstances. As a general matter, the 25 percent limitation on equity investment interests will serve as a safeguard that the very large entities who are excluded from bidding in these blocks do not, through their investments in qualified firms, circumvent the gross revenue/total asset caps. At the same time, it will afford qualified bidders a reasonable measure of flexibility in obtaining needed financing from other entities, while ensuring that such entities do not acquire controlling interests in the eligible bidders.[136] Similarly, the five percent threshold for attributing revenues of investors with voting stock in corporate applicants is designed to keep ineligible parties from exerting undue control over eligible firms.[137] For all of these reasons, we also will attribute the gross revenues and total assets of entities, or the personal net worth of individuals, that otherwise constitute "affiliates" of the applicant.[138]

160. *Qualified Woman and Minority-Owned "Entrepreneurs".* As discussed above, the record demonstrates that women and minorities have especially acute problems in obtaining financing, due in part to discriminatory lending practices by private financial institutions. To address these special problems and to afford women and minority-owned businesses more flexibility in attracting financing, it is necessary to provide these entities with an alternative, somewhat more relaxed option regarding the attribution of revenues of passive investors. Under this alternative standard, we will not attribute to the applicant the gross revenues, assets, or net worth of any single investor in a minority or woman-owned applicant unless it holds more than 49.9 percent of the passive equity (which is defined to include as much as five percent of a corporation's voting stock). To guard against abuses, however, the control group of applicants choosing this option would have to own at least 50.1 percent of the applicant's equity, as well as retain control and hold at least 50.1 percent of the voting stock.[139] As discussed above with regard to general eligibility to bid in the entrepreneurs' blocks, winning bidders must identify on their long-form applications a control group (this time consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and/or women) and the gross revenues and net worth of each member of the control group and each member's affiliates will be counted toward the $125 million gross revenue/$500 million total asset thresholds or the individual $100 million personal net worth limitation, regardless of the size of the member's total interest in the applicant.

161. Relaxing the attribution standard somewhat in determining eligibility of women and minority-owned companies to bid for licenses on frequency blocks C and F directly addresses what most commenters have stated to be the biggest obstacle to entry for these designated entities: obtaining adequate financing. By this measure, women and minorities who are eligible to bid in these blocks (*i.e.*, who otherwise meet the $125 million gross revenues/$500 million total asset standard) will be required to maintain control of their companies and, at the same time, will have flexibility to attract significant infusions of capital from a single investor. The requirement that the minority and women principals hold 50.1 percent of the company's equity mitigates substantially the danger that a well-capitalized investor with a substantial ownership stake will be able to assume *de facto* control of the applicant. Because this step gives large companies, who are otherwise ineligible to bid in the entrepreneurs' blocks, a significant incentive to "partner" with minority and women-owned firms, it will enhance the likelihood that these designated entities will be both successful in the auctions and become viable, long-term competitors in the PCS industry.

162. Of course, women and minority-owned firms, like any other applicant for a C or F block license, may sell a larger portion of their companies' equity, provided that they also abide by the general eligibility requirements to bid in the entrepreneurs' blocks. Specifically, the gross revenues, total assets and net worth of all investors holding 25 percent or more of the company's passive equity (as defined to include 5 percent or more of the voting stock) will be attributed toward the $125 million/$500 million caps or the $100 million personal net worth standard. In this event, the control group will be required to hold at least 25 percent of the company's equity and 50.1 percent of its voting stock.

163. *Qualified Publicly-Traded "Entrepreneurs".* We also believe that these attribution rules may impose a particular hardship on publicly traded companies, which have little control over the ownership of their stock, and whose voting stock typically is widely held. Therefore, for purposes of determining eligibility to bid in the entrepreneurs' blocks, we adopt an exception from these rules for publicly traded companies.[140] Specifically, we will not attribute the gross revenues or total assets of a shareholder in a publicly traded company that owns up to 25 percent of the corporation's equity, even if that equity is represented by up to 15 percent of the voting stock. To take advantage of this exception, however, the eligible control group of the applicant still must control the corporation, hold at least 50.1 percent of the voting stock, and at least 25 percent of the company's equity.[141]

164. *De Facto Control Issues.* We shall codify in our rules a provision explaining more explicitly the term "control," so that applicants will have clear guidance concerning the requirement that a control group maintains *de facto* as well as *de jure* control of the firms that are eligible for special treatment under the rules for broadband PCS. For this purpose, we shall borrow from certain SBA rules that are used to determine when a firm should be deemed an affiliate of a small

[136] Several commenters have suggested that we establish an attribution threshold for investors in a broadband PCS applicant. *See, e.g., ex parte* filings of Columbia PCS, June 2, 1994 (20 percent threshold), and Impulse Telecommunications Corporation, May 27, 1994 (10 percent threshold).

[137] In the event that the five percent voting stock limitation proves to be overly restrictive, we may consider whether a higher threshold (*e.g.*, 15 percent) would be sufficient to meet our concerns about undue control from large investors.

[138] The definition of an "affiliate" is set forth in subsection 5, *infra*.

[139] As noted previously, the control group of a partnership applicant must hold all of the general partnership interests.

[140] "Publicly-traded company" shall mean a business entity organized under the laws of the United States whose shares, debt or other ownership interests are traded on an organized securities exchange within the United States.

[141] We note that this exception for publicly held companies is only applicable for purposes of assessing eligibility to bid in the entrepreneurs' blocks and for the general installment payment option. In the event that a publicly traded company can demonstrate that the 15 percent threshold would impose a serious hardship, the Commission would entertain a request to raise the threshold in individual cases. Companies seeking such relief must also demonstrate that raising the threshold would not contravene the Commission's control objectives, as described in this Order. We do not believe, however, that publicly traded corporations with individual shareholders owning up to 15 percent active equity require additional special provisions such as bidding credits, "enhanced" installment payments, or tax certificates to overcome capital access problems. Thus, we will not apply this exception with regard to the small business definition or the definition of a woman or minority-owned business.

business.[142] These SBA rules, which are codified in 13 CFR 121.401, provide several specific examples of instances in which an entity might have control of a firm even though the entity has less than 50 percent of the voting stock of a concern, and thus provide a useful model for our rules. Through reference to circumstances such as those described in the SBA rules, our rules will expressly alert designated entities that control of the applicant through ownership of 50.1 percent of the firm's voting interests may be insufficient to ensure *de facto* control of the applicant if, for example, the voting stock of the eligible control group is widely dispersed. In those and other circumstances, ownership of 50.1 percent of the voting stock may be insufficient to assure control of the applicant. Of course, apart from these structural issues relative to control, eligible entities must not, during the license term, abandon control of their licenses through any other mechanism. As we stated in the *Second Report and Order*, designated entities must be prepared to demonstrate that they are in control of the enterprise.[143]

165. *Financial Benefits.* To ensure that the control group has a substantial financial stake in the venture, we shall adopt certain additional requirements, also borrowed from SBA rules. As noted previously, we shall require that at least 50.1 percent of each class of voting stock and at least 25 percent (or 50.1 percent for the alternative option for minority and women-owned businesses) of the aggregate of all outstanding shares of stock to be unconditionally owned by the control group members. In addition, 50.1 percent of the annual distribution of dividends paid on the voting stock of a corporate applicant concern must be paid to these members. Also, in the event stock is sold, the control group members must be entitled to receive 100 percent of the value of each share of stock in his or her possession. Similarly, in the event of dissolution or liquidation of the corporation, the control group members must be entitled to receive at least 25 percent (or 50.1 percent, as the case may be) of the retained earnings of the concern and 100 percent of the value of each share of the stock in his or her possession, subject, of course, to any applicable laws requiring that debt be paid before distribution of equity.

166. Partnerships and other non-corporate entities will be subject to similar requirements. Indicia of ownership that we will consider in non-corporate cases include (but are not limited to) (a) the right to share in the profits and losses, and receive assets or liabilities upon liquidation, of the enterprise *pro rata* in relationship to the designated entity's ownership percentage and (b) the absence of opportunities to dilute the interest of the designated entity (through capital calls or otherwise) in the venture. As with corporations, our concern is ensuring that the economic opportunities and benefits provided through these rules flow to designated entities, as Congress directed.

167. *Application of the Five-Year Holding Rule.* Finally, we explain how these attribution rules apply with regard to the five-year holding and limited transfer period for C and F block licensees. During this five-year period, a C or F block licensee must not sell more than 25 percent of its passive equity to a single investor if the resulting attribution of that investor's gross revenues or total assets would bring the company over the $125 million gross revenues/$500 million total assets thresholds, or if that investor's personal net worth exceeds the $100 million personal net worth cap. Similarly, while individual members of the control group may change (if it would not result in a transfer of control of the company), the control group must maintain control and at least 25 percent of the equity and 50.1 percent of the voting stock.[144] A company will be permitted to grow beyond these gross revenues/total assets caps, however, through equity investment by non-attributable (i.e. passive) investors, debt financing, revenue from operations, business development or expanded service.[145]

168. *Abuses.* As stated above, we intend by these attribution rules to ensure that bidders and recipients of these licenses in the entrepreneurs' blocks are *bona fide* in their eligibility, and we intend to conduct random audits both before the auctions and during the 10-year initial license period to ensure that our rules are complied with in letter and spirit. If we find that large firms or individuals exceeding our personal net worth caps are able to assume control of licensees in the entrepreneurs' blocks or otherwise circumvent our rules, we will not hesitate to force divestiture of such improper interests or, in appropriate cases, issue forfeitures or revoke licenses. In this regard, we reiterate that it is our intent, and the intent of Congress, that women, minorities and small businesses be given an opportunity to participate in broadband PCS services, not merely as fronts for other entities, but as active entrepreneurs.

b. Limit on Licenses Awarded in Entrepreneurs' Blocks

169. The special provisions which we adopt for designated entities are based, in part, on our mandate to fulfill the congressional goal that we disseminate licenses among a wide variety of applicants. 47 U.S.C. § 309(j)(3)(B). Therefore, in adopting the financial assistance measures set forth in this Report and Order, we are concerned about the possibility, even if remote, that a few bidders will win a very large number of the licenses in the entrepreneurs' blocks. As a consequence, the benefits that Congress intended for designated entities would be enjoyed, in disproportionate measure, by only a few individuals or entities. Congress, in our view, did not intend that result. We shall therefore take steps to ensure that the financial assistance provided through our rules is dispersed to a reasonable number of applicants who win licenses in these blocks.

170. To achieve a fair distribution of the benefits intended by Congress, we shall impose a reasonable limit on the total number of licenses within the entrepreneurs' blocks that a single entity may win at auction. In setting this limit, we shall take care not to impose a restriction that would prevent applicants from obtaining a sufficient number of licenses to create large and efficient regional services. Specifically, we shall impose a limitation that no single entity may win more than 10 percent of the licenses available in the entrepreneurs' blocks, or 98 licenses. These licenses may all be in frequency block C or all in frequency block F, or in some combination of the two blocks. Such a limit will ensure that at least ten winning bidders enjoy the benefits of the entrepreneurs' blocks. At the same time, it will allow bidders to effectuate aggregation strategies that include large numbers of licenses and extensive geographic coverage.

171. Further, this limitation will apply only to the total number of

[142] As discussed below, these SBA affiliation rules also will be used as a basis for our own rules defining "affiliates" for purposes of determining whether particular entities meet the financial thresholds for bidding in the entrepreneurs' blocks or for qualifying as a small business.

[143] Second Report and Order at ¶ 278, citing *Intermountain Microwave*, 24 Rad. Reg. 983, 984 (1963).

[144] A minority or woman-owned company must continue to adhere to the attribution rules applicable to it, set out above.

[145] These rules will continue to apply in this manner throughout the license term with regard to a firm's continuing eligibility for installment payments, "enhanced" installment payments and bidding credits.

licenses that may be won at auctions in these blocks; it is not an ownership cap that applies to licenses that might be obtained after the auctions. For purposes of implementing this restriction, we shall consider licenses to be won by the same entity if an applicant (or other entity) that controls, or has the power to control licenses won at the auction, controls or has the power to control another license won at the auction.

2. Definition of Small Business

172. In the *Second Report and Order* we adopted a definition for small businesses based on the standard definition used by the Small Business Administration (SBA). This definition permits an applicant to qualify for installment payments based on a net worth not in excess of $6 million with average net income after Federal income taxes for the two preceding years not in excess of $2 million. 13 CFR § 121.601.[146] In the *Second Report and Order*, we noted, however, that, in certain telecommunications industry sectors, this limit may not be high enough to encompass those entities that, while needing the assistance provided by installment payments, have the financial wherewithal to construct and operate the systems. Therefore we indicated that, on a service specific basis, we might adjust this definition upward to accommodate capital intensive telecommunications businesses. *See Second Report and Order* at ¶ 267.

173. Many commenters, including the Chief Counsel for Advocacy of the SBA, argue that the SBA net worth/net revenue definition is too restrictive and will exclude businesses of sufficient size to survive, much less succeed, in the competitive broadband PCS marketplace. The SBA's Chief Counsel for Advocacy and the Suite 12 Group advocate adoption of a gross revenue test, arguing that a net worth test could be misleading as some very large companies have low net worth. The SBA's Chief Counsel for Advocacy recommends that the revenue standard be raised to include firms that (together with affiliates) have less than $40 million in gross revenue. Similarly, Suite 12 suggests a $75 million in annual sales threshold.[147] As another option, the SBA's Chief Counsel for Advocacy suggests that the Commission consider a higher revenue ceiling or adopt different size standards for different telecommunications markets.[148]

174. We expect broadband PCS to be a highly capital intensive business requiring bidders to expend tens of millions of dollars to acquire a license and construct a system even in the smaller broadband PCS markets. Thus, we believe that our current small business definition is overly restrictive because it would exclude most businesses possessing the financial resources to compete successfully in the provision of broadband PCS services. Accordingly, we modify our small business definition for broadband PCS auctions to ensure the participation of small businesses with the financial resources to compete effectively in an auction and in the provision of broadband PCS services.

175. There is substantial support in the record for a $40 million gross revenue standard. For example, the SBA recommends that for broadband PCS, a small business be defined as one whose average annual gross revenues for its past three years do not exceed $40 million.[149] It states that this definition isolates those companies that have significantly greater difficulty in obtaining capital than large enterprises. At the same time, the SBA contends that a company with $40 million in revenue is sufficiently large that it could survive in a competitive wireless communications market.[150] Similarly, the SBA Chief Counsel for Advocacy asserts that a $40 million threshold will allow participation by firms "of sufficient size to meet demands in almost all small markets and some medium-size markets without significant outside financial assistance."[151] For purposes of broadband PCS, we shall therefore define a small business as any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of $40 million.[152] In addition, an applicant will not qualify as a small business if any one attributable investor in, or affiliate of, the entity has $40 million or more in personal net worth.[153]

176. For purposes of determining whether an entity qualifies as a small business, we will follow the control group and attribution rules set forth with regard to eligibility to bid in the entrepreneurs' blocks. In particular, winning bidders are required to identify on their long-form applications a control group that holds at least 50.1 percent of the voting interests of the applicant (and otherwise has *de facto* control) and owns at least a 25 percent equity stake. The gross revenues of each member of the control group and each member's affiliates will be counted toward the $40 million gross revenue threshold, regardless of the size of the member's total interest in the applicant. The $40 million personal net worth limitation will also apply to each member of the

[146] The SBA has recently changed its net worth/net income standard as it applies to its Small Business Investment Company (SBIC) Program. *See* 59 Fed. Reg. 16953, 16956 (April 8, 1994). The new standard for determining eligibility for small business concerns applying for financial and/or management assistance under the SBIC program was increased to $18 million net worth and $6 million after-tax net income. 15 CFR § 121.802(a)(3)(i). The change in this size standard was attributable to an adjustment for inflation and changes in the SBIC program "designed to strengthen and expand the capabilities of SBICs to finance small businesses so that they can increase their contribution to economic growth and job creation." 59 Fed. Reg. at 16955. However, Section 121.601, which was the SBA size standard cited in the Notice and the Second Report and Order, has not been modified by the SBA. For purposes of our generic competitive bidding rules, in consultation with the SBA, we will reexamine our $6 million net worth/$2 million annual profits definition in light of the SBA's recent action.

[147] Many other commenters set forth their recommendations on the appropriate small business definition for broadband PCS preferences. *See, e.g.*, comments of Tri-State ($5 million average annual operating cash flow), Luxcel (net worth not exceeding $20 million), and Iowa Network (less than $40 million in annual revenues).

[148] Some parties recommend using the SBA's alternative 1500 employee standard. *See, e.g.*, comments of SBA Associate Administrator for Procurement Assistance at 2, CFW Communications at 2, and Iowa Network at 17. A number of other commenters, including the SBA's Chief Counsel for Advocacy, argue, however, that adoption of this alternative SBA definition would open up a huge loophole in the designated entity eligibility criteria. Specifically, they contend that telecommunications is a capital, rather than labor, intensive industry, and that an entity with 1,500 employees is likely to be extremely well capitalized and have no need for the special treatment mandated by Congress in the Budget Act. *See, e.g.*, comments of SBA Chief Counsel for Advocacy at 8, LuxCel Group, Inc. at 4, Suite 12 Group at 10–11.

[149] *Ex parte* filing of U.S. Small Business Administration, June 24, 1994.

[150] *Id.*

[151] Comments of SBA Office of Advocacy at 10. *Cf.* comments of Iowa Network and Telephone Electronics Corporation (advocating a $40 million annual revenue criterion for telephone companies) and reply comments of North American Interactive Partners and Kingwood Associates (advocating $40 million gross-revenue criterion for applicants for the fifty most-populous BTAs, based on estimated average build-out cost).

[152] The establishment of small business size standards is generally governed by Section 3 of the Small Business Act of 1953, as amended, 15 U.S.C. § 642(a). Recent amendments to that statute provide that small business size standards developed by Federal agencies must be based on the average gross revenues of such business over a period of not less than three years. *See* Pub. L. No. 102–366, Title II, § 222(a), 106 Stat. 999 (1992); 15 U.S.C. § 632 (a)(2)(B)(ii).

[153] Unlike our eligibility criteria to bid in the entrepreneurs' blocks, we do not adopt a total assets standard here. We believe that the $40 million gross revenue cap for small businesses, together with the $500 million total asset threshold we set for entry into the entrepreneurs' blocks in the first instance, should be sufficient to ensure that only *bona fide* small businesses are able to take advantage of the measures intended for those designated entities.

control group. We will not consider the gross revenues or personal net worth of any other investor unless the investor holds 25 percent or more of the outstanding passive equity in the applicant, which, as defined above, includes as much as five percent of the voting stock in a corporate applicant.

177. We also adopt the more relaxed attribution standard set forth in the entrepreneurs' blocks section with regard to investors in minority and female-owned applicants. Specifically, we will not consider the gross revenues or personal net worth of a single passive investor in a minority or female-owned small business unless the investor holds in excess of a 49.9 percent passive interest (which includes as much as five percent of a corporate applicant's voting stock), provided the women or minority control group maintains at least 50.1 percent of the equity and, in the case of a corporate applicant, at least 50.1 percent of the voting stock.[154] We believe that such revenue attribution will ensure that only *bona fide* small businesses are able to take advantage of the special provisions we have adopted, but will allow those businesses to attract sufficient equity capital to be truly viable contenders in the PCS industry.

178. These financial eligibility rules will continue to apply throughout the license term. Thus, firms that received bidding credits and "enhanced" installment payments based on their small business status will be subject to the repayment penalties outlined above, if an investor subsequently purchases an "attributable" interest (*e.g.* 25 percent or more of the firm's equity) and, as a result, the gross revenues of the firm exceed the $40 million gross revenues cap, or the personal net worth of the investor exceeds the $40 million personal net worth threshold.

179. Finally, we will allow a consortium of small businesses to qualify for any of the measures adopted in this order applicable to individual small businesses. As used here, the term "consortium" means a conglomerate organization formed as a joint venture among mutually-independent business firms, each of which individually satisfies the definition of a small business.

180. Several commenters argue that a consortium should not qualify for special treatment unless the consortium itself meets the established definitional criteria.[155] They contend that the FCC should not allow consortia to be used as a means of circumventing the usual prerequisites for these special provisions. In the *Second Report and Order,* we concluded that consortia might be permitted to receive benefits based on participation in the consortium by one or more designated entities, but believed such a consortium should not be entitled to qualify for measures designed specifically for designated entities. As a general matter, we shall continue to adhere to that principle. We think, however, that in the broadband PCS service, allowing small businesses to pool their resources in this manner is necessary to help them overcome capital formation problems and thereby ensure their opportunity to participate in auctions and to become strong broadband PCS competitors. Because of the exceptionally large capital requirements in this service, we agree with the SBA Chief Counsel for Advocacy that, so long as individual members of the consortium satisfy the definition of a small business, the congressional objective of ensuring opportunities for small business will be fully met. Individual small entities that join to form consortia, as distinguished from a single entity with gross revenues in excess of $40 million, still are likely to encounter capital access problems and, thus, should qualify for members aimed at small businesses. We do not believe however, that this congressional goal will be satisfied if special measures are allowed for consortia that are "predominantly" or "significantly" owned and/or controlled by small businesses, as recommended by several commenters.[156] This would have the effect of eviscerating our small business definitional criteria and would not further the ability of *bona fide* small businesses to participate in PCS services.

3. Definition of Women and Minority-Owned Business

181. As discussed above, we have taken steps in this order to address the special funding problems faced by minority and women-owned firms and thereby to ensure that these groups have the opportunity to participate and become strong competitors in the broadband PCS service.[157] We thus have adopted a tax certificate program for women and minorities to allow more sources of potential funding, have relaxed the attribution standard used to determine eligibility to bid for licenses on frequency blocks C and F, and have adopted special measures for installment payments and bidding credits.

182. As also indicated above, for purposes of implementing these steps, we have departed from the definition of a minority and woman-owned firm that was adopted in the *Second Report and Order.* There, we found generally that to establish ownership by minorities and women, a strict eligibility standard should be adopted that required minorities or women to have at least a 50.1 percent equity stake and a 50.1 percent controlling interest in the designated entity. *Second Report and Order* at ¶ 277; 47 CFR § 1.2110(b)(2). For the broadband PCS auctions, we retain the requirement that minorities and/or women control the applicant and hold at least 50.1 percent of a corporate applicant's voting stock. However, to establish their eligibility for certain benefits, summarized below, we shall impose an additional requirement that, even where minorities and women hold at least 50.1 percent of the applicant's equity, other investors in the applicant may own only passive interests, which, for corporate applicants, is defined to include as much as five percent of the voting stock. In addition, provided that certain restrictions are met, we shall also allow women and minority-owed firms the option to reduce to 25 percent the 50.1 percent minimum equity amount that must be held.

183. We emphasized in the *Second Report and Order* that we did not intend to restrict the use of various equity financing mechanisms and incentives to attract financing, provided that the minority and women principals continued to own 50.1 percent of the equity, calculated on a fully-diluted basis, and that their equity interest entitled them to a substantial stake in the profits and liquidation value of the venture relative to the non-controlling principals. We noted, however, that different standards that meet the same objectives may be appropriate in other contexts. *Second Report and Order* at ¶ 278. In view of the evidence of discriminatory lending experiences faced by minority and women entrepreneurs and the exceptional great financial resources believed to be

[154] *See supra* ¶ 160.

[155] *See* comments of McCaw at 21 and Myers at 6.

[156] *See, e.g.,* comments of Rural Cellular Corp. at 2, Bell Atlantic at 17, NAMTEC at 19, and AT&T at 25–26.

[157] As noted in the Second Report and Order, the members of the following groups will be considered "minorities" for purposes of our rules: "[T]hose of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." *See* Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 980 n.8 (1978); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849, 489 n.1 (1982). Moreover, as adopted in the Second Report and Order, minority and women-owned businesses will be eligible for special measures only if the minority and women principals are also United States citizens.

required by broadband PCS applicants, we conclude that it is appropriate to allow more flexibility with regard to the 50.1 percent equity requirements for this service in order to open doors to more sources of equity financing for women and minority-owned firms.

184. We shall therefore allow women and minority-owned firms the following options. First, they may satisfy the general definition set forth in the *Second Report and Order*, which requires the minority and/or female principles to control the applicant, own at least 50.1 percent of its equity and, in the case of corporate applicants, hold at least 50.1 percent of the voting stock. Under this option, other investors may own as much as a 49.9 percent passive equity interest. As noted above regarding eligibility to bid in the entrepreneurs' blocks, passive equity in the corporate context means only non-voting stock may be held, or stock that includes no more than five percent of the voting interests.[158] For partnerships, the term means limited partnership interests that do not have the power to exercise control of the equity. In addition, as required in the *Second Report and Order*, all investor interests will be calculated on a fully-diluted basis, meaning that agreements such as stock options, warrants and convertible debentures generally will be considered to have a present effect and will be treated as if the rights thereunder have been fully exercised.[159] We recognize that the requirement that other investors own only passive interests is a departure from the definition of a minority or women-owned business adopted in the *Second Report and Order*, but because of the very significant financial contribution that may be made by such other investors in designated entities, we believe that the passive equity requirement is appropriate as an additional safeguard to ensure that minorities and/or women retain control of the applicant.

185. As a second option, women and minority-owned firms may sell up to 75 percent of the company's equity, provided that no single investor may hold 25 percent or more of the firm's passive equity, which is defined in the same manner as above. For example, a corporation with 100 shares of voting stock and 100 shares of non-voting stock, with the 200 shares representing the total outstanding shares of the company, could qualify as a minority or women-owned business under the following circumstances. The minority or women principals would have to own at least 51 shares of voting stock, which satisfies the requirement that they have voting control and, in this case, also meets the requirements that they hold at least 25 percent of the equity. Two other investors could each own 44 shares of non-voting stock and five shares of voting stock, which represents 24.5 percent of the company's equity for each of the shareholders. A third investor could own the remaining 12 shares of non-voting stock and five shares of the voting stock, or 8.5 percent of the equity. The remaining 34 shares of voting stock may be sold to other investors provided that no single investor owns more than five shares.

186. Whichever option is chosen, we will require establishment of a "control group" in much the same way we did for purposes of eligibility to bid in the entrepreneurs' blocks. Specifically, winning bidders, transferees or assignees must identify on their long-form applications a control group (consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and women) that has *de jure* and *de facto* control of the applicant and holds either at least 50.1 or 25 percent of the applicant's equity, depending upon which option is elected.

187. We believe that a modification of our 50.1 percent equity requirement will best achieve Congress' objective of providing effective and long-term economic opportunities for women and minority-owned firms in broadband PCS. At the same time, we shall maintain strict enforcement of the requirement that actual control reside with the qualified designated entities. Thus, to establish their eligibility for tax certificates, enhanced installment payments, bidding credits and relaxed cellular attribution rules, women and minority-owned applicants electing to use the 25 percent equity option may not in any instance allow an individual investor who is not in the control group to own more than a 25 percent passive equity interest. This restriction will apply even in circumstances in which allowing an investor to exceed these limitations would not result in the applicant's exceeding the gross revenues and other financial standards that apply to other bidders in the entrepreneurs' blocks and other situations involving financial caps. These structural safeguards, as well as the general requirement that other investors hold only passive interests in women and minority-owned applicants, will help to ensure that control truly remains with the women and minority designated entities.

188. For example, a women or minority-owned firm electing to use the 25 percent option may have a non-eligible investor with more than a 25 percent passive stake and still qualify to bid in the entrepreneurs' blocks or for benefits that apply to small businesses, as long as the attributable revenues of the investor do not cause the applicant to exceed the gross revenues/total assets caps. In these contexts, no additional restrictions are necessary, because women and minority-owned applicants, like other applicants, are eligible to bid in these blocks and to qualify as small businesses so long as they comply with the same restrictions on financial eligibility that apply to other applicants. Since the attribution rule itself operates to ensure compliance with size limitations, it is not necessary to impose additional restrictions on the size of interests held by investors with attributable interests. This firm will not qualify, however, for special measures applicable only to women and minority-owned businesses, such as "enhanced" installment payments or the 15 or 25 percent bidding credits, because it has a single non-eligible investor with more than a 25 percent passive interest. In circumstances in which women and minorities are required to retain only 25 percent of the firm's equity, this additional structural restriction is appropriate because the objective in this context is to ensure not merely financial eligibility, but that women and minorities retain control of the license.

189. We set forth previously rules defining more explicitly the term "control" for purposes of determining whether a "control group" maintains *de facto* as well as *de jure* control of an applicant.[160] Those rules apply equally to the minority and women principals of minority and women-owned applicants. Consistent with our general policies with regard to women-owned applicants for purposes of our multiple ownership

[158] For example, under this option, a corporate applicant with two classes of issued and outstanding stock, 100 shares of voting stock and 100 shares of non-voting stock, could sell to a single non-eligible entity 49.9 percent of the applicant's equity, consisting of 5 shares of the corporate's voting stock and 94 shares of its non-voting stock. Under this scenario, eligible minorities or women, in order to retain at least 50.1 percent of the value of all outstanding shares of the corporation's stock, must own all of the corporation's remaining shares of stock; that is, 95 shares of voting stock and six shares of non-voting stock.

[159] As also noted in the Second Report and Order, we will consider departing from the requirement that the equity of investors in minority and women-owned businesses must be calculated on a fully-diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and women principals of a substantial financial stake in the venture or impair their rights to control the designated equity. *See* Second Report and Order at ¶ 277.

[160] *See supra* ¶ 164.

and cross-ownership rules in this broadcast context, we shall not adopt, at this time, any special rules or presumptions to determine whether women-owned applicants exercise independent control of their firms. *See* In the Matter of Clarification of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd 1920, 57 FR 8845, Mar. 13, 1992.

190. Our requirement that control rest with minorities and/or women and the clarifications above ensure that parties do not attempt to evade the statutory requirement to provide economic opportunities and ensure participation by businesses owned by these groups. We reaffirm our commitment to investigate all allegations of fronts, shams or other methods used by those who try to obtain a benefit to which they are not lawfully entitled. In this vein, we again admonish parties that we will conduct random pre- and post-auction audits to ensure that applicants receiving these benefits are *bona fide* designated entities.

191. We also note here that we are departing from the provision in the *Second Report and Order* that bars publicly traded companies from qualifying as minority and woman-owned businesses for purposes of participating in auctions. Most of the steps taken to assist these designated entities in this Order (*e.g.*, bidding credits and installment payments) are confined to winning bidders in the entrepreneurs' blocks, where there is a financial limit on the size of participants. Because of the expected large capital entry costs of broadband PCS, we believe that even publicly traded companies owned by women and minorities that qualify to bid in blocks C and F require additional measures, such as bidding credits and installment payments, to be able to participate successfully. We emphasize, however, that the exception to the attribution rules for publicly traded companies to be eligible to bid in the entrepreneurs' blocks does not apply here.[161] To qualify for measures targeted exclusively to women and minority-owned businesses, a company must satisfy the definition set forth in this section.

192. As noted above, applicants owned by women and minorities must meet the limitations on gross revenues, total assets and personal net worth to qualify for entry into the entrepreneurs' blocks. The size limitations do not apply, however, to all measures designed to assist applicants owned by minorities and/or women. The tax certificate policy applies to all broadband PCS licenses and is not limited to licenses in the entrepreneurs' blocks. Therefore, businesses owned by minorities and women need not meet the gross revenue and other financial restrictions to qualify for tax certificates. Similarly, the relaxed cellular attribution threshold for minority and women-owned firms adopted in the *Broadband PCS Reconsideration Order* is not limited to the entrepreneurs' blocks. Thus, minority and women-owned firms that do not meet the gross revenues, total assets and net worth restrictions may nevertheless qualify for the 40 percent cellular attribution rule. But minority and women-owned firms must satisfy the Commission's structural ownership requirements to receive the benefits of tax certificates and the relaxed cellular attribution rule; that is, they are subject to the limitation that interests held by investors who are not women and minorities must be passive.

4. Definition of Rural Telephone Company

193. As discussed above, we have adopted several measures to assist rural telephone companies in the broadband PCS service. We decide here the definition of rural telephone companies who are eligible for those benefits. As explained below, for this service, we shall depart from the definition adopted in the *Second Report and Order* and define rural telephone companies as local exchange carriers having 100,000 or fewer access lines, including all affiliates.

194. As we pointed out in the *Second Report and Order*,[162] most of those responding to our tentative conclusion in the Notice concerning the definition of a rural telephone company contended that the proposed definition, which was based on the standard contained in Section 63.58 of the Commission's Rules, was too restrictive. A variety of more inclusive definitions were recommended.[163] Some commenters advocated a definition in which a company would qualify if it satisfied either of two alternative criteria based on population of communities served or number of access lines.[164] Others advocated adoption of a definition focusing simply on the number of access lines provided.[165] One commenter advocated a definition focusing exclusively on revenues rather than access lines, with the standard for rural telephone company status at annual revenues under $100 million.[166] In addition, some advocated a somewhat more restrictive definition.[167]

195. Many commenters suggested limiting rural telephone eligibility to carriers serving communities with no more than 10,000 inhabitants, asserting that such a standard better comports with common notions about which telephone companies are "rural."[168] A number of other commenters supported a definition of rural telephone company that would include a limitation on the size of the company. OPASTCO, for example, asserted that such a limitation would comport with the statutory mandate to ensure opportunity for rural telephone companies because "the problem such companies face in the competitive bidding arena" is as much a function of their size as of the rural character of their service areas."[169] NTCA similarly contended that small companies have shown the interest and commitment needed to fulfill the explicit statutory goal of "rapid deployment of new * * * services for * * * those residing in rural areas," citing as support a report on the deployment of digital switching by small LECs.[170] Other parties suggested

[161] With regard to qualifying to bid in the entrepreneurs' blocks, we stated that we would not attribute the revenues or assets of an investor that owns up to 15 percent of a publicly traded applicant's voting stock. For privately held companies, the voting stock threshold is five percent. *See supra* ¶¶ 158, 163.

[162] Second Report and Order at ¶¶279–282.

[163] *See, e.g.*, comments of Saco River, Telephone Electronics, and Iowa Network (advocating amending the proposed definition merely by raising the population threshold to 10,000), and comments of Chickasaw (advocating definition including companies that predominantly, but not exclusively, serve customers in communities of less than 10,000 in non-urbanized areas).

[164] *See, e.g.*, comments of Telocator, TDS, NYNEX, NOTA, NTCA and Saco River (recommending a definition including companies that either provide service only within communities of 10,000 or less in non-urbanized areas or provide 10,000 or fewer access lines (and no more than 150,000 in conjunction with affiliates)); comments of OPASTCO (recommending defining rural telephone companies as those that either provide exchange service only within communities of 10,000 or less in non-urbanized areas or that provide 50,000 or fewer access lines; and comments of SBA Chief Counsel for Advocacy (recommending a definition including companies serving communities of 20,000 or less in non-urbanized areas or providing 50,000 or fewer access lines (including lines provided by affiliates)).

[165] *See, e.g.*, comments of STCL, MEBTEL, CFW, Minnesota Equal Access Network, Rural Cellular Assn., Rural Cellular Corp., Rochester Tel. Corp, McCaw, DialPage, APC, TDS and Gulf Telephone Co. (suggesting caps between 25,000 and 150,000 access lines).

[166] Comments of PMN.

[167] *See, e.g.*, comments of GTE (definition would apply only to companies that exclusively serve customers in communities of 10,000 or less in non-urbanized areas and that provide wireline exchange service to 10,000 or fewer customers).

[168] *See, e.g.*, comments of OPASTCO, Iowa Network, Saco River and Telephone Electronics.

[169] Comments of OPASTCO at 5.

[170] Comments of NTCA at 7–8.

that we look to the unenacted antecedent of the Budget Act, S. 1134, in which a rural company was defined as an entity that either (a) "provides telephone exchange service by wire in a rural area" (*i.e.*, a non-urbanized area containing no incorporated place with more than 10,000 inhabitants), (b) "provides telephone exchange service by wire to less than 10,000 subscribers," or (c) "is a telephone utility whose income accrues to a State or political subdivision thereof."

196. In the *Second Report and Order*, we adopted a definition of "rural telephone company" that includes independently owned and operated local exchange carriers that (1) do not serve communities with more than 10,000 inhabitants in the licensed area, and (2) do not have more than 50,000 access lines, including all affiliates. 47 CFR § 1.2110(b)(3). We stated our belief that a limitation on the size of eligible rural telephone companies is appropriate because Congress did not intend for us to give special treatment to large LECs that happen to serve small rural communities. *See Second Report and Order* at ¶ 282.

197. Several parties who filed petitions for reconsideration of the *Second Report and Order* argue that the definition adopted for rural telephone companies may be too restrictive given the capital intensive nature of broadband PCS.[171] We also note that NTCA argued in its comments in this proceeding that it is neither necessary nor appropriate to use the same criteria to define rural telephone companies in rules pertaining to different services, technologies, and industries.[172] Likewise, in an *ex parte* letter, OPASTCO states that by defining rural telephone company for purposes of broadband PCS as a local exchange carrier with less than $100 million in revenue, the Commission will properly capture in the defined class locally-owned telephone companies who are truly interested in providing services to rural areas.[173] OPASTCO notes that the "same universe of companies" that would fall under such a revenue threshold would be captured by a definition that includes all telephone companies having 100,000 or fewer access lines.[174]

198. Our challenge in establishing a definition of a rural telephone company for broadband PCS is to achieve the congressional goal of promoting the rapid deployment of this new service in rural areas by targeting only those telephone companies whose service territories are predominantly rural in nature, and who are thus likely to be able to use on their existing wireline telephone networks to build broadband PCS infrastructures to serve rural America. For purposes of our rules governing broadband PCS licenses, we believe that this goal can best be achieved if we define rural telephone companies as those local exchange carriers having 100,000 or fewer access lines, including all affiliates. We agree with OPASTCO that such a definition will include virtually all of the telephone companies who genuinely are interested in providing services to rural areas. This definition will encourage participation by legitimate rural telephone companies without providing special treatment to large LECs. Therefore, we will better achieve the congressional goal of providing service rapidly to rural areas without giving benefits to large companies that do not require such assistance. Rural telephone companies that satisfy this definition thus will be eligible for rural partitioning, as discussed above.[175]

199. Anchorage Telephone Company argues in a petition for reconsideration of the *Second Report and Order* that our definition of a rural telephone company should include telephone companies that are owned by governmental authorities. Anchorage contends that Congress meant to mandate special consideration not only for telephone carriers serving rural areas but also for all municipally-owned telcos, even those with wholly or predominantly urban service areas.[176] This argument is based on its interpretation of the Senate bill that was antecedent to the enacted Budget Act. Anchorage argues that the Senate bill containing the prototype of a mandate for special consideration for rural telephone companies directed the FCC to grant "rural program licenses" to "qualified" common carriers and explicitly said that the category of "qualified" carriers included all state-owned and municipally-owned telephone companies. Anchorage further states that the report of the conference committee that drafted the Budget Act declares that the Senate's "findings" are incorporated by reference.[177] Anchorage also asserts that without the aid of special assistance it and most other state-owned and municipal telcos won't be able to purchase spectrum licenses at auction because it is politically infeasible for them to generate and retain enough surplus revenue to fund such investments, due to popular aversion to increases in taxes or telephone rates.[178]

200. We find no merit in Anchorage's arguments. There is no specific evidence that Congress intended the term "rural telephone companies" to include all state or municipally-owned telephone companies. To the contrary, the fact that an antecedent bill contained an explicit mandate for preferential treatment of government-owned telephone companies that was deleted from the enacted bill could just as easily be interpreted as an indication that Congress rejected such a rule. Further, we disagree that state and municipal governments lack the means to participate successfully in auctions. Such governments have substantial capabilities to raise funds through private financing, bond offerings and taxation. Therefore, our definition of a rural telephone company will not encompass telephone companies that are owned by government authorities.

5. Definition of an Affiliate

201. Many of the eligibility criteria set forth above are based on the size of the entity applying for a broadband PCS license and/or seeking special treatment under our designated entity policies. Each of these size standards ($125 million gross revenues/$500 million total assets/$100 million personal net worth, $40 million gross revenues/$40 million personal net worth, and 100,000 access lines) requires applicants to include, among other parties, "affiliates" when calculating their attributable gross revenues, total assets, net worth or access lines. This affiliation requirement is intended to prevent entities that, for all practical purposes, do not meet these size standards from receiving benefits targeted to smaller entities.[179] We adopt specific affiliation rules for purposes of applying these eligibility criteria based in part on the Small Business Administration's affiliation rules.[180]

202. In the *Second Report and Order*, we referenced the SBA's affiliation rules for purposes of defining generally

[171] *See, e.g.*, petitions of South Dakota Network (SDN), U.S. Intelco, NTCA, Rural Cellular Association and TDS. We note that similar arguments have been made with respect to other services.

[172] *See* comments of NTCA at 4.

[173] *Ex parte* filing of filing of OPASTCO, June 2, 1994, at 2; *see also* comments of PMN at 7–8.

[174] *Id.*

[175] Such companies also will be eligible for special treatment under our cellular attribution rules for broadband PCS. *See* 47 CFR § 24.204(d)(2)(ii).

[176] Anchorage Petition at 2–3.

[177] *Id.*

[178] *Id.* at 4–5.

[179] *See, e.g.*, Second Report and Order at ¶272.

[180] *See* 13 CFR § 121.401 (1993) (formerly at 13 CFR § 121.3 (1989)).

whether an entity qualifies as a small business and gave examples of how the affiliation rules would be applied. We continue to believe that the SBA's affiliation rules provide a solid foundation on which to build our own affiliation rules for purposes of the small business definition for broadband PCS and for the other size standards adopted in this order.[181] Accordingly, for purposes of these eligibility restrictions, we will again borrow from the SBA's rules for outside affiliations. In addition, to ensure that applicants have clear guidance concerning these matters, we shall include in our rules more detailed information concerning the circumstances in which an entity will be deemed an affiliate of the applicant.

203. Like the eligibility rules we have adopted here governing size limitations for broadband PCS, the SBA's rules provide that size determinations shall include the applicant and all of its "affiliates."[182] At the outset, before considering in more detail all the types of affiliations that might exist when guided by the SBA rules, we review briefly our own rules described above, concerning attributable interests. Those rules provide that, so long as a control group is established, the gross revenues, assets or net worth of an investor in a PCS applicant or licensee will be attributed to the applicant or licensee only if the investor holds more than 25 percent of the applicant's passive equity or is part of a control group that controls the applicant. Therefore, only where an investor has such attributable interests in the broadband PCS applicant or licensee do we need to examine whether the investor has a relationship with other persons or outside entities that rises to the level of an affiliation with the PCS applicant, and if so, whether the affiliate's revenues or net worth, when aggregated with the applicant's, exceed our size eligibility thresholds.

204. *General Principles of Affiliation.* When such an attributable interest exists, an affiliation under the SBA rules would arise, first, from "control" of an entity or the "power to control it." Thus, under the SBA rules, entities are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party or parties controls or has the power to control both. 13 CFR § 121.401(a)(2)(i), (ii). In determining control, the SBA's rules provide generally that every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. The rules, in addition, provide specific examples of where control resides under various scenarios, such as through stock ownership or occupancy of director, officer or management positions. The rules also articulate general principles of control, and note, for example, that control may be affirmative or negative and that it is immaterial whether control is exercised so long as the power to control exists. 13 CFR § 121.401(c)(1). Second, an affiliation, under SBA rules, may also arise out of an "identity of interest" between or among parties. 13 CFR § 121.401(a)(2)(iii), (d). We shall adopt these same general provisions in our affiliation rules for broadband PCS.

205. In adopting these affiliation rules, we emphasize that these rules will not be applied in a manner that defeats the objectives of our attribution rules. Our attribution rules expressly permit applicants to disregard the gross revenues, total assets and net worth of passive investors, provided that an eligible control group has *de facto* and *de jure* control of the applicant. Our attribution rules are designed to preserve control of the applicant by eligible entities, yet allow investment in the applicant by entities that do not meet the size restrictions in our rules. Therefore, so long as the requirements of our attribution rules are met, the affiliation rules will not be used to defeat the underlying policy objectives of allowing such passive investors. More specifically, if a control group has *de facto* and *de jure* control of the applicant, we shall not construe the affiliation rules in a manner that causes the interests of passive investors to be attributed to the applicant.

206. Applying these SBA affiliation rules, and affiliation would arise, for example, where an entity with an attributable interest in a broadband PCS applicant is under the control of another entity. An affiliation would also arise where an entity with an attributable interest in a broadband PCS applicant controls, or has the power to control, another entity. For example, if a 10 percent voting shareholder of a PCS applicant is also a shareholder in a large Corporation X, when should Corporation X be deemed an affiliate of the PCS applicant as a result of the shareholder's ownership interest in both entities? Under the SBA rules and the rules we adopt here, Corporation X would be deemed an affiliate of the applicant if the shareholder controlled or had the power to control Corporation X, in which case, Corporation X's gross revenues must be included in determining the applicant's gross revenues.

207. For purposes of determining control, ownership interests will be calculated on a fully-diluted basis. Thus, for example, stock options, convertible debentures, and agreements to merge (including agreements in principle) will generally be considered to have a present effect on the power to control or own an interest in either an outside entity or the PCS applicant or licensee.[183] We will treat such options, debentures, and agreements generally as though the rights held thereunder had been exercised.[184] However, an affiliate cannot use such options and debentures to appear to terminate its control over or relationship with another concern before it actually does so.[185]

208. *Voting and Other Trusts.* In a similar vein, we also borrow from the SBA's rules and our own rules in other services to find affiliation under certain voting trusts in order to prevent a circumvention of eligibility rules. The SBA's rules provide that a voting trust, or similar agreement, cannot be used to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control an outside concern, if the primary purpose of the trust is to meet size eligibility rules.[186] Similarly,

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[181] SBA's affiliation rules were promulgated under the authority in Section 3 of the Small Business Act of 1953, as amended, 15 U.S.C. § 632, which provides that, to be eligible for benefits provided by SBA and other agencies, a "small-business concern" must be "independently owned and operated." *See Small Business Size Standards*, 54 FR 52634 (December 21, 1989).

[182] *See* 13 CFR § 121.401(a).

[183] We recognize that we have adopted a different rule for purposes of our broadband PCS-cellular ownership rules. *See* 47 C.F.R. § 24.204(d)(2)(v). In that context, however, our purpose was not to establish the financial position, or potential financial position, of applicants bidding in auctions.

[184] *See* 13 C.F.R. § 121.401(f). SBA's rules provide the following examples to guide the application of this provision:

Example 1. If company "A" holds an option to purchase a controlling interest in company "B," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B." The [annual revenues] of both concerns must be taken into account in determining size.

Example 2. If company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger has taken place. [A and B are affiliates of each other].

[185] *Id.* SBA's rules provide this example:

If large company "A" holds 70% (70 of 100 outstanding shares) of the voting stock of company "B" and gives a third party an option to purchase 66 of the 70 shares owned by company "A," company "B" will be deemed to be an affiliate of company "A" until the third party actually exercises its option to purchase such shares. In order to prevent large company "A" from circumventing the intent of the regulation which [gives] present effect to stock options, the option is not considered to have present effect in this case.

[186] 13 CFR § 121.401(g).

under the Commission's broadcast multiple ownership rules, stock interests held in trust may be attributed to any person who holds or shares the power to vote such stock, has the sole power to sell such stock, has the right to revoke the trust at will or to replace the trustee at will.[187] Also, under the broadcast rules, if a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary of a trust, the stock interests held in trust will be considered assets of the grantor or beneficiary, as appropriate.[188] Because we believe the broadcast rules provide more definitive guidance in this particular area, we shall use them as a model for the affiliation rules adopted here. Thus, for example, if an investor with an attributable interest in a PCS applicant holds a beneficial interest in stock of another firm that amounts to a controlling interest in that other firm, depending on the identity of the trustee, the other firm may be considered an affiliate and its assets and gross revenues may be attributed to the PCS applicant.

209. *Officers, Directors and Key Employees.* Under the SBA's affiliation rules, affiliations also generally arise where persons serve as the officers, directors or key employees of another concern and they represent a majority or controlling element of that other concern's board of directors and/or management of the outside entity.[189] We shall adopt an identical rule. Thus, if a person with an attributable interest in a broadband PCS applicant, through his or her other key employment positions or positions on the board of another firm, controls that other firm, then the other firm will be considered an affiliate of the applicant. Such affiliations may or may not result in the applicant's exceeding our size limitations. As this rule reflects, for purposes of attributing the financial position of an outside entity in this context, officers and directors of an outside concern are not foreclosed entirely from holding attributable or non-attributable interests in a PCS applicant. Whether or not such persons control the outside entity, we also do not want to prohibit these persons, who may be experienced in the telecommunications, finance, or communications and equipment industries, from assisting start-up companies in PCS by serving as officers or directors of the applicant. Thus, under our general attribution rule, if such persons serving as officers or directors of the applicant do not control the applicant or otherwise have an attributable interest in the applicant, their outside affiliations (even if controlling) will not be considered at all for purposes of determining the applicant's eligibility under our rules.[190]

210. *Affiliation Through Identity of Interest: Family and Spousal Relationships.* As expressed in the SBA's rules, an affiliation may arise not only through control, but out of an "identity of interest" between or among parties. *See* 13 CFR § 121.401(a)(2)(iii). For example, affiliation can arise between or among members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control an entity, persons with an identity of interests may be treated as though they were one person. 13 CFR § 121.401(d). For example, if two shareholders in Corporation X are both attributable shareholders in the PCS applicant, to the extent that together they have the power to control Corporation X, Corporation X may be deemed an affiliate of the applicant.

211. Similarly, as under the SBA rules, we must consider spousal and other family relationships in determining whether an affiliation exists. Under the SBA rules for determining small business status, for example, members of the same family may be treated as though they were one person because they have an "identity of interest." 13 CFR § 121.401(d). Likewise, in order to determine whether individuals are economically disadvantaged, the SBA rules governing eligibility for participation in the government's "section 8(a)" program for socially and economically disadvantaged small businesses have special provisions for attributing spousal interests. The latter rules provide generally that half of the jointly-owned interests of an applicant and his or her spouse must be attributed to the applicant for purposes of determining the applicant's net worth. *See* 13 CFR § 124.106(a)(2)(i)(A)(1).

212. In the context of the auction eligibility rules at issue here, we begin by clarifying that our reason for considering spousal and kinship relationships is not to determine whether the spouse or other kin of a woman-owned applicant actually is controlling the applicant, thereby violating our eligibility rules for woman-owned businesses. As discussed above, our rules do not embody any presumptions concerning spousal control in that context.[191] Rather, our objective here is to ensure both that entities permitted to bid in the entrepreneurs' blocks are actually in need of special financial assistance and that otherwise ineligible entities do not circumvent the rules prohibiting entry by funding family members that purport to be eligible applicants.

213. In formulating these rules, we need to consider also that, as a practical matter, it will not be possible for us prior to the auctions to resolve all questions that pertain to the individual circumstances of particular applicants. Furthermore, if we determine subsequent to an auction that a winning bidder in fact was ineligible to bid because of spousal or kinship relationships, not only will authorization of service be delayed but, as discussed above, disqualified applicants may be subject to substantial penalties. In these circumstances, we think that the public interest requires that we endeavor, insofar as possible, to establish brightline tests for determining when the financial interests of spouses and other kin should be attributed to the applicant.

214. We have decided that, for purposes of determining whether the financial limitations in our eligibility rules have been met, we will in every instance attribute the financial interests of an applicant's spouse to the applicant. This will resolve any concern that an applicant might transfer his or her assets to a spouse in order to satisfy the personal net worth or control restrictions that apply to eligible entities. For example, an applicant could not transfer stock or other assets to his or her spouse and thereby dispose of interests that, if held by the applicant, would render the applicant ineligible. Just as importantly, this approach will resolve any concern that an applicant might participate in bidding in the entrepreneurs' blocks by using the personal assets of an ineligible spouse, which would defeat entirely the

[187] *See* 47 CFR § 73.3555 note 2(e).

[188] *Id.*

[189] *See* 13 CFR § 121.401(h). A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. 13 CFR § 121.405.

[190] SBA's size standard affiliation rules also provide that affiliations can arise in a variety of other scenarios, such as where one concern is dependent upon another for contracts and business, where firms share joint facilities, or have joint venture of franchise license agreements. To the extent we believe these rules may have general applicability in the context of our policies for broadband PCS, we shall codify them in our affiliate rules. We caution parties that issues relating to *de facto* control of the applicant (or parties with attributable interests in the applicant) could also arise under arrangements not expressly codified in the rules.

[191] *See supra* ¶ 189.

objective of excluding very large entities from bidding in these blocks.

215. In adopting this rule, we fully recognize that instances could arise in which, if all factors were considered, attributing a spouse's financial interests to the applicant could lead to harsh results. As a general matter, however, we think it provides a workable bright-line standard that resolves fully our policy concerns and avoids undesirable ambiguity concerning the nature of our requirements. As in the SBA rules, however, one exception is clearly warranted; this affiliation standard would not apply if the applicant and his or her spouse are subject to a legal separation recognized by a court of competent jurisdiction. In calculating their personal net worth, investors in the applicant who are legally separated must, of course, still include their share of interests in community property held with a spouse.

216. As indicated above, circumstances could also arise in which other kinship relationships are used as a means to evade our eligibility requirements. Because we believe kinship relationships in many cases do not present the same potential for abuse that exists with spousal relationships, particularly in terms of the "identity of interests" that are likely to exist between the persons involved, we shall adopt a more relaxed standard for determining when kinship interests must be attributed to applicants. In this area, we shall follow the same standard that is applied by the SBA when interpreting its "identity of interest" rule described above. Specifically, an identity of interests between family members and applicants will be presumed to exist, but the presumption can be rebutted by showing that the family members are estranged, or that their family ties are remote, or that the family members are not closely related in business matters. *See generally Texas-Capital Contractors, Inc. v. Abdnor*, 933 F.2d 261 (5th Cir. 1990). For purposes of determining who is a family member under this rule, we shall use a definition that is identical to the definition of "immediate family member" in the SBA's rules, 13 CFR § 124.100.

217. In appropriate cases, an applicant should be able to rebut the presumption regarding kinship affiliations with relative ease, simply by demonstrating that the applicant has no close relationship in business matters with the relevant family members. Of course, should such business relationships arise with a winning applicant after the auction, we might need to consider whether the applicant intended to circumvent the requirements of our eligibility rules. Our holding period rule, which, as discussed above, requires that winning bidders in the entrepreneurs' blocks maintain an ownership structure meeting our eligibility requirements for five years, will serve as an additional safeguard against possible abuses arising from kinship relationships.

VIII. Conclusion, Procedural Matters, and Ordering Clauses

A. Conclusion

218. In fashioning rules for competitive bidding for broadband PCS licenses, we seek to promote the public policy goals set forth for us by Congress. We believe that the rules adopted in this Fifth Report and Order satisfy this objective. These rules should facilitate the rapid implementation of new broadband communications services through advanced technologies and efficient spectrum use, thus advancing the public interest by providing consumers with competitive and innovative wireless voice and data services and also fostering economic growth. The rules will allow for the public to recover a portion of the value of the public spectrum, and will promote access to broadband PCS services by consumers, producers and new entrants by ensuring that small businesses, rural telephone companies and businesses owned by minorities and women will have genuine opportunities to participate in the auctions and in the provision of service. We expect that the advent of PCS will benefit consumers by raising the overall level of competition in many already competitive segments of the telecommunications industry and providing competition in others for the first time, promote job creation in the communications and information sector of the domestic economy, and enhance productivity and efficiency in industry as a whole.

B. Final Regulatory Flexibility Analysis

219. Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in PP Docket No. 93–253. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

220. *Need for and purpose of the action.* This rule making proceeding was initiated to implement Section 309(j) of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a system of competitive bidding for broadband PCS licenses. The rules adopted herein also will carry out Congress's intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

221. *Issues raised in response to the IRFA.* The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised in the IRFA. We have made some modifications to the proposed requirements as appropriate.

222. *Significant alternatives considered and rejected.* All significant alternatives have been addressed in the Fifth Report and Order.

C. Ordering Clauses

223. Accordingly, it is ordered that part 24 of the Commission's Rules is amended as set forth in the attachment hereto.

224. It is further ordered that the rules changes made herein will become effective 30 days after their publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 24

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

§ 24.204 [Amended]

2. Section 24.204 is amended by replacing references to "Section 24.305" and "Section 24.307" in paragraphs (f)(1) and (f)(2), respectively, with "§ 24.705" and "§ 24.707".

3. A new subpart H consisting of §§ 24.701 through 24.720 is added to Part 24 to read as follows:

Subpart H—Competitive Bidding Procedures for Broadband PCS

Sec.

24.701 Broadband PCS subject to competitive bidding.
24.702 Competitive bidding design for Broadband PCS licensing.
24.703 Competitive bidding mechanisms.
24.704 Withdrawal, default and disqualification penalties.
24.705 Bidding application (FCC Form 175 and 175–S Short-Form).
24.706 Submission of upfront payments and down payments.
24.707 Long-form applications.
24.708 License grant, denial, default, and disqualification.
24.709 Eligibility for licenses for frequency Blocks C and F.
24.710 Limitation on licenses won at auction for frequency Blocks C and F.
24.711 Installment payments for licenses for frequency Blocks C and F.
24.712 Bidding credits for licenses for frequency Blocks C and F.
24.713 Tax certificates.
24.714 Eligibility for partitioned licenses.
24.720 Definitions.

Subpart H—Competitive Bidding Procedures for Broadband PCS

§ 24.701 Broadband PCS subject to competitive bidding.

Mutually exclusive initial applications to provide broadband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in this part.

§ 24.702 Competitive bidding design for Broadband PCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide broadband PCS service:

(1) Simultaneous multiple round auctions.

(2) Sequential auctions.

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount or percentage. Combinatorial bidding may be used with any type of auction design.

(d) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 24.703 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which broadband PCS licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(e) *Stopping Rules.* The Commission will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(f) *Activity Rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one waiver of such rule during each auction stage.

(g) *Suggested Minimum Bid.* The Commission may establish suggested minimum bids on each license. Bids below the suggested minimum bid would count as activity under the activity rule only if no bids at or above the suggested minimum bid are received.

§ 24.704 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 24.702(a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(1) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder was deposited with the Commission.

(2) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions pursuant to § 24.702(a)(2), the Commission may modify the penalties set forth in subsection (a) above to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the penalty specified in paragraph (a)(2) of this section will apply.

§ 24.705 Bidding application (FCC Form 175 and 175–S Short-Form).

All applicants to participate in competitive bidding for broadband PCS licenses must submit applications on FCC Forms 175 and 175–S pursuant to the provisions of §§ 1.2105 of the Chapter and 24.813. The Commission will issue a Public Notice announcing the availability of broadband PCS licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a broadband PCS auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be

submitted, and the location where the application must be filed.

§ 24.706 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions, bidders will be required to submit an upfront payment in accordance with § 1.2106 of this Chapter and § 24.711(a)(1).

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with § 1.2107(b) of this Chapter and § 24.711(a)(2).

§ 24.707 Long-form applications.

Each winning bidder will be required to submit a long-form application on FCC Form 401, as modified, within ten (10) business days after being notified that it is the winning bidder. Applications on FCC Form 401 shall be submitted pursuant to the procedures set forth in Subpart I of this Part and § 1.2107 (c) and (d) of this Chapter and any associated Public Notices. Only auction winners (and applicants seeking partitioned licenses pursuant to agreements with auction winners under § 24.714) will be eligible to file applications on FCC Form 401 for initial broadband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form 401.

§ 24.708 License grant, denial, default, and disqualification.

(a) Except with respect to entities eligible for installment payments (*see* § 24.711), each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due or is disqualified will be subject to the penalties specified in § 1.2109 of this Chapter.

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) *General Rule.* (1) No application is acceptable for filing and no license shall be granted for frequency Block C or frequency Block F, unless the applicant, together with its affiliates and persons holding interests in the applicant and their affiliates, have gross revenues of less than $125 million in each of the last two calender years and total assets of less than $500 million at the time the applicant's short-form (Form 175) application is filed.

(2) No application is acceptable for filing and no license shall be granted for frequency Block C or frequency Block F, if, at the time the application is filed, the applicant (or person holding an interest in the applicant) is an individual and he or she (or affiliates) has $100 million or greater in personal net worth at the time the applicant's short-form (Form 175) application is filed.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that increased gross revenues, increased total assets or personal net worth due to non-attributable equity investments (*i.e.*, from sources whose revenues, total assets and personal net worth are not considered under paragraph (b)(4) of this section), debt financing, revenue from operations, business development or expanded service shall not be considered.

(b) *Attribution and Aggregation of Gross Revenues, Total Assets, and Personal Net Worth.* (1) Except as specified in paragraphs (b)(3) and (4) of this section, the gross revenues and total assets of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or licensee) and their affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency Block C or frequency Block F under this section.

(2) the personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if under the amount in paragraph (a)(2) of this section, shall not be considered for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency Block C or frequency Block F under this section.

(3) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business shall not be aggregated.

(4) (i) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered for purposes of determining financial eligibility so long as:

(A) Such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's (or licensee's) control group; and

(B) The applicant (or licensee) has a control group that owns at least 25 percent of the applicant's (or licensee's) total equity and, if a corporation, holds at least 50.1 percent of the applicant's (or licensee's) voting interests.

(ii) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered for purposes of determining financial eligibility so long as:

(A) Such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's (or licensee's) control group; and

(B) The applicant (or licensee) has a control group that consists entirely of members of minority groups and/or women and that owns at least 50.1 percent of the applicant's (or licensee's) total equity and, if a corporation, at least 50.1 percent of the applicant's (or licensee's) voting interests.

(iii) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered for purposes of determining financial eligibility so long as:

(A) Such person owns no more than 25 percent of the applicant's (or licensee's) total equity, which shall include not more than 15 percent of the voting stock;

(B) The applicant (or licensee) is a publicly traded corporation; and

(C) The applicant (or licensee) has an eligible control group that holds at least 50.1 percent of the voting stock, if a corporation, and at least 25 percent of the applicant's (or licensee's) equity.

Note: Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(c) *Short-Form Application Certification; Long-Form Application Disclosure.* (1) All applicants for a license for frequency Block C or frequency Block F shall certify on its short-form application (Form 175) that they are eligible to bid on and obtain licenses in those blocks pursuant to this section.

(2) In addition to the requirements in subpart I, all applicants that are winning bidders on frequency Blocks C and F shall, in an exhibit to their long-form applications—

(i) Identify each member of the applicant's control group, regardless of the size of the member's total interest in

the applicant, and each member's minority group or gender classification, if applicable;

(ii) Disclose the gross revenues and total assets of the applicant and its affiliates, and other persons that hold interests in the applicant and their affiliates (including all members of the applicant's control group), unless exempted under paragraph (b)(4) of this section; and

(iii) Certify that the personal net worth of the applicant (if an individual), each affiliates and each person that hold an interest in the applicant is less than $100 million.

(d) *Audits.* Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth, publicly traded corporation, and total assets* used in this section are defined in § 24.720.

§ 24.710 Limitation on licenses won at auction for frequency Blocks C and F.

(a) No applicant may be deemed the winning bidder of more than 98 of the licenses available for frequency Blocks C and F. Any applicant who is the high bidder for more than 98 of the licenses available for frequency Blocks C and F shall be required to withdraw its bid(s) for a sufficient number of licenses to achieve compliance with this section and may be subject to bid withdrawal penalties under § 24.704.

(b) For purposes of paragraph (a) of this section, licenses will be deemed to be won by the same bidder if an entity that controls or has the power to control any applicant that wins licenses at the auction, has the power to control any other applicant that wins licenses at the auction.

§ 24.711 Installment payments for licenses for frequency Blocks C and F.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, an applicant that has $75 million or less in gross revenues in each of the preceding two calendar years and that is a winning bidder for frequency Blocks C or F in a BTA market other than the fifty largest markets and any eligible applicant that is a winning bidder for frequency Blocks C or F in one of the fifty largest BTA markets, may pay the full amount of its winning bid in installments as follows:

(1) Each eligible bidder shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid.

(2) Each winning bidder shall make a down payment equal to ten percent of their winning bids; a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its winning bids within five business days after the auction closes and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted.

(3) Each eligible licensee shall pay the remainder of its winning bids in installment payments with interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; interest-only payments for the first year; and principal and interest payments amortized over the remaining nine years of the license.

(4) For purposes of determining whether an applicant has $75 million or less in gross revenues, gross revenues shall be attributed to the applicant and aggregated as provided in § 24.709(b), except that § 24.709(b)(4)(iii) shall not apply.

(b) An applicant that qualifies as a business owned by members of minority groups and/or women may pay the full amount of its winning bid in installments in the same manner as in paragraphs (a)(1) and (a)(2) of this section, except that interest-only payments may be paid for the first three years and interest shall be paid at the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted.

(c) An applicant that qualifies as a small business or as a consortium of small businesses may pay the full amount of its winning bid in installments in the same manner as in paragraphs (a)(1) and (a)(2) of this section, except that interest-only payments may be paid for the first two years.

(d) An applicant that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small businesses owned by members of minority groups and/or women may pay the full amount of its winning bid in installments in the same manner as in paragraphs (a)(1) and (a)(2) of this section, except that interest-only payments may be paid for the first five years and interest shall be paid at the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted.

(e) *Unjust Enrichment.* (1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval. Increases in gross revenues or total assets that result from equity investments that are not attributable to the licensee under § 24.709(b)(4), revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under paragraphs (a), (b) or (c) of this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status under paragraphs (a), (b) or (c) of this section. A licensee may not switch its payment plan to a more favorable plan.

§ 24.712 Bidding credits for licenses for frequency Blocks C and F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a business owned by members of minority groups and/or women may use a bidding credit of fifteen percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a small business owned by members of minority groups and/or women or a consortium of small business owned by members of minority groups and/or women may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

(d) *Unjust Enrichment.* (1) If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek

Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credit or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 24.713 Tax certificates.

(a) Any non-controlling initial investor in a business owned by members of minority groups and/or women and who provides "start-up" financing, which allows such business to acquire a broadband PCS license(s), and any non-controlling investor who purchases an interest in a broadband PCS license held by a business owned by members of minority groups and/or women within the first year after license issuance, may, upon the sale or such investment or interest, request from the Commission a tax certificate.

Note: For purposes of this subsection, *non-controlling investor* means any person who is not part of the control group of a business owned by members of minority groups and/or women as defined in § 24.720(k).

(b) Any broadband PCS licensee who assigns or transfer control of its license to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate. Any licensee that obtain a broadband PCS license through the benefit of a tax certificates under this subsection shall not assign or transfer control of its license within one year of its license grant date, unless such assignee or transferee qualifies as a business owned by members of minority groups and/or women, which shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

(c) Any licensee in the Domestic Public Cellular Radio Telecommunications Service who assigns or transfer control of its cellular license(s) to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate. Such tax certificates will only be issued if the principal purpose of the assignment or transfer of control is to allow the cellular licensee to become eligible for a broadband PCS license(s) beyond the limitations imposed on the cellular licensee by § 24.204. Any licensee that obtains a cellular license through the benefit of a tax certificate under this paragraph shall not assign or transfer control of its license within one year of its license grant date, unless such assignee or transferee qualifies as a business owned by members of minority groups and/or women, which shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

§ 24.714 Eligibility for partitioned licenses

(a) Notwithstanding § 24.202, an applicant that is a rural telephone company, as defined in § 24.720(e), may be granted a broadband PCS license that is geographically partitioned from a separately licensed MTA or BTA, so long as the MTA or BTA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and part 1 of this Chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (*see* 47 CFR § 1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MTA or BTA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the MTA or BTA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 24.839.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note: A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (*see* § 24.203).

§ 24.720 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.709-24.715, unless otherwise specified in those sections.

(b) *Small Business; Consortium of Small Businesses.*

(1) A *small business* is an entity that

(i) Together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years;

(ii) Has no attributable investor or affiliate that has a personal net worth of $40 million or more;

(iii) Has a control group all of whose members and affiliates are considered in determining whether the entity meets the $40 million annual gross revenues and personal net worth standards; and

(iv) Such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in paragraph(c) of this section) may also qualify as a small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(2) For purposes of determining whether an entity meets the $40 million gross revenues and $40 million personal net worth standards in paragraph (b)(1) of this section, gross revenues and personal net worth shall be attributed to the entity and aggregated as provided in § 24.709(b), except that § 24.709(b)(4)(iii) shall not apply.

(3) A small business consortium is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraph (b)(1) of this section.

(c) *Business Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is an entity:

(1) That has a control group composed 100 percent of members of minority groups and/or women who are United States Citizens, and

(2) Such control group owns and holds 50.1 percent of the voting interests, if a corporation, and

(i) Owns and holds 50.1 percent of the total equity in the entity, provided that all other investors hold passive interests; or

(ii) Holds 25 percent of the total equity in the entity, provided that no single other investor holds more than 25 percent passive equity interests in the entity. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(d) *Small Business Owned by Members of Minority Groups and/or Women; Consortium of Small Businesses Owned by Members of Minority Groups and/or Women.* A small business owned by members of minority groups and/or women is an entity that meets the definitions in both paragraphs (b) and (c) of this section. A consortium of small businesses owned by members of minority groups and/or women a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) and (c) of this section.

(e) *Rural Telephone Company.* A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

(f) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

(g) *Total Assets.* Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited quarterly financial statements.

(h) *Personal Net Worth.* Personal net worth shall mean the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owned by the individual in his individual capacity or as a joint obligor.

(i) *Members of Minority Groups.* Members of minority groups includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(j) *Passive Equity.* Passive equity shall mean:

(1) For corporations, non-voting stock or stock that includes no more than five percent of the voting equity;

(2) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(k) *Control Group.* A control group is an entity, or a group of individuals or entities that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to its interest in the total equity of the applicant or licensee.

Note: Voting control does not always assure *de facto* control, such as, for example, when the voting stock of the control group is widely dispersed (*see, e.g.*, § 24.270(l)(2)(iii)).

(l) *Affiliate.* (1) An individual or entity is an affiliate of:

(i) An applicant; or

(ii) A person holding an attributable interest in an applicant under § 24.709 (both referred to herein as "the applicant") if such individual or entity—

(A) Directly or indirectly controls or has the power to control the applicant, or

(B) Is directly or indirectly controlled by the applicant, or

(C) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) Has an "identity of interest" with the applicant.

(2) Nature of *control* in determining affiliation.

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or

her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS applilcation. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in Interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(i) Spousal Affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(ii) Kinship Affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example. A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) Affiliation through stock ownership.

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) Affiliation under voting trusts.

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) Affiliation under joint venture arrangements.

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge,

but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(m) *Publicly Traded Corporation. A publicly traded corporation* is a business entity organized under the laws of the United States whose shares, debt or other ownership interests are traded on an organized securities exchange within the United States.

4. A new subpart I consisting of §§ 24.801 through 24.844 is added to Part 24 to read as follows:

Subpart I—Interim Application, Licensing, and Processing Rules for Broadband PCS

Sec.

24.801 [Reserved]
24.802 [Reserved]
24.803 Authorization required.
24.804 Eligibility.
24.805 Formal and informal applications.
24.806 Filing of broadband PCS applications; Fees; Number of copies.
24.807 [Reserved]
24.808 [Reserved]
24.809 Standard application forms and permissive changes or minor modifications for the broadband Personal Communications Services.
24.810 [Reserved]
24.811 Miscellaneous forms.
24.812 [Reserved]
24.813 General application requirements.
24.814 [Reserved]
24.815 Technical content of applications; maintenance of list of station locations.
24.816 Station antenna structures.
24.817 [Reserved]
24.818 [Reserved]
24.819 Waiver of rules.
24.820 Defective applications.
24.821 Inconsistent or conflicting applications.
24.822 Amendment of application to participate in auction for licenses in the broadband Personal Communications Services filed on FCC Form 175.
24.823 Amendment of applications for licenses in the broadband Personal Communications Services (other than applications filed on FCC Form 175).
24.824 [Reserved]
24.825 Application for temporary authorizations.
24.826 Receipt of application; applications in the broadband Personal Communications Services filed on FCC Form 175 and other applications in the broadband Personnel Communications Services.
24.827 Public notice period.
24.828 Dismissal and return of applications.
24.829 Ownership changes and agreements to amend or to dismiss applications or pleadings.
24.830 Opposition to applications.
24.831 Mutually exclusive applications.
24.832 Consideration of applications.
24.833 [Reserved]
24.834 [Reserved]
24.835 [Reserved]
24.836 [Reserved]
24.837 [Reserved]
24.838 [Reserved]
24.839 Transfer of control or assignment of license.
24.840 [Reserved]
24.841 [Reserved]
24.842 [Reserved]
24.843 Extension of time to complete construction.
24.844 Termination of authorization.

Subpart I—Interim Application, Licensing, and Processing Rules for Broadband PCS

§ 24.801 [Reserved]

§ 24.802 [Reserved]

§ 24.803 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 24.804 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under all applicable laws and Commission regulations, policies and decisions;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A broadband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A broadband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 24.805 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in Section 308(a) of the Communications Act of 1934 (47 U.S.C. § 308(a)), the Commission may grant the following authorizations only upon written application received by it: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 24.806 Filing of broadband PCS applications; Fees; Numbers of copies.

(a) As prescribed by §§ 24.705, 24.707 and 24.809, standard formal application forms applicable to broadband PCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554, or

(2) By calling the Commission's Forms Distribution Center, (202) 632–3676.

(b) Applications to participate in competitive bidding for broadband PCS service must be filed on FCC Form 175 in accordance with the rules in § 24.705 and Part 1, Subpart Q of this Chapter. In the event of mutual exclusivity

between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long-form applications on FCC Form 401 to provide broadband PCS service. Mutually exclusive applications filed on FCC Form 175 are subject to competitive bidding under those rules. Broadband PCS applicants filing FCC Form 401 need not complete Schedule B.

(c) All applications for broadband PCS licenses (other than applications to participate in competitive bidding filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: Broadband PCS Processing Section.

Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of this Chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Broadband PCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this Chapter. Filings of five pages or less are exempt from the requirement to submit on microfiche, as are emergency filings such as letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings and forms must simultaneously submit the original hard copy which must be stamped "original". Abbreviations may be used if they are easily understood. In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this Chapter, shall also submit two paper copies as provided in § 1.51 of this Chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm x 105mm negative (clear transparent characters appearing on an opaque background) at 24x to 27x reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes. Each microfiche copy of pleadings shall include:

(i) The month and year of the document;

(ii) The name of the document;

(ii) The name of the filing party;

(iv) The file number, applicant identification number, and call sign, if assigned;

(v) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (*e.g.*, 30 MHz MTA, 30 MHz BTA, 10 MHz BTA);

(iii) The month and year of the document;

(iv) The name of the document;

(v) The file number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

§ 24.807 [Reserved]

§ 24.808 [Reserved]

§ 24.809 Standard application forms and permissive changes or minor modifications for the broadband Personal Communications Services.

(a) Applications to participate in competitive bidding for broadband PCS licenses must be filed on FCC Forms 175 and 175–S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for broadband PCS licenses under Part 24. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under Part 22") shall be submitted by each auction winner for each broadband PCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist with respect to a license identified on an applicant's FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form 401. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. *See* § 24.11. Broadband PCS applicants filing FCC Form 401 need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 24.203, a timely application for extension of time (FCC Form 489) must be filed.

(d) License for mobile subscriber station—These stations are considered to be associated with and covered by the authorization issued to the carrier serving the land mobile station. No additional authorization is required.

§ 24.810 [Reserved]

§ 24.811 Miscellaneous forms.

(a) *Licensee qualifications.* FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by broadband Personal Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under Part 22).

(b) *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 24.812 [Reserved]

§ 24.813 General application requirements.

(a) Each application (including applications filed on Forms 175 and 401) for a broadband PCS license or for consent to assign or transfer control of a broadband PCS license shall disclose fully the real party or parties in interest and must include in an exhibit the following information:

(1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.

(2) A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (*e.g.*, if Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).

(3) A list of the names, addresses, citizenship and principal business of any person holding five percent or more of each class of stock, warrants, options

or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application.

(b) Each application for a broadband PCS license must:

(1) Submit the information required by the Commission's Rules, requests and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter.

(3) Show compliance with and make all special showings that may be applicable;

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications; and

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding.

However, question on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F and §§ 1.2105 of this Chapter, 24.813 and 24.815, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee or licensee to enable it to determine whether a radio authorization should be granted, denied or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of this Chapter. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this Chapter must be filed with the application and Commission environmental review must be completed prior to construction. *See* § 1.1312 of this chapter. All broadband PCS licensees are subject to continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with § 1.1301 through 1.1319 of this Chapter. *See* § 1.1312 of this Chapter.

§ 24.814 [Reserved]

§ 24.815 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a broadband PCS license must also comply with all technical requirements of the rules governing the broadband PC (*see* Subparts C and E of this Part as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a license for broadband PCS must comply with the provisions of §§ 24.229–24.238 of the Commission's Rules.

(c)–(i) [Reserved]

(j) The location of the transmitting antenna shall be considered to be the station location. Broadband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

§ 24.816 Station antenna structures.

(a) Unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure that is located either at an airport or heliport that is available for public use and is listed in the *Airport Directory* of the current *Airman's Information Manual* or in either the *Alaska* or *Pacific Airman's Guide and Chart Supplement*, or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA and, except for military airports, it is clearly indicated that the airport will be available for public use, or at an airport or heliport that is operated by the armed forces of the United States, or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A broadband PCS station antenna structure no higher than 6.1 m (20 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting, are contained in Part 17 of the FCC Rules, *Construction, Marking and Lighting of Antenna Structures*. To request approval to place an antenna structure higher than the limits specified in paragraph (a), (b), and (c) of this section, the licensee must notify the Federal Aviation

Administration (FAA) on FAA Form 7460–1 and the FCC on FCC Form 854.

§§ 24.817–24.818 [Reserved]

24.819 Waiver of rules.

(a) Requests for waiver.

(1) A waiver of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reason sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) Denial of waiver, alternate showing required. If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 24.820 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. *See also* § 1.2105 of this Chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2)–(4) [Reserved]

(5) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(6) [Reserved]

(7) The application is filed prior to the Public Notice issued under § 24.705, announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice.

(c) [Reserved]

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 24.821 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, its successor or assignee, or on behalf or for the benefit of the same applicant, its successor or assignee.

§ 24.822 Amendment of application to participate in auction for licenses in the broadband Personal Communications Services filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications, defects which may not be cured. *See also* § 1.2105 of this Chapter.

(b) In the broadband PCS, the only amendments to FCC Form 175 which will be permitted are minor amendments to correct minor errors or defects such as typographical errors. All other amendments to FCC Form 175, such as changes in the information supplied pursuant to § 24.813(a) or changes in the identification of parties to bidding consortia, will be considered to be major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. *See also* § 1.2105 of this Chapter.

§ 24.823 Amendment of applications for licenses in the broadband Personal Communications Services (other than applications filed on FCC Form 175).

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 24.829, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 24.829 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 24.827 if it proposes a substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, request for waiver or other written communication shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. *See also* § 1.2108 of this Chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly-filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) [Reserved]

(2) [Reserved]

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(4) [Reserved]

(5) The amendment corrects typographical transcription or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

§ 24.824 [Reserved]

§ 24.825 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 24.805 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, at least 10 days prior to the expiration date of the existing temporary authorization. The Commission may accept a late-filed request upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 24.827(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of Section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 24.826 Receipt of application; Applications in the broadband Personal Communications Services filed on FCC Form 175 and other applications in the broadband Personal Communications Services.

(a) All applications for the initial provision of broadband PCS must be submitted on FCC Forms 175 and 175–S. Mutually exclusive initial applications in the broadband Personal Communications Services are subject to competitive bidding. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under Part 22") must be submitted by each winning bidder for each broadband PCS license for which application was made on FCC Form 175. In the event that mutual exclusivity does not exist between applicants for a broadband PCS license that have filed FCC Form 175, the sole applicant will be required to file FCC Form 401. The aforementioned Forms 175, 175–S, and 401 are subject to the provisions of 47 CFR Part 1, Subpart Q ("Competitive Bidding Proceedings") and Subpart H of this Part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. *See* § 24.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's Rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (*See* § 24.813 for additional information concerning the filing of applications.)

§ 24.827 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are intended solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

(4) Special environmental considerations as required by Part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing; provided, however, that the Commission will not grant an application filed on Form 401 filed either by a winning bidder or by an applicant whom Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable filing. *See also § 1.2108 of this Chapter.*

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 24.823) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities (*see* § 24.203;

(4) For temporary authorization pursuant to § 24.825(b);

(5) [Reserved]

(6) For an authorization under any of the proviso clauses of Section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 24.828 Dismissal and return of applications.

(a) Except as provided under § 24.829, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications may be subject to penalties contained in § 1.2104 of this Chapter. Requests for dismissal shall comply with the provisions of § 24.829 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of § 24.829 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance with § 24.829 or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 24.829 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this Chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 24.823(c) and 24.823(g) apply or which would cause the applicant to lose its status as a designated entity under § 24.709, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application amendment, petition or other pleading.

(b) Policy. Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties that, under a settlement agreement, apply to the Commission for ownership changes or for the amendment or dismissal of either pleadings or applications shall at the time of filing notify the Commission that such filing is the result of an agreement or understanding.

(c) The provisions of § 22.927 of the Commission's Rules will apply in the event of the filing of petitions to deny or other pleadings or informal objections filed against broadband PCS applications. The provisions of § 22.928 of the Commission's Rules will apply in the event of dismissal of broadband PCS applications. The provisions of § 22.929 of the Commission's Rules will apply in the event of threats to file petitions to deny or other pleadings or informal objections against broadband PCS applications.

§ 24.830 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this Chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 of this Chapter except where otherwise provided in § 1.2108 of this Chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be *prima facie* inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously-filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying previously-filed application. This subsection does not apply, however, to petitioners who gain standing because of the major amendment.

§ 24.831 Mutually exclusive applications.

(a) The Commission will consider applications for broadband PCS licenses to be mutually exclusive if they relate to the same geographical boundaries (MTA or BTA) and are timely filed for the same frequency block.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of broadband PCS are subject to competitive bidding in accordance with the procedures in Subpart H of this part and in Part 1, Subpart Q of this Chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

(d)–(j) [Reserved]

§ 24.832 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience and necessity. *See also* § 1.2108 of this Chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing and is in accordance with the Commission's rules, regulations and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 24.831 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 24.830, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely state the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if upon consideration of the application, any pleadings or objections filed or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (*see also* § 1.2108 of this Chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete and in accordance with the Commission's rules, regulations and other requirements; or

(3) The application is entitled to comparative consideration (under § 24.831) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this Chapter.

(g) [Reserved]

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with Subpart A of Part 1 of this Chapter.

§ 24.833–24.838 [Reserved]

§ 24.839 Transfer of control or assignment of license.

(a) Approval required. Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24,713(b) (unjust enrichment) and 1.2111(a) of this Chapter (reporting requirement).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership and the relationships of the owners, including family relationships.

(b) Forms required.

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within thirty (30) days following the event giving rise to the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within thirty (30) days following the event giving rise to the transfer.

(3) Form 430. Whenever an application must be filed under paragraphs (a)(1) or (2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original construction requirement of § 24.203.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F. No assignment or transfer of control of a license for frequency Block C or frequency Block F will be granted unless—

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant;

(2) The application for assignment or transfer of control is filed after three years from the date of the initial license grant and the proposed assignee or transferee meets the eligibility criteria set forth in § 24.709;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the assignee meets the eligibility criteria set forth in § 24.709; or

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action or, in the event of death or disability, to a person or entity legally qualified to succeed the decrease or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph.

(e) If the assignment or transfer of control of a license is approved, the assignee or transferee is subject to the original construction requirement of § 24.203.

§§ 24.840–24.842 [Reserved]

§ 24.843 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 24.203, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. *See* paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) Extension of Time to Complete Construction. An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be

granted only if the licensee shows that the failure to complete construction is due to causes beyond its control.

(c) An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

(d) [Reserved]

§ 24.844 Termination of authorization.

(a) Termination of authorization.

(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will be considered only if it is filed within thirty (30) days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30-day period, a reinstatement application must be filed on FCC Form 489. Service to subscribers need not be suspended while a late-filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. *See also* § 24.16 (Criteria for Comparative Renewal Proceedings).

(b) Termination of special temporary authorization. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

(c) [Reserved]

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Friday
July 22, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23 and 91

Airworthiness Standards; Systems and Equipment Proposals Based on European Joint Aviation Requirements Proposals; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23 and 91

[Docket No. 27806; Notice No. 94–21]

RIN: 2120–AE59

Airworthiness Standards; Systems and Equipment Proposals Based on European Joint Aviation Requirements Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes changes to the systems and equipment airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These proposals arise from the joint effort of the Federal Aviation Administration (FAA) and the European Joint Aviation Authorities (JAA) to harmonize the Federal Aviation Regulations (FAR) and the Joint Aviation Requirements (JAR) for airplanes that will be certificated in these categories. The proposed changes would provide nearly uniform systems and equipment airworthiness standards for airplanes certificated in the United States under 14 CFR part 23 (part 23) and in the JAA countries under Joint Aviation Requirements 23 (JAR 23), thereby simplifying airworthiness approval for import and export purposes.

DATES: Comments must be submitted on or before November 21, 1994.

ADDRESSES: Comments on this document should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27806, 800 Independence Avenue SW., Washington, DC 20591.

Comments delivered must be marked Docket No. 27806. Comments may be inspected in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE–7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the duplicate information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Earsa Tankesley, ACE–112, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received 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 docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27806." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

At the June 1990 meeting of the JAA Council (consisting of JAA members from European countries) and the FAA, the FAA Administrator committed the FAA to support the harmonization of the FAR with the JAR being developed for use by the European authorities who are members of the JAA. In response to this commitment, the FAA Small Airplane Directorate established an FAA Harmonization Task Force to work with the JAR 23 Study Group to harmonize part 23 and the proposed JAR 23. The General Aviation Manufacturers Association (GAMA) also established a JAR 23/part 23 Committee to provide technical assistance in this effort.

Following a review of the first draft of proposed JAR 23, members of the FAA Harmonization Task Force and the GAMA Committee met in Brussels, Belgium for the October 1990 meeting of the JAR 23 Study Group. Representatives from the Association Europeene des Constructeures de Material Aerospatial (AECMA), an organization of European airframe manufacturers, also attended. The main agenda item for this meeting was the establishment of procedures to accomplish harmonization of the airworthiness standards for normal, utility, and acrobatic category airplanes. The JAA had decided that its initial rulemaking effort should be limited to these three categories and that commuter category airworthiness standards should be addressed separately.

After that meeting, technical representatives from each of the four organizations (GAMA, AECMA, FAA and JAA) met to resolve differences between the proposed JAR and part 23. This portion of the harmonization effort involved a number of separate meetings of specialists in the flight, airframe, powerplant, and systems disciplines. These meetings showed that harmonization would require revisions to both part 23 and the proposed JAR 23.

Near the end of the effort to harmonize the normal, utility, and acrobatic category airplane airworthiness standards, the JAA requested and received recommendations from its member countries on proposed airworthiness standards for commuter category airplanes. The JAA and the FAA held specialist and study group meetings to discuss these recommendations, which resulted in proposals to revise portions of the part 23 commuter category airworthiness standards.

Unlike the European rules, where commuter category airworthiness standards are separate, for U.S. rulemaking, it is advantageous to adopt normal, utility, acrobatic, and commuter category airworthiness standards

simultaneously, since commuter category airworthiness standards are already contained in part 23. Accordingly, this NPRM proposes to revise the systems and equipment airworthiness standards for all part 23 airplanes.

During the part 23 harmonization effort, the FAA established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991), which held its first meeting on May 23, 1991. The ARAC on General Aviation and Business Airplane (GABA) Issues was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards in part 23 as well as related provisions of parts 91 and 135 of the regulations.

The FAA announced, on June 2–5, 1992, at the JAA/FAA Harmonization Conference in Toronto, Ontario, Canada, that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the JAR and the FAR. Coinciding with that announcement, the FAA assigned the ARAC on GABA Issues those rulemaking projects related to JAR/part 23 harmonization that were in final coordination between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public as NPRM's. Subsequently, the ARAC on GABA Issues established an ARAC–JAR 23 Study Group.

The JAR 23 Study Group made recommendations to the ARAC on GABA Issues concerning the FAA disposition of the rulemaking issues coordinated between the JAA and the FAA. The draft NPRMs previously prepared by the FAA harmonization team were made available to the harmonization working group to assist them in their effort.

A notice of the formation of the JAR 23 Harmonization Working Group was published on November 30, 1992 (57 FR 56626). The group held its first meeting on February 2, 1993. These efforts resulted in the proposals for systems and equipment airworthiness standards contained in this notice. The ARAC on GABA Issues agreed with these proposals.

The FAA received unsolicited comments from the JAA dated January 20, 1994, concerning issues that were left unresolved with the JAR 23 Study Group. The JAR/FAR 23 Harmonization Working Group did not address some of the unresolved issues because the JAA had not yet reached positions on those issues. Unresolved issues will be dealt with at future FAR/JAR Harmonization meetings. With respect to other issues unresolved by the JAR 23 Study Group, the JAR/FAR 23 Harmonization Working Group recommendations did not reflect harmonization, but reflected the technical discussion of the merits of each issue that had been thoroughly debated at the JAR/FAR 23 Harmonization meetings. (The Working Group Chairperson had been present at the Harmonization meetings.) The JAA comments have been placed in the docket for this proposal, and will be considered along with those received during the comment period.

Following completion of these harmonization efforts, the FAA determined that the proposed revisions to part 23 were too numerous for a single NPRM. The FAA decided to simplify the issues by issuing four NPRM's. These NPRM's address the airworthiness standards in the specific areas of systems and equipment, powerplant, flight, and airframe. These NPRM's propose changes in all seven subparts of part 23. Since there is some overlap, interested persons are advised to review all four NPRM's to identify all proposed changes to a particular section.

Discussion of Proposals

Section 23.677 Trim Systems

Proposed revised § 23.677(a) would clarify the need to mark the lateral and directional trim indicators with the neutral trim position. Since trim indicators on most airplanes are currently marked with the neutral position of the trimming device, this proposal would standardize the cockpit markings for all airplanes.

Revised paragraph (a) would also add a requirement for the pitch trim indicator to be marked with the proper pitch trim range for the takeoff of the airplane. Some takeoff accidents, including some involving fatalities, have occurred because the pitch trim was not set to the proper range needed for the airplane takeoff. Because of this accident experience, most of the current airplane manufacturers mark the pitch trim indicator with the pitch trim range for takeoff. Therefore, the proposed marking requirement would not have a significant impact on future airplane designs and would ensure that the markings needed for a safe takeoff are provided for the pilots' use.

Section 23.691 Artificial Stall Barrier System

This proposed new section would provide standards for stall barrier systems if a stall barrier is necessary to show compliance with § 23.201(c).

The requirements of § 23.201(c) provide criteria for the in-flight demonstration of wings level stall. The requirements also specify the means of identifying when a stall has occurred. Amendment No. 23–45 (58 FR 42136, August 6, 1993) revised § 23.201(c) by adding the activation of an artificial stall barrier as an acceptable means of identifying when a stall has occurred.

As the technology of airplane designs improved and engines with increased power became available, airplanes were developed that did not meet the older wings level stall requirement of § 23.201. Consequently, these airplanes were equipped with an artificial stall barrier that moved the airplane elevator controls and caused a nose down pitching motion similar to the pitching motion of airplanes that meet the wings level stall requirement of § 23.201. The manufacturer selected the airspeed where this pitching motion occurred and flight testing established compliance with the other flight regulations at airspeeds above the speed selected for the push. These stall barrier systems are commonly called "stick pushers." Such systems have been accepted for compliance with § 23.201 under the equivalent safety provisions of § 21.21(b)(1), since they provide a pitch motion that is equivalent to that experienced during stalls of airplanes that meet the stall requirements of § 23.201. Appropriate compliance with other applicable requirements of part 23 has been established by other design characteristics of the stall barrier system.

The provisions of the proposed new section are based on system design characteristics necessary to ensure the safe operation of previously approved stall barrier systems. The proposed section also requires such systems to include provisions to prevent unwanted activation of the stall barrier systems. This is necessary to ensure that such systems do not cause downward pitching motions at higher airspeeds when such pitching could be unsafe.

The proposed sections would basically codify those provisions that have been found necessary for approving stick pusher systems under the equivalent safety requirements of § 21.21(b)(1). Therefore, in effect, no new requirements would be added by this proposed amendment.

The proposed new section would be applicable only to airplanes with flight characteristics that need an artificial stall barrier system to ensure safe operation of that airplane. Including provision for the installation of an optional stick pusher system would relieve the manufacturer of the financial

burden that would be needed to redesign the airplane so that it would meet the wings level stall requirements.

Section 23.697 Wing Flap Controls

Proposed new § 23.697(c) would provide safety standards for the wing flap control lever designs installed in airplanes that use wing flap settings other than fully retracted when showing compliance with § 23.145. This revision is needed to ensure that the flap settings, which establish the safe operation of the airplane, can be positively selected.

Section 23.701 Flap Interconnection

Section 23.701 (a)(1) and (a)(2) would be revised to clarify the requirements for flap systems installed on part 23 airplanes. Following the revision of § 23.701, as adopted by Amendment No. 23–42 (56 FR 353, January 3, 1991), the FAA discovered that the new requirements could be interpreted in a way that was not intended and that this interpretation could result in approval of airplanes with unsafe flight characteristics in the event of flap failure. To clarify the intent of the requirements, the FAA issued on March 14, 1991, a policy letter to all aircraft certification offices that provided guidance for the correct application of the requirements.

Since then, the FAA has reexamined the requirements and determined that § 23.701 (a)(1) and (a)(2) need to be revised to ensure that a failure of the flap system would not create an asymmetric flap configuration that could result in an unsafe flight condition. Therefore, § 23.701 (a)(1) and (a)(2) would be revised to clarify that one of the following would apply:

(1) The moveable flap surfaces must be synchronized by a mechanical interconnection or by an approved equivalent means, that is independent of the flap drive system.

(2) The wing flap system must be designed so that any failures of the flap system that would result in an unsafe flight characteristic of the airplane, such as flap asymmetry, is extremely improbable.

These revisions would ensure that a failure of the flap drive systems will not result in a flap asymmetry configuration.

Section 23.703 Takeoff Warning System

This proposed new section would require a takeoff warning system on some commuter category airplanes. The requirement would be applicable if the flight evaluation showed that an unsafe takeoff condition would result if lift devices or longitudinal trim devices are set to any position outside the approved takeoff range. If the evaluation shows that no unsafe condition would result at any setting of these devices, a takeoff warning system would not be required. For those airplanes on which a warning system must be installed, the proposal would provide requirements for the installation of the system.

Section 23.723 Shock Absorption Tests

Paragraph (b) of this section would be revised by changing the word "reserved" in the phrase "reserved energy absorption capacity" to "reserve."

Section 23.729 Landing Gear Extension and Retraction System

This proposal would revise § 23.729(e) to clarify that a landing gear indicator is required for each gear. The last sentence of current § 23.729(e) would also be removed. This sentence, which states that the switches may be located where they are operated by the actual landing gear locking latch or device, is advisory material and should not be included in the requirements. If future guidance is needed to identify acceptable switch locations, Advisory Circular 23.701–1 will be revised to include that information.

This proposal would also add a new § 23.729(g) requiring that if the landing gear bay is used as the location for equipment other than landing gear, the equipment must be designed and installed to minimize damage. On larger airplanes, such as the commuter category, a primary cause of damage to such equipment would be tire burst. In addition, service history has shown that rocks, water, and slush enter the landing gear bay and cause damage. The equipment on any size airplane should be protected from damage by such external sources.

Section 23.735 Brakes

Section 23.735(a) would be revised to state plainly that wheel brakes must be provided. A proposed new § 23.735(c) would require the brake system to be designed so that the brake manufacturer's specified brake pressures are not exceeded during the landing distance determination required by § 23.75.

Proposed new § 23.735(e), applicable to commuter category airplanes, would require establishing the minimum rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly. Section 23.45 provides that the determination of the accelerate-stop distance for commuter category airplanes be made in accordance with the applicant's procedures for operation in service. The proposed requirement is needed to ensure that the brakes will perform safely under accelerate-stop conditions.

Section 23.745 Nose/Tail Wheel Steering

Proposed new § 23.745 would provide requirements that apply if nose/tail-wheel steering is installed. Advanced airplane design technology, along with the need to safely control the airplane when it is being operated on increasingly congested airports, has resulted in several small airplanes being equipped with systems for ground steering only.

The proposed new section would not require the installation of a system for ground steering, but it would add requirements to define how such a system should function if one is installed. It would also require the steering system to be designed so that it will not interfere with any installed landing gear retraction and extension system.

Section 23.775 Windshields and Windows

Section 23.775(a) would be revised to state that internal glass panels of windshields and windows must be constructed of a nonsplintering material, such as nonsplintering glass. Currently § 23.775(a) requires nonsplintering safety glass only. A nonsplintering material must be used to protect pilots from injury. While nonsplintering glass is an acceptable standard, other nonsplintering materials would be allowed under the proposal.

Section 23.775(c) would be revised to clarify that it applies to pressurized airplanes if certification for operation up to and including 25,000 feet is requested. This would not be a substantive change. It has always applied to such airplanes but is not as directly stated in the current rule as it would be in the proposed rule. Current § 23.775(e), which is being redesignated as § 23.775(d) by this notice without change, provides requirements for airplanes that are certified for operations above 25,000 feet. This revision of paragraph (c) and redesignation of paragraph (e) will clarify the requirements that are applicable to airplanes approved for operations at different altitudes. Redesignated paragraph (e) is revised to remove the masculine gender by rephrasing "when he is seated" to read "when the pilot is seated."

Section 23.775(h), introductory text, and paragraph (h)(1) would be added to require windshield panes of commuter

category airplanes that are directly in front of the pilots to withstand the impact of a two pound bird. This requirement is based on a Joint Aviation Authority recommendation to add windshield bird strike protection for commuter category airplanes. Following receipt of the recommendations, the FAA obtained and reviewed the International Civil Aviation Organization (ICAO) data on bird strikes that occurred on airplanes of 19,000 pounds or less from 1981 through 1989. These data show that approximately 550 strikes occurred and that one out of seven strikes hit the windshield. The bird strike reports, which include information on the type of bird, the airplane altitude and/or airspeed, show the following:

1. More than one-half of the strikes (51.8 percent) occurred between the ground and 100 feet above the ground.

2. Another one-fourth of the strikes (26.7 percent) occurred between 101 and 1000 feet.

3. The airplane airspeed at the time of most of the strikes (85 percent) was 150 knots or less.

4. Where bird types were reported, 27.6 percent involved small birds and 58.6 involved medium size birds.

5. Incidents where the airplane was damaged showed that 16.9 percent resulted from small bird strikes and 64 percent resulted from strikes involving medium size birds.

Evaluation of these data indicate that most bird strikes occur at takeoff and landing altitudes and airspeeds, and that medium or small birds, many weighing two pounds or less, are most often struck. Although only a few fatalities and injuries have resulted from these reported bird strikes, the data indicates a high probability of bird strikes during landings and takeoffs and the potential hazards of such strikes.

This proposed new paragraph would require that the windshield panes directly in front of the pilots of commuter category airplanes, and the supportive structure for these panes, must withstand the impact of a two-pound bird at an airplane's maximum approach flap speed.

Proposed § 23.775(h)(2) would require the panels of the windshield to be arranged so that, if one is damaged, other panels will remain that will provide visibility for continuous safe flight and landing of the airplane.

By requiring full protection against the strike of a two-pound bird at approach speeds, some protection will also be provided if the airplane strikes a larger bird or strikes a bird at a higher speed.

Section 23.783 Doors

Current § 23.783(b) requires that passenger doors not be located with respect to any propeller disk so as to endanger persons using the door. Proposed paragraph (b) would add that passenger doors must be located in relation to any other potential hazard that could endanger persons using the door. The propeller disk remains the prominent hazard but other items, such as hot deicer surfaces or sharp objects on the airplane structure, are also hazards.

Proposed new paragraph (g) would require lavatory doors, if installed, that would not trap occupants inside a closed and locked lavatory compartment.

Section 23.785 Seats, Berths, Litters, Safety Belts, and Shoulder Harnesses

Seat requirements of part 23 would be clarified by moving the seat provisions in current § 23.1307(a), which require a seat or berth for each occupant, to the introductory text of § 23.785. The requirement of § 23.1413, for a metal to metal latching device for seat belts and shoulder harnesses would also be referenced in § 23.785(b). These proposed changes would combine related seat requirements in one section.

Section 23.787 Baggage and Cargo Compartments

Section 23.787 would be revised by extending the present requirements for cargo compartments to baggage compartments. As proposed, future baggage compartments on all airplane categories would be required to: Be placarded for their maximum weight capacity; have a means to prevent the baggage from shifting; and have a means to protect controls, wiring, lines, and equipment or accessories that are located in the compartment and whose damage or failure would affect safe operation of the airplane. These standards have been applicable to cargo compartment designs for some time and should be applied to baggage compartments since the same safety factors are involved. Because manufacturers recognize the need for these standards, many of these provisions have been included in the current design of baggage compartments and, therefore, the proposed requirements are not expected to create a significant burden. With this revision the commuter category requirements of § 23.787(g) would be redundant and that requirement is being removed.

Proposed revisions to this section would also move the substance of paragraphs (d) and (f) to a proposed new § 23.855, which will address cargo and baggage compartment fire protection.

Proposed new paragraph (c) of this section would require flight crew emergency exits on all cargo configured airplanes to meet the requirements of § 23.807. This requirement would provide increased assurance that flight crews of all cargo airplanes will have ready access to an emergency exit.

Section 23.791 Passenger Information Signs

This proposed new section would require at least one illuminated sign notifying all passengers when seat belts should be fastened. This proposed requirement applies to airplanes where flightcrew members cannot observe occupant seats or where the flightcrew member compartment is separated from the passenger compartment. When illuminated, the signs must be legible to all persons seated in the passenger compartment. Each sign must be installed so that a flightcrew member can turn it on and off from his or her station.

Section 23.807 Emergency Exits

Proposed new § 23.807(a)(4) would provide the same protection from any propeller disk and other potential hazard for a person who uses emergency exits as that provided by proposed § 23.783(b) for a person who uses a passenger door. (See discussion for proposed § 23.783 in this notice.)

The proposed revision of § 23.807(b) would provide that the inside handles of emergency exits that open outward must be protected against inadvertent operation. Currently this protection is required by applying the general safety provisions of this subchapter. The addition of the specific requirement in § 23.807(b) would clarify the need for this protection by providing a requirement that addresses outward opening emergency exits.

The proposed revision to § 23.807(b)(5) and new § 23.807(b)(6) would apply to acrobatic and utility category airplanes that are approved for maneuvers, such a spinning. The proposed rule would require that emergency exits for these category airplanes allow the occupants to abandon the airplane at certain speeds related to such maneuvers. These emergency exits need to function under different environmental conditions than the emergency exits on normal category airplanes. The revision of the text in paragraph (b)(5) would provide the same terminology that is used in added new paragraph (b)(6).

Section 23.841 Pressurized Cabins

The proposed revision to § 23.841(a) would extend the cabin pressure requirements of current paragraph (a), which now apply to airplanes certificated for operation above 31,000 feet, to airplanes certificated for over 25,000 feet. Current 14 CFR part 25, JAR 25, and proposed JAR 23 include the same requirement as this proposal. This proposed requirement is intended to protect the airplane occupants from harm if a malfunction occurs at altitudes where symptoms of hypoxia occur, usually above 25,000 feet. Due to the increasing use of turbine powered engines, more part 23 airplanes will be approved for operations above 25,000 feet, thus exposing an increasing number or occupants, who may have some breathing difficulties, to these altitudes. The occupants should have the same protection provided by the airworthiness standards of part 25 and JAR 25.

Section 23.853 Passengers and Crew Compartment Interiors

This proposal would revise the section heading from "Compartment Interiors" to "Passenger and crew compartment interiors" for consistency with the introductory text of the section and to clarify the content of the section.

Section 23.855 Cargo and Baggage Compartment Fire Protection

This proposed new section would require the following:

Proposed paragraph (a) would require all sources of heat within each cargo and baggage compartment that are capable of igniting the compartment contents to be shielded and insulated to prevent such ignition.

Proposed paragraph (b) would require cargo and baggage compartments to be constructed of materials that meet the appropriate provisions of § 23.853(d)(3). Currently these requirements apply to commuter category airplanes and to the materials used in the compartments of these airplanes. The proposed new requirement would expand this applicability to the cargo and baggage compartments of all part 23 airplanes. In effect, the proposed new requirement would require materials that are self-extinguishing rather than flame resistant as currently required under § 23.787(d).

Proposed new paragraph (c) would add new fire protection requirements for cargo and baggage compartments for commuter category airplanes. The proposed rule would require on of the following alternatives: (1) Either the compartment must be located where pilots seated at their duty station would easily discover the fire or the compartment must be equipped with a smoke or fire detector system to warn the pilot's station. The compartment must also provide access to the compartment with a fire extinguisher. (2) The compartment may be inaccessible, but must be equipped with a fire detector system that warns the pilot station, and the compartment must have ceiling and sidewall floor panels constructed of materials that have been subjected to and meet the vertical self-extinguishing tests of appendix F of this part. (3) The compartment must be constructed and sealed to contain any fire.

The proposed new section is necessary for several reasons. The proposals for additional requirements for commuter category airplane cargo and baggage compartments were developed after an examination of reported incidents of inflight fires and their causes. Although most of these incidents of inflight fires occurred on transport category airplanes, the reported sources of the fires showed that the fires originate from sources, such as matches in the pockets of clothing, that are as likely to be found on part 23 airplanes as on transport category airplanes. The same potential for inflight fires exists on commuter category airplanes and adequate protection should be provided.

The potential for inflight fires also showed a need to examine the flame resistant requirements of current § 23.787(d) and to consider requirements that would improve the fire protection on other categories of airplanes. As a part of this consideration, fire protection was discussed with certain airframe manufacturing representatives. Information provided in these discussions showed that materials that meet self-extinguishing flame requirements are available at about the same cost as materials that meet flame resistance requirements. Based on a review of the fire incidents and the information on availability of improved materials, the proposal for § 23.855(b), which would replace current § 23.787(d), would require self-extinguishing materials to be used in the cargo and baggage compartments of all part 23 airplanes.

Section 23.867 Electrical Bonding and Protection Against Lightning and Static Electricity

This proposed revision would change the heading that precedes the section from "Lightning Evaluation" to "Electrical Bonding and Lightning Protection." It would also revise the section heading from "Lightning protection of structures" to "Electrical bonding and protection against lightning and static electricity." The proposed revisions more accurately clarify the content of the section.

Section 23.1303 Flight and Navigation Instruments

The lead in for § 23.1303(a) would be revised to clarify that the instruments required by this section are the minimum ones required. Also, § 23.1303(d) would add a requirement for those airplanes whose performance must be based on weight, altitude, and temperature to be equipped with a free air temperature indicator. A new sentence added to § 23.1303(e)(2) would state that nuisance overspeed warnings should not occur at lower speeds where pilots might ignore the warning. A new paragraph (f) would propose requirements for attitude instruments that include a means for flightcrew members to adjust the reference symbol. Finally, it would add a new paragraph (g) to define certain specific instruments required for a commuter category airplane.

The proposal for § 23.1303(e)(2) was developed following a Joint Aviation Authority recommendation that the warning should not occur below the maximum operating limit speed (V_{MO}/M_{MO})/ To determine the effect that this recommended V_{MO}/M_{MO} limit would have on the design of overspeed warning devices, the FAA contacted several equipment manufacturers. These manufacturers responded that it would be possible to establish a lower limit at V_{MO}/M_{MO}, but that the design changes needed to ensure that the warning occurred between the presently required upper limit and the recommended lower limit would be very expensive.

The FAA notes that no known safety problem justifies that cost of these design changes. However, the FAA is also aware that if warnings of any type occur when the pilots know that no particular problem exists, such warnings may become a nuisance. If warnings become a nuisance, a pilot may disregard a warning when the airplane is approaching a flight speed where an unsafe flight condition may occur. Regulatory action is therefore needed to ensure that the warning will occur within appropriate speed limits. Proposed § 23.1303(e)(2) would require manufacturers to establish a lower speed limit so that nuisance overspeed warnings will not occur. The manufacturer would be required to show that this limit is appropriate for the airplane design but would not be required to set this lower limit at one

specific speed, such as V_{MO}/M_{MO}, which would be costly to achieve.

A new § 23.1303(f) is proposed because attitude instruments are available that provide a means accessible to the flightcrew members, for adjusting the reference symbol through ranges that could result in unsafe pitch angles in small airplanes. These instruments were developed for airplanes that use high pitch angles for approved climb or descent gradients. By permitting these airplanes to use instruments that can be adjusted for these higher pitch angles, pilots are able to maintain the design gradients using an instrument that provides a normal indication at that pitch.

If such attitude instruments are installed in small airplanes, pilots could adjust the reference symbol to ranges that could result in unsafe pitch angles. The recommendation showed that some instruments can be adjusted to result in pitch angles that are nearly the same as the pitch angle that many small airplanes achieve before stalling. To preclude potential cases of unwanted pitch adjustments of attitude instruments installed in small airplanes, § 23.1303(f) proposes to limit the adjustment range to that limit that is needed for parallax correction.

Proposed new § 23.1303(g) would identify specific instruments, and limits of those instruments, required for commuter category airplanes. When the JAA initiated their consideration of commuter category airplanes, one of the proposals they received recommended adding the instrument requirements of § 25.1303 to part 23 for commuter category airplanes. In considering this recommendation, a review of the requirements showed that many instruments required under § 25.1303 are presently required by the operating rules. In addition, § 23.1583(h) requires a list of the equipment that must be installed for the kinds of operation for which the airplane is approved. Based on the review, it was determined that many of the requirements in § 25.1303 would be redundant, and the recommendation was not accepted.

In considering a portion of the recommendation to require a third attitude instrument, the FAA noted that § 91.531(a)(3) requires a commuter category airplane of ten or more passengers to be operated with a second-in-command and that § 23.1321 requires flight and navigation instruments for each required pilot. Accordingly, two attitude instruments are required for a ten passenger, IFR approved commuter category airplane. Service experience has shown that failures of an attitude instrument system can occur where there will be a time period in which the indicator appears to be working but is providing incorrect information. During such a failure of one instrument in an airplane equipped with only two instruments, the pilots may have difficulty determining which instrument to follow, and hazardous flight attitudes may result. A third attitude instrument would allow the crew to retain reliable attitude information at all times, and thus the proposed rule would require a third attitude instrument for commuter airplanes operated by two pilots.

Section 23.1307 Miscellaneous Equipment

This proposal would remove the requirement of § 23.1307(a) which is being added to § 23.785. The discussion of § 23.785 covers this change.

Also, the provisions of § 23.1307(b)(1), (b)(2), and (b)(3), are being removed from § 23.1307. These requirements have been previously added to §§ 23.1361, 23.1351, and 23.1357, respectively; therefore, they are redundant and may be removed. The designator for paragraph (c) has also been removed from the remaining text of this section.

Section 23.1309 Equipment, Systems, and Installations

Proposed new § 23.1309(a)(4) would correct an inadvertent omission that occurred when the FAA issued Amendment No. 23–41 (55 FR 43306, October 26, 1990). The omitted requirement was adopted by Amendment No. 23–34 as a portion of § 23.1309(d) and read: "In addition, for commuter category airplanes, system and installations must be designed to safeguard against hazards to the airplane in the event of their malfunction or failure." (52 FR 1833, January 15, 1987.) To correct this oversight, and to continue the single fault provision of this paragraph, § 23.1309(a)(4) is being proposed.

Section 23.1311 Electronic Display Instrument Systems

This proposal would revise § 23.1311 to remove redundant requirements and to clarify which secondary instruments are required and the visibility requirements for these instruments. When § 23.1311 was adopted by Amendment No. 23–41 (55 FR 43306, October 26, 1990), several nonsubstantive changes were made to the proposals in Notice No. 89–6 (54 FR 9345, March 6, 1989) to remove the redundancy included in the notice. In the process certain provisions, such as the one that permitted the installation of mechanical secondary instruments, were inadvertently omitted from the final rule. Since the final rule, discussions with airplane manufacturer representatives have shown that the requirements defining the instrument panel location where secondary instruments may be installed are also not clear. Accordingly, the FAA is proposing to revise this section to correct and clarify these portions.

Current § 23.1311(a), which requires electronic display indicator installations that are independent to each pilot station, would be deleted because it is redundant with § 23.1321(a). Section 23.1321(a) requires that each flight, navigation, and powerplant instrument for use by any required pilot shall be located so that any pilot seated at the controls can monitor the instruments with minimum head and eye movement. As stated in the preamble of Notice No. 89–6 (54 FR 9345, March 6, 1989) regarding the proposed revision to § 23.1321, "This revision also clarifies the rule relative to instrumentation that must be provided for each pilot required for type certification or by the applicable operating rules. If a pilot is required by any applicable requirement, then that pilot must be provided all instrumentation required for any operations for which the airplane is approved." Accordingly, the requirements of current § 23.1311(a) would be removed.

In place of current paragraph (a), proposed § 23.1311(a) would be a revision of current paragraph (c) that would clarify what instruments are required and the visibility of those instruments. Proposed new § 23.1311(a)(1) would require electronic display instrument installations to meet the arrangement and visibility requirements of § 23.1321(a).

Proposed § 23.1311(a) (2), (3), and (4) would be redesignated with no changes from current § 23.1311(c) (1), (2), and (3).

Proposed § 23.1311(a)(5) would continue the requirement of § 23.1303(c) for a magnetic direction indicator and, in addition, would require either an independent secondary mechanical altimeter, airspeed indicator, and attitude indicator or individual electronic display indicators for the altimeter, airspeed, and attitude that are independent from the airplane's primary electrical power. These secondary instruments may be installed in panel positions other than the primary location as long as the selected location allows the pilot to properly monitor the instruments and control the airplane.

The substance of proposed paragraph (a)(5) is both a substantive change and a combination of the current § 23.1311(b), which states that certain electronic display indicators must be independent of the airplane's electrical power system, and current § 23.1311(c)(4) which requires independent secondary attitude and rate-of-turn instruments and specifies the location of those instruments. Proposed § 23.1311(a)(5) would delete the requirement for a rate-of-turn instrument (in current § 23.1311(c)(4)) and specify that the required secondary instruments are those that provide altitude, airspeed, magnetic direction, and attitude. The information that would be provided by a secondary rate-of-turn instrument would not appreciably add to the safe operations of the airplane if the pilot has the information provided by the secondary attitude instrument.

Current § 23.1311(b) requires that electronic display indicators required by § 23.1303 (a), (b), and (c) be independent of the airplane's electrical power system. The original intent of the requirement for secondary instruments, as stated in Notice No. 89–6, was to require the installation of either mechanical instruments or independent electronic display indicators powered by a source independent of the airplane's electrical system. However, the current rule does not clearly state this and does not address the installation of mechanical instruments. Proposed § 23.1311(a)(5), would allow either secondary electronic display indicators or mechanical instruments to provide a crew with information essential for continued flight and landing in the event of failure in the airplane's electrical power system.

Current § 23.1311(c) (5) and (6) would be redesignated as § 23.1311(a) (6) and (7) without change.

Proposed new § 23.1311 (b) and (c) would continue the requirements of current § 23.1311 (d) and (e) without change.

Section 23.1321 Arrangement and Visibility

The proposed revision to § 23.1321(d) would remove the wording that limits the instrument location requirement to airplanes certificated for flight under instrument flight rules or airplanes weighing more than 6,000 pounds. Instruments are for the pilot and should be located near that pilot's vertical plane of vision without regard to what flight rules are approved for the airplane's operation or the maximum weight of the airplane.

Section 23.1323 Airspeed Indicating System

The proposed new § 23.1323(c) would add a requirement that each airspeed indicating system design and installation should provide positive drainage of moisture from the system. This proposal is consistent with the provisions required for a static system by § 23.1325(b).

If moisture enters, or accumulates in, an airspeed indicating system, that moisture could cause erroneous airspeed indications or the complete loss of airspeed information. The resulting loss of accurate airspeed information would be hazardous to the operation of the airplane; therefore, to assure the safety of the airplane, the FAA would need to apply the more general airworthiness requirements of §§ 23.1301 and 23.1309 to such a system and require provisions for drainage of moisture. Accordingly, this proposed revision of the airspeed indicating systems requirements only clarifies the criteria that must be applied to airspeed indicating systems.

To better organize the requirements that are applicable to the airspeed systems on all airplane categories and those that would be additional requirements for the airspeed systems of commuter category airplanes, the FAA proposes to redesignate existing paragraphs (c) and (e), respectively, as paragraphs (e) and (d). By this redesignation, paragraphs (a), (b), (c), and (d) would apply to all airplanes, and paragraphs (e) and (f) would include additional requirements applicable to commuter category airplanes.

The proposal for redesignated paragraph (e) would also remove the words "in flight and" from the first sentence of that paragraph. This would remove the requirement for the airspeed indicating system to be calibrated in flight. The requirement for an in flight calibration is provided in paragraph (b). Proposed redesignated paragraph (e) would apply to the calibration needed to determine the system error during the accelerate-takeoff ground run.

As identified in the background section of this notice, the FAA is issuing additional notices that address proposed changes to the requirements for powerplant, flight, and airframe. Proposed revisions to subpart G in the flight NPRM include placing all of the requirements for what must appear in the Airplane Flight Manual (AFM) in that subpart. With the proposals to revise the AFM requirements, the flight NPRM also proposes that the requirement in existing § 23.1323(d) (to show the relationship between IAS and CAS in the AFM) be added to § 23.1587 as proposed new paragraph (d)(10). Because the AFM requirement would be added to § 23.1587, it no longer needs to appear in § 23.1323. Accordingly, this notice proposes to remove the text of existing § 23.1323(d).

Proposed new § 23.1323(f) would provide that, on those commuter airplanes where duplicate airspeed indicators are required, the airspeed pitot tubes must be located far enough apart so that both tubes will not be damaged by a single bird strike.

Section 23.1325 Static Pressure System

Current § 23.1325(b)(3) establishes certain static pressure system requirements for airplanes that encounter icy conditions. Current § 23.1325(g) exempts from the requirements of (b)(3) airplanes that are prohibited from flight in instrument meteorological conditions in accordance with § 23.1559(b). After the adoption of § 23.1325(g), it came to the FAA's attention that there are conditions other than instrument meteorological conditions where icing may be encountered and, therefore, that this paragraph should also exempt from the provisions of § 23.1325(b)(3) airplanes that are prohibited from flight in icing conditions. Accordingly, § 23.1325(g) would be revised to read, "For airplanes prohibited from flight in instrument meteorological or icing conditions."

As indicated in the background section of this notice, the FAA will issue additional notices that will address proposed changes to the requirements for powerplant, flight, and airframe. Revisions to Subpart G in the flight notice will propose to place all of the requirements that specify what must appear in the AFM in that subpart. With the proposals to revise the AFM requirements, the flight notice will also propose that § 23.1325(f) be removed and the results of the altimeter system calibration would be required by § 23.1587.

Section 23.1326 Pitot Heat Indication System

Proposed new § 23.1326 would require the installation of a pitot tube heat indicating system on those airplanes required to be equipped with a heated pitot tube. Heated pitot tubes ensure that moisture will not freeze in the tube and block or partially block the airspeed indicating system. Such blockage would result in the pilots receiving incorrect flight data with possibly disastrous results.

Due to advancements in technology, many part 23 airplane installations now utilize equipment whose data sources are critical to the accurate and dependable operation of that equipment. The heated pitot tube is one such data source. The pitot heat indicating system will advise the pilots of any inoperative heating element in the pitot tube and that subsequent inaccuracies may result.

Part 23 airplanes certificated for flight under instrument flight rules or for flight in icing conditions are required by current § 23.1323(e) to have a heated pitot system or an equivalent means of preventing an airspeed indicating system malfunction due to ice accumulation. This proposal would require such airplanes equipped with a heated pitot tube to be equipped with a pitot tube heat indicating system. This requirement will provide greater assurance that the pilots will not be dangerously misled by faulty flight instrument indications caused by pitot tube icing.

When pitot tube heat indicating system requirements were added to part 25, the FAA noted the occurrence of at least one accident and several incidents in which an airspeed indicating error occurred that might have been avoided if a pitot tube heat indicating system had been installed. Part 23 airplanes operate at lower airspeeds and over shorter distances that do part 25 airplanes; therefore, their exposure to moisture and temperature conditions where icing may occur is higher than it is for transport category airplanes. Because of this environmental exposure, the potential for an inoperative heated pitot tube becoming a hazard to part 23 airplanes is greater.

This proposed requirement also responds to National Transportation Safety Board (NTSB) recommendation A–92–85, which recommends requiring a modification to certain part 23 airplanes to provide for a pitot heat operating light similar to the light required by § 25.1326 for transport category airplanes. NTSB issued the safety recommendation, among others, as a result of a special investigation and analysis of a series of fatal accidents that occurred from May 31, 1989, through March 17, 1991.

Section 23.1329 Automatic Pilot System

New § 23.1329(b), adopted by Amendment No. 23–24 (58 FR 18958, April 9, 1993), does not state clearly that stick controlled airplanes must be equipped with the same autopilot quick release controls that are required for airplanes with control wheels. This proposed revision of § 23.1329(b) would clarify that a quick release control must be installed on each control stick of an airplane that can be operated from either pilot seat.

Section 23.1337 Powerplant Instruments Installation

This proposal would revise the heading of this section to reflect the powerplant instrument installation requirements that it contains. The difference between this section and § 23.1305 is clarified by this change.

Section 23.1337(b) would be revised by removing the wording that authorizes installation of only those fuel indicators marked in gallons and pounds. In countries that use the metric system, other acceptable units of measure for marking fuel indicators are used. This proposed revision would allow the use of any appropriate measurement unit.

Section 23.1337(b) would also be revised by adding the word "usable" to the first sentence of this section. This revision is consistent with the requirements of § 23.1337(b)(1), which requires the fuel quantity indicator to be calibrated to read "zero" when the fuel in the tank is equal to the unusable fuel determined under § 23.959.

Proposed new § 23.1337(b)(4) would require a "means to indicate" the amount of usable fuel in each tank when the airplane is on the ground. This requirement would ensure that a reliable means is provided for the pilot to determine before takeoff that the amount of fuel that is in the airplane is adequate for the intended flight. The ability to make this preflight determination will help reduce the number of accidents that have resulted from fuel starvation. This proposal, which is patterned after § 23.1337 (d) and (d)(1), would not require a separate fuel indicating system. The means to determine the amount of fuel while on the ground may be provided by a calibrated dipstick, separate markings on the inflight fuel indicator, or any other acceptable means selected by the manufacturer. Accordingly, this proposal would contribute to the safe operation of the airplane and would not appreciably add to the cost of the airplane design.

Section 23.1351 General

The proposal would revise current § 23.1351 by removing portions of paragraphs (b)(2) and (b)(3) and by removing all of paragraph (b)(4). The removed requirements are applicable to alternators that depend upon the battery for initial excitation or for stabilization. This revision responds to a Joint Aviation Authority recommendation to remove the provisions that allow a battery failure to result in the loss of the alternator. Information in this recommendation showed that self-excited alternators are now available for installation on newly certificated airplanes. The FAA has verified that self-excited alternators are now available; therefore, there is no longer a need for the regulations to address alternators that depend upon a battery for initial excitation and stabilization.

Revised § 23.1351(c)(3) would require an automatic means for reverse current protection. Reverse current protection is accomplished by means that automatically detect changes in the current. The proposed revised wording would more accurately define this function and the equipment that would accomplish the protection.

Finally, § 23.1351(f) would be revised by adding a requirement that would require the ground power receptacle to be located where its use will not result in a hazard to the airplane or to people on the ground using the receptacle.

Section 23.1353 Storage Battery Design and Installation

Proposed new § 23.1353(h) would require that, in the event of a complete loss of the primary electrical power generating system, airplane battery capacity must be sufficient to supply at least 30 minutes of electrical power to those loads essential to the continued safe flight and landing of the airplane.

This proposal is not limited to airplanes that are approved for any particular type of operation. Although the battery capacity needed for an airplane approved for day visual flight rules (VFR) operations would be much less than the capacity for an airplane approved for day/night instrument flight rules (IFR) operations, the same level of safety should be provided for all airplanes. While this proposal would add an additional requirement to part 23 for normal, utility, acrobatic, and commuter category airplanes, in practice this requirement to provide a battery capacity sufficient to supply at least 30 minutes of electrical power is not new to many airplane manufacturers. Certain other countries in which part 23 airplanes have been certificated have requirements for such a 30-minute battery capacity. Manufacturers' experience with these requirements has shown that the only design impact that results from complying with these requirements is the need to install a battery with greater capacity than might otherwise be installed. Experience has also shown that a load shedding procedure may be necessary for certain airplanes. No other

airplane design changes would be needed.

Despite the above referenced experience record, this requirement would be new to some manufacturers and they may have questions on how it would be applied. For that reason, this notice discusses compliance considerations that have emerged from experience based on substantively equivalent requirements.

This compliance experience has shown that the rating of the battery selected for the airplane should be sufficient to cover the loss of capacity that would occur with battery age and the reduced capacity that results from a realistic state of charge, which may be less than a full charge. Using a design battery capacity that is only 75 percent of the battery nameplate rating would be an acceptable way of accounting for these losses.

In addition to determining the battery rating that would be needed, the manufacturer would also need to determine the functions that would be necessary for 30 minutes of safe flight and the landing of the airplane. Again, experience has identified several functions. For a day VFR approved airplane, no functions may require battery power; however, it may be necessary to supply power for certain communication capacities or, if the airplane has electrically powered retractable landing gear, power may be required to lower the gear. Providing a secondary means for lowering the gear would be an acceptable alternative to providing electrical power or battery power for this function.

For other types of operating approvals, providing power for the following functions and equipment should be considered:

1. Any required flight and navigation instruments. Air driven instruments that would function over the required period can also be accepted for this function.
2. Cockpit and instrument lighting.
3. For IFR and icing approvals, power for the heated pitot tube.
4. For radio communication, usually one VHF communication system with power for three to five minutes of transmission would be acceptable.
5. Functions needed for safe night flight and night landing of the airplane.
6. Electronic engine ignition systems.
7. Any functions that cannot be readily shed following the loss of generator power.
8. Engine inlet heat or deicing protection required for normal operation of the airplane.

Although power for the listed functions may provide for the safe operation and landing of most airplanes, individual airplane designs may require the consideration of additional functions.

In applying these rules it may be assumed that airframe and engine icing protection equipment would not be operating at the time of the generator system failure. Power for icing protection would not be required if the icing protection equipment is not required for the normal operation of the airplane.

This proposal would require additional battery capacity and would not alter or supersede any other requirements in this part for separate or dedicated emergency power supplies. When requirements such as those in current § 23.1331(a) or in proposed § 23.1311(a)(5) are applicable to the airplane design, these power supplies are required to provide a needed level of safety for that function; therefore, that power source must be supplied.

Section 23.1359 Electrical System Fire Protection

Proposed new § 23.1359 would require smoke and fire protection for electrical system installations. The provisions of § 23.1359(a) of this proposal state that electrical systems must meet the applicable requirements of §§ 23.863 and 23.1182.

Proposed § 23.1359(b) would require that the electrical systems components installed in designated fire zones and used during emergency procedures be fire resistant. This provision is needed to clarify the requirements for electrical system components that may be installed in the designated fire zones identified in § 23.1181.

Finally, § 23.1359(c) provides burn criteria for electrical wire and cables. A proposed revision to appendix F of part 23 that would add appropriate wire testing criteria is included in this notice.

This proposed burn criteria for wire is necessary because of the increased use of electrical systems in the design of part 23 airplanes and the resulting increase in the amount of electrical wire being installed. This increased use results in the need to ensure that wire insulating material does not become the source of an in-flight fire and/or that it does not propagate a fire from another source. The electrical wire burn requirements in this proposal, along with the testing identified in revised appendix F, would ensure that installed electrical wire has insulating material that reduces the possibility of hazardous in-flight fires.

Section 23.1361 Master Switch Arrangement

To harmonize with the JAR this proposal would revise § 23.1361(c) by making an editorial change to remove the last two words of the paragraph that read "in flight."

Section 23.1365 Electrical Cables and Equipment

This proposal would revise § 23.1365(b) and would add three new paragraphs.

Section 23.1365(b) would be revised in relation to proposed new § 23.1359(c), which would require self-extinguishing insulated electrical wires and cables. Current § 23.1365(b) requires that cable and associated equipment that would overheat in the event of circuit overload or fault must be flame resistant and may not emit dangerous quantities of toxic fumes. The proposed revisions to § 23.1365(b) would remove the reference to electrical cables from the flame resistance requirement since the cables would be required to have self-extinguishing insulation under § 23.1359(c). The requirement for electrical cables and the associated equipment that would overheat to not emit dangerous quantities of toxic fumes has been retained.

The text of § 23.1365(b) that includes the words "at least flame resistant " would also be revised by removing the words "at least". The removed words implied that there were burn requirements, other than the ones in this section, that must be met.

The three paragraphs that would be added by this proposal would require: (1) The identification of electrical cables, terminals, and connectors; (2) the protection of electrical cables from damage by external sources; and (3) installation criteria for cables that cannot be protected by a circuit protection device.

As identified in the discussion of proposed § 23.1359, there is an increasing use of electrical systems in part 23 airplanes. The resulting increase in the number of electrical wires used in part 23 airplanes makes proper installation difficult. The proposal for electrical cable identification would provide better assurance that the cables will be correctly installed initially and correctly reinstalled when airplane maintenance or modifications are accomplished. The other proposed new requirements would provide installation criteria that will ensure the protection of cables under circumstances that can be expected from the increased use of electrical systems.

Section 23.1383 Taxi and Landing Lights

The landing light requirements of § 23.1383 would be revised by adding taxi lights to this section. When the landing light requirements were included in the normal, utility, acrobatic, and commuter category requirements, the same lights were used for both night landing and taxiing of the airplane. Due to availability of different types of lights, separate lights are now frequently installed for landing and for taxiing. Including the word "taxi" in the heading would clarify that the requirements cover both kinds of lights.

Current § 23.1383(a), which requires the lights to be acceptable, would be deleted because it is unnecessary to state this. All lights that are found to meet the requirements of this section and other directly related airworthiness requirements are acceptable. The paragraphs would be redesignated accordingly.

Current § 23.1383(b)(3) requires that a landing light must be installed to provide enough light for a night landing. Proposed § 23.1383(c) would revise "night landing" to "night operation" since the requirements would also cover taxiing and parking. Proposed new paragraph (d) would require the lights to be installed so that they do not cause a fire hazard. This clarifies the need for such an evaluation.

Section 23.1401 Anticollision Light System

This proposal would revise § 23.1401 to require the installation of an anticollision light system on all part 23 airplanes. Current § 23.1401 requires an anticollision light system only if certification for night operations is requested. When the requirements for anticollision lights were first added to the Civil Air Regulations (CAR), part 3, in 1957, those requirements were needed to increase the conspicuity of the airplanes during night operations because of the increasing air traffic density and the newer airplanes' capability to attain higher speeds. At the time, the operating conditions did not show a need for such lights for daylight operations.

The number of airplanes that have been added to the fleet and the increasing speeds resulting from improved technology, especially the increasing use of turbine engines, now necessitates the conspicuity provided by anticollision lights for day operations as well. The FAA Accident and Incident data for the period 1984 through 1990 shows that 269 aircraft were involved in midair collisions in which 108 fatalities occurred. A review of this data shows that 234 of these aircraft were involved in accidents or incidents that occurred during VFR conditions and that 224 were involved in accidents or incidents during day operations. The other 10 were involved in operations at night or dusk. The reports on 35 aircraft did not identify the type of condition that existed.

Of the types of aircraft identified by the reports in this data, 60 were balloons, gliders, or other aircraft that were not certificated under part 23 and whose level of safety would not be changed by this proposal. When the data is revised by removing those reports, it shows that 209 small, part 23 airplanes operated under VFR conditions were involved in midair accidents or incidents and that at least 167 of these airplanes were being operated in day VFR conditions. Because the occupant capacity of all the aircraft in the data ranged from one to ten, it can be assumed that the fatality rate of .401 per aircraft (108 fatalities/269 aircraft) would be nearly the same for the 167 small airplanes operating in day VFR conditions as it was for the 269 aircraft. Based on this assumption, there would have been approximately 67 fatalities that occurred in these 167 small airplane accidents and incidents.

The reports do not show if the airplanes involved were equipped with or were using anticollision lights. They do show that a need exists to reduce the number of accidents. Requiring the installation of anticollision lights on all newly certificated airplanes and, as proposed by revised § 91.209 in this notice, requiring operation of anticollision lights during day operations would increase the airplane's conspicuity and contribute to a reduction in the number of accidents. Even if such action is only 25 percent effective, a review of the 6-year service history indicates that approximately 17 fatalities could be avoided in a similar 6-year period. Many manufacturers have realized the additional safety that can be provided by the increased airplane conspicuity of using anticollision lights and have elected to install an anticollision light system on all of the airplanes they produce. Therefore, most airplanes are now being manufactured with an installed anticollision light system, and the FAA expects that this proposal would not result in an economic burden on the aviation community.

Section 23.1431 Electronic Equipment

This proposal would add three new paragraphs to § 23.1431. Proposed new paragraph (c) would require that airplanes required to be operated by more than one flightcrew member must be evaluated to determine if the flightcrew members can converse without difficulty when they are seated at their duty stations. Accident investigations have shown that, in some instances, conversation between the flightcrew members was severely hindered by the noise level in the cockpit and that the inability to communicate contributed to the accident. If the required evaluation shows that the noise level does not impair conversation, no further action is required. However, if the evaluation shows that conversation will be difficult, an intercommunication system would be required.

Proposed new paragraph (d) would require that if installed communication equipment includes any means of switching from receive to transmit, the equipment must use "off-on" transmitter switching that will ensure that the transmitter is turned off when it is not being used. Transmitting equipment that remains in the transmit mode when not being used blocks the frequency being used and can create an unsafe condition by preventing other needed communication.

Proposed new paragraph (e) would require that if provisions for the use of communications headsets are provided, it must be demonstrated that flightcrew members can hear aural warnings when a headset is being used. Aural warnings are required to warn the pilot of a condition that necessitates the pilot's taking action; therefore, it is necessary to ensure that such warnings would be effective even when headsets are being used.

During the development of the proposed new requirements in paragraphs (c) and (e), the FAA considered proposing a requirement that compliance demonstrations should be conducted under actual cockpit noise conditions when the airplane is being operated. The FAA, however, ultimately determined that such a requirement could result in demonstrations conducted under more severe noise conditions than needed. Accordingly, no such requirement is being proposed. If the FAA determines in the future that noise conditions for demonstrations need to be specified, the FAA will define these conditions in advisory material.

Section 23.1435 Hydraulic Systems

Since the close of the comment period for the Small Airplane Airworthiness Review Program Notice No. 3 (55 FR 40598, October 3, 1990), now adopted by Amendment No. 23–43 (58 FR 18958,

April 9, 1993), the FAA has been involved in discussions of the installation of hydraulic accumulators that are permitted by § 23.1435(c). These discussions have shown that applicants are likely to find § 23.1435(c) difficult to understand because of the way it is worded. This notice would further revise § 23.1435(c) to clarify under what circumstances a hydraulic accumulator and reservoir may be installed on the engine side of any firewall.

Section 23.1447 Equipment Standards for Oxygen Dispensing Units

Proposed new § 23.1447(a)(4) would require that if radio equipment is installed in an airplane, flightcrew oxygen dispensing units must be designed to allow the use of communication equipment when oxygen is being used. If radio equipment is installed, that equipment cannot perform its intended function if the flightcrew is not provided the proper means for its utilization under all operating conditions, including operations when oxygen is being used.

This proposal would not require all flightcrew oxygen dispensing units to be equipped with communication equipment. Since an airplane may be operated in uncontrolled airspace, where two-way radio communication is not required and, at the same time, be at altitudes where oxygen is required for the flightcrew members, some airplanes have a crew oxygen system but no radio equipment. It would be inappropriate to require the flightcrew dispensing units of those airplanes to be equipped with communication equipment.

The proposed revisions to § 23.1447(d) would require the flightcrew oxygen dispensing units to be automatically presented before the cabin pressure altitude exceeds 15,000 feet or be the quick-donning type if the airplane is certificated for operation above 25,000 feet. The requirement in paragraph (e) for the passenger dispensing units to be automatically presented if the airplane is approved for operation above 30,000 feet has not been revised. The revision to paragraph (d) would provide the flightcrew and the airplane passengers the same level of safety as provided by other airworthiness standards. This proposed revision is also consistent with the proposed revision of § 23.841 in this notice.

Section 23.1451 Fire Protection for Oxygen Equipment

This proposed new section would specify that fire protection is needed for oxygen equipment installations. Section 23.1451 (a) and (b) would, respectively, prohibit the installation of oxygen equipment in designated fire zones and require that oxygen system components be protected from the heat from designated fire zones.

Proposed § 23.1451(c) would require oxygen equipment and lines to be separated from other equipment or to be protected in a manner that would prevent escaping oxygen from striking grease, fluids, or vapors. The impingement of pure oxygen on certain materials will lower their combustion point to a value where ignition will occur in ambient conditions thereby creating a potential source for an airplane fire. In one instance, an airplane was destroyed by fire that resulted when escaping oxygen impinged on lubricating material during maintenance of the airplane. The proposed new section would ensure that oxygen systems are protected to prevent fire hazards that can result from escaping oxygen.

Section 23.1453 Protection of Oxygen Equipment From Rupture

This proposed new section would clarify the rupture protection needed for oxygen system installation. Rupture protection for oxygen systems is currently required by the application of the structures load requirements of part 23. The addition of § 23.1453(a) would clarify the application of these load requirements and would identify the need to consider maximum temperatures and pressures that may be present. Section 23.1453(b) would identify the protection to be provided for high pressure oxygen sources and the high pressure lines that connect such sources to the oxygen system shutoff valves.

Section 23.1461 Equipment Containing High Energy Rotors

This proposal would revise paragraph (a) of this section to clarify that the requirements apply to high energy rotors included in an auxiliary power unit (APU). Following the addition of this section to part 23, the FAA issued a policy message that showed § 23.1461 was adopted to cover equipment such as APU's and constant speed drives that may be installed on small airplanes. The proposed revision of paragraph (a) will clarify the applicability of this section as identified in that policy material.

Appendix F

This proposal would revise appendix F to provide the procedures needed to test electrical wire to ensure that the wire meets the burn requirements of § 23.1359. It would also add procedures for meeting the 45 degree and 60 degree angle burn test requirement proposed for §§ 23.855(c)(2) and 23.1359(c), respectively. Paragraph (b) would be revised to clarify the specimen configuration that must be used in the testing procedures that are proposed to be added by this notice.

Section 91.205 Powered Civil Aircraft With Standard Category U.S. Airworthiness Certificates: Instrument and Equipment Requirements

Proposed new § 91.205(b)(11) would require that airplanes certificated under § 23.1401 of this notice be equipped with an anticollision light system for day VFR operations. Day VFR operations are discussed under § 23.1401 of this notice.

Section 91.209 Aircraft Lights

Proposed new § 91.209(b) would require that airplanes equipped with an anticollision light system be operated with the anticollision light system lighted during all types of operations, except when the pilot determines that, because of operating conditions, it would be in the interest of safety to turn the lights off.

Regulatory Evaluation, Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that would justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not "significant" as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

This section summarizes the costs and benefits of each provision of the proposed rule. Many of the provisions would impose either no cost or a negligible cost. Such provisions are

typically administrative, editorial, clarifying, relieving, or conforming in nature. In addition, the FAA holds that certain provisions have a potential safety benefit that can be achieved with no incremental cost, due primarily to the fact that this rule would apply to future certificated airplanes and retrofitting would not be required. All provisions of the proposed rule, including those with no or negligible costs, are summarized below. Only those provisions with non-negligible costs are further evaluated in the section that follows. The reader is directed to the full regulatory evaluation for additional information.

Section	Incremental cost	Benefit
Section 23.677 Trim systems	Negligible	Safety.
Section 23.691 Artificial stall barrier system	None	Administrative.
Section 23.697 Wing flap controls	$480 per certification and $100 per airplane for affected airplanes.	Nominal safety and relief.
Section 23.701 Flap interconnection	None	Clarification.
Section 23.703 Takeoff warning system	$240 per certification for evaluation. Where necessary, $5,120 per certification, $1,000 per airplane and $100 per year.	Nominal safety and relief.
Section 23.723 Shock absorption tests	None	Editorial.
Section 23.729 Landing gear extension and retraction system.	¶(e). None	Clarification.
	¶(g). Negligible, general practice	Minor; general practice.
Section 23.735 Brakes	¶(a). None	Editorial clarification.
	¶(c). None	Administrative.
	¶(e). $240 per certification	Minor safety.
Section 23.745 Nose/Tail wheel steering	None	Minor. Avoids special conditions.
Section 23.775 Windshields and windows	¶(a). None	Relieving.
	¶(c). None	Clarification.
	¶(h). Up to $350,000 per certification	Safety.
Section 23.783 Doors	¶(b). None	Minor safety.
	¶(f). $25 per airplane	Safety.
Section 23.785 Seats, births, litters, safety belts and shoulder harnesses.	None	Editorial organization.
Section 23.787 Baggage and cargo compartments	¶(a). $1 per airplane	Minor safety.
	¶(b). $60 per certification and up to $100 per airplane	Safety.
	¶(c). None	Clarification.
Section 23.791 Passenger information signs	$60 per certification, up to $200 per airplane, and a negligible effect on operating costs.	Safety.
Section 23.807 Emergency exits	¶(a)(4). Expected negligible	Minor safety.
	¶(b) and (b)(5). None	Clarification and editorial.
	¶(b)(6). Where chosen, $10,000 per certification and $500 per airplane.	Safety.
Section 23.841 Pressurized cabins	$1,000 per certification and $2,000 per airplane	Safety.
Section 23.853 Passenger and crew compartment interiors.	None	Editorial.
Section 23.855 Cargo and baggage compartment fire protection.	¶(a). Less than $40 per airplane	Minor safety.
	¶(b). Less than $200 per airplane	Safety.
	¶(c). Potentially as high as $1,800 per certification, $4,550 per airplane, and $100 per year.	Safety.
Section 23.867 Electrical bonding and protection against lightning and static electricity.	None	Editorial.
Section 23.1303 Flight and navigation instruments	Introduction. None	Clarification.
	¶(d). $500 per certification and $350 per airplane	Safety.
	¶(e)(2). None.	Minor safety.
	¶(f). None	Minor safety.
	¶(g)(1). Up to $2,000 per airplane	Safety.
	¶(g)(2). None	Minor safety.
	¶(g)(3). Up to $3,600 per certification and $7,000 per airplane.	Safety.
Section 23.1307 Miscellaneous equipment	None	Editorial and conforming.
Section 23.1309 Equipment, systems, and installations.	None	Minor safety.
Section 23.1311 Electronic display instrument systems.	None	Clarifying, editorial, and relieving.
Section 23.1321 Arrangement and visibility	None	Minor safety.
Section 23.1323 Airspeed indicating system	None	Minor safety.
Section 23.1325 Static pressure system	None	Relieving.
Section 23.1326 Pitot heat indication system	$2,800 per certification, $1,600 per airplane	Safety.
Section 23.1329 Automatic pilot system	None	Clarifying.
Section 23.1337 Powerplant instruments installation	Heading and ¶(b). None	Clarifying, relieving.
	¶(b)(4). Negligible	Safety.
Section 23.1351 General	¶(b). None	Administrative.
	¶(c)(3). None	Clarifying.
	¶(f). None	Minor safety.

Section	Incremental cost	Benefit
Section 23.1353 Storage battery design and installation.	Where necessary, up to $30 per five years capital, up to $10 per year operating, and $600 per certification.	Safety.
Section 23.1359 Electrical system fire protection	¶(a). None	Clarifying emphasis.
	¶(b). Negligible	Clarifying.
	¶(c). $240 per certification	Safety.
Section 23.1361 Master switch arrangement	None	Editorial.
Section 23.1365 Electrical cables and equipment	¶(b). None	Conforming editorial.
	¶(d). $4,400 per certification and $100 per airplane	Safety.
	¶(e). None	Minor safety.
	¶(f). Negligible	Minor safety.
Section 23.1383 Taxi and landing lights	None	Editorial update.
Section 23.1401 Anticollision light system	Where necessary, $2,400 per certification and $1,600 per airplane.	Safety.
Section 23.1431 Electronic equipment	¶(c). Where necessary, up to $1,200 per certification and $1,600 per airplane.	Safety.
	¶(d). Negligible. Included above	Minor safety.
	¶(e). None or negligible	Safety.
Section 23.1435 Hydraulic systems	None	Clarifying.
Section 23.1447 Equipment standards for oxygen dispensing units.	¶(a)(4). Up to $2,000 per airplane	Safety.
	¶'s (d) and (e). None	Minor safety.
Section 23.1451 Fire protection for oxygen equipment	None	Safety.
Section 23.1453 Protection of oxygen equipment from rupture.	$960 per certification	Safety.
Section 23.1461 Equipment containing high energy rotors.	None	Clarifying.
Appendix F to part 23—Test procedure	None. Considered above	Minor safety.
Section 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.	None	Safety, considered above.
Section 91.209 Aircraft lights	$25 per year per airplane	Safety, considered above.

Evaluation of Provisions With Non-Negligible Projected Costs

This section describes and evaluates those provisions of the proposed rule that are expected to impose costs that are not negligible.

Section 23.697 Wing Flap Controls

Proposed new § 23.697(c) would provide safety standards for the wing flap control lever designs installed in airplanes that use wing flap settings other than fully retracted when showing compliance with § 23.145. The FAA estimates that an aerospace engineer could design the flap control lever to meet the proposed requirement in 8 hours at a burdened rate of $60 per hour, totalling $480 per certification. The control lever itself would impose an incremental cost, including installation, of approximately $100 per airplane.

The nominal benefits of this provision would derive from the increased safety afforded the pilot in positively selecting the proper flap setting to maintain longitudinal control. In fact, if a flap position other than fully retracted were needed to maintain longitudinal control: (1) That position would be necessary to prevent an unsafe condition, (2) the airplane would not be certificated under that design, and (3) the airplane would have to be redesigned so that intermediate flap positions would not be needed for control. Proposed paragraph (c) would allow the identification of an intermediate flap position and the positive means of selecting that position. This alternative would rectify the unsafe condition without requiring the manufacturer to redesign the airplane.

Section 23.703 Takeoff Warning System

This proposed new section would require a takeoff warning system on some commuter category airplanes. The requirement would be applicable if the flight evaluation shows that an unsafe takeoff condition would result if lift devices or longitudinal trim devices are set to any position outside the approved takeoff range. If the evaluation shows that no unsafe condition would result at any setting of these devices, a takeoff warning system would not be required. For those airplanes on which a warning system must be installed, the proposed rule would provide requirements for the installation of the system.

The FAA estimates that an evaluation to determine whether a takeoff warning system would be needed would cost $240 (4 hours of engineering at a burdened rate of $60 per hour). Where needed, the integration design of a warning system would cost $2,400 (40 hours at $60 per hour). In addition, an incremental 4 hours of flight testing at a cost of $2,720 ($500 per hour for two test pilots and $180 per hour for fuel) would be needed to demonstrate the system's performance. The FAA estimates that the system, including acquisition, wiring, micro switches, and labor, would add approximately $1,000 to the cost of each airplane required to have one. Maintenance of such a system would cost approximately $100 per year. The FAA solicits comments from interested parties concerning the expected certifications that would require a takeoff warning system and the concomitant costs to acquire, install, and maintain them.

The nominal benefits of this proposal would derive from the increased safety provided by the takeoff warning system that would activate whenever lift or longitudinal trim devices are not set within their approved takeoff ranges. In fact, if an evaluation showed that positions of the lift or longitudinal trim devices could create an unsafe condition on takeoff, the manufacturer would be required, under existing regulations, to redesign the devices so that the unsafe positions could not be obtained. The proposed section would provide relief by allowing the applicant to install a warning system rather than redesigning the trim device(s).

Section 23.735 Brakes

Proposed new § 23.735(e), applicable to commuter category airplanes, would

require establishing the minimum rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly. Section 23.45 provides that the determination of the accelerate-stop distance for commuter category airplanes be made in accordance with the applicant's procedures for operation in service. This proposed requirement is needed to ensure that the brakes will perform safely under accelerate-stop conditions.

Under the proposed rule, manufacturers of commuter airplanes could determine the kinetic energy absorption requirements either through a conservative rational analysis of the sequence of events expected during a rejected takeoff or by using a formula presented in proposed new § 23.735(e)(2). It is projected that the necessary determination would cost $240 based on four hours of engineering at a burdened rate of $60 per hour. The potential benefits of the proposal would derive from the added safety that would be provided by establishing beforehand the minimum necessary kinetic energy capacity rating of each main wheel brake assembly under rejected-takeoff conditions.

Section 23.775 Windshields and Windows

Introductory text and paragraph (h)(1) would be added to require that commuter category windshield panes that are directly in front of the pilots be able to withstand the impact of a two pound bird at maximum approach flap speed. By requiring full protection against the strike of a two-pound bird at approach speed, additional protection would also be provided if the airplane strikes a larger bird or strikes a bird at a higher speed.

Proposed § 23.775(h)(2) would further require the panels of the windshield to be so arranged that, if one is damaged, other panels would remain to provide visibility for continuous safe flight and landing.

The potential costs of proposed § 23.775(h) would vary depending on the circumstances of the affected manufacturer. Industry sources estimate that the total nonrecurring cost per model would range from $250,000 to $350,000, consisting of: (1) Up to $200,000 for a bird strike test article ("bird gun") if the manufacturer does not have one; and (2) up to $150,000 of time and materials costs for the actual testing.

A manufacturer that has a bird strike test article would not incur additional capital test costs. Most manufacturers would incur up to $150,000 in time and materials costs for the actual testing, but even these costs would be mitigated by the existing need of most manufacturers to perform such tests for export sales to JAA member countries.

Industry sources estimate that there would be no identifiable increment in design or tooling costs since the windshield would be an integral part of the initial design. Similarly, little or no recurring costs per airplane (incremental materials, installation, or weight) are projected since it is reasonable to assume that the pressure load, as compared to bird strike resistance, would be the controlling factor in the windshield design strength.

The benefit of the proposed rule is the incremental protection against bird strikes that would be afforded to commuter category airplanes. The FAA has reviewed International Civil Aviation Organization (ICAO) data on bird strikes that occurred on member-country airplanes of 19,000 pounds or less than 1981 through 1989. These data show that approximately 550 strikes occurred and that one out of seven strikes hit the windshield. The data show that:

1. Almost 52 percent of the strikes occurred at altitudes of less than 100 feet, and 26.7 percent occurred between 101 and 1000 feet.

2. Eighty-five percent of the strikes occurred at airspeeds of 150 knots or less.

3. Where bird types were reported, 27.6 percent of the strikes involved small birds and 58.6 involved medium size birds (2 pounds or less).

4. Incidents where the airplane was damaged showed that 16.9 percent resulted from small bird strikes and 64 percent resulted from medium size bird strikes.

These data show that most bird strikes occur at takeoff and landing altitudes and airspeeds, and that birds weighing two pounds or less are struck most often. The standards of the proposed provision are based on these statistics. Few fatalities and injuries resulted from the bird strikes reported in the ICAO data. Similarly, a review of NTSB accident records between 1982 and 1992 revealed no U.S. accidents resulting from bird strikes to the windshields of commuter category airplanes. As a result, the FAA is not able to illustrate the justification of this provision on the basis of historical accidents. Instead, the standards are being proposed based on the expert recommendations of the ARAC. It is also noted that this standard will be applied in JAA member countries and that U.S. manufacturers wishing to export to those countries would be required to meet the standard in any event.

Given that this provision cannot be quantitatively supported on the basis of past accidents alone, the FAA expressly requests public input and comments on its expected costs and potential benefits.

Section 23.783 Doors

Proposed new paragraph (f) would require that the locks on lavatory doors, if installed, be designed so that they would not trap occupants. Lavatory door locks used in transport category airplanes (see § 25.783) meet the requirements of this proposed rule. The FAA estimates that the incremental cost of this provision would be no more than $25 per lock. The proposal would reduce the likelihood that occupants would be trapped in a locked lavatory, both in emergency and non-emergency situations.

Section 23.787 Baggage and Cargo Compartments

The proposed rule would extend to normal, utility, and acrobatic airplanes the existing commuter requirement to prevent baggage from hazardous shifting. The FAA estimates that an aerospace engineer would be required for 1 hour, at a burdened cost of $60 per hour, to analyze the subject loads that would need to be constrained. Tiedowns would cost approximately $50 per baggage compartment, or no more than $100 per airplane. These additional costs would apply only to normal, utility, or acrobatic airplanes since commuter category airplanes are already subject to the requirement under the existing rule.

The potential benefits of the proposed provision include the reduced likelihood: (1) That baggage compartments would be overloaded, (2) that stowed baggage would shift dangerously, and (3) that essential co-located equipment or wiring would be damaged.

Section 23.791 Passenger Information Signs

This proposed new section would require at least one illuminated sign notifying all passengers when seat belts should be fastened. The requirement would apply only to airplanes where flightcrew members could not observe occupant seats or where the flightcrew compartment is separated from the passenger compartment. The signs would have to be legible to all seated passengers and be operable from a crewmember station.

The FAA estimates that an aerospace engineer could design the required sign(s) in 1 hour, at a burdened rate of $60 per hour. The sign would cost approximately $200 per airplane,

including parts and installation costs. Maintenance costs for bulb replacement would be negligible. The weight penalty associated with the light system would also be minor (no more than 2 pounds).

The safety benefits of the proposed change would derive from the increased likelihood that passengers would know when their seat belts should be fastened.

Section 23.807 Emergency Exits

Proposed new § 23.807(a)(4) would provide the same hazard protection for a person using an emergency exit as that provided by proposed § 23.783(b) for a person who uses a passenger door. Emergency exits could not be located with respect to a propeller disk or any other hazard in a manner that would endanger persons using that exit.

The FAA holds that no incremental cost would be incurred to meet the standards of the proposed provision for newly certificated airplanes. However, this notice specifically requests that interested parties submit comments on the potential costs and methods of compliance that manufacturers would choose to comply with this proposed requirement.

The proposed revision to § 23.807(b)(5) would editorially revise the current egress requirements for acrobatic airplanes. New § 23.807(b)(6) would establish similar egress standards for utility category airplanes that are certificated for spinning. Industry sources estimate that an aerobatic, quick-release door would cost an incremental $10,000 in engineering design per affected airplane model and an additional $500 per production airplane. Little or no additional weight is expected. These costs would apply only in cases where the manufacturer determines that the marketplace return of a combination type certificate would outweigh the additional costs of design and production.

Section 23.841 Pressurized Cabins

The proposed revision to § 23.841(a) would extend the cabin pressure requirements of current paragraph (a), which now apply to airplanes certificated for operation above 31,000 feet, to airplanes certificated for operation above 25,000 feet. Current part 25, JAR 25, and proposed JAR 23 include the same requirement proposed here. This proposed requirement is intended to protect airplane occupants from harm if a malfunction occurs at altitudes where symptoms of hypoxia occur, usually above 25,000 feet.

For airplanes that will be certificated for maximum altitude operation between 25,000 feet and 31,000 feet, the proposal would necessitate two additional pressure altitude regulators and associated plumbing. Industry sources estimate that the proposed requirement would cost an incremental $1,000 in engineering design per affected airplane model and $2,000 per production airplane. Any additional weight would be negligible.

The benefits of the proposal would derive from the incremental protection against hypoxia afforded to occupants of airplanes certificated for maximum altitude between 25,000 and 31,000 feet. Due to the increasing use of turbine engines, more part 23 airplanes are likely to be approved for operation above 25,000 feet. In the absence of this proposed rule, an increasing number of occupants would be exposed to the potential for harm in the event of a failure or malfunction of the pressure system on these airplanes.

Section 23.855 Cargo and Baggage Compartment Fire Protection

Proposed paragraph (a) would require all sources of heat within each cargo and baggage compartment that are capable of igniting the compartment contents to be shielded and insulated to prevent such ignition. Existing § 23.787(f) requires that cargo compartment lamps be installed so as to prevent contact between the lamp bulb and cargo. The proposal would clarify and extend this provision to include all sources of heat for baggage as well as cargo compartments.

Lights and (rarely) heaters for pets are typically the only sources of heat located in a baggage or cargo compartment. A wire cage, costing no more than $20, around the heat source would meet these requirements. The FAA estimates that the cost of compliance per airplane would be no more than $40 in those rare cases where such protection would not have been provided anyway. The benefit of the proposed provision is a reduction in the possibility of fire caused by the ignition of compartment contents by lights or heaters.

Proposed paragraph (b) would require cargo and baggage compartments to be constructed of materials that meet the appropriate provisions of § 23.853(d)(3). Currently these requirements apply to commuter category airplanes and to the materials used in the compartments of these airplanes. The proposed new requirement would expand this applicability to the cargo and baggage compartments of all part 23 airplanes. In effect, the proposed new requirement would require materials that are self-extinguishing rather than flame resistant as currently required under § 23.787(d).

Information provided by manufacturers shows that materials that meet self-extinguishing flame requirements are available at a slightly higher cost than materials that meet flame resistant requirements. The FAA conservatively estimates that the incremental costs of complying with proposed § 23.855(b) would be less than $200 per airplane. The safety benefits of this provision would be an increase in cargo and baggage compartment fire protection.

Proposed new paragraph (c) would add new fire protection requirements for cargo and baggage compartments for commuter category airplanes. The proposed rule would require one of the following three alternatives:

(1) The compartment just be located where pilots seated at their duty station would easily discover the fire or the compartment must be equipped with a smoke or fire detector system to warn the pilot's station. The compartment must also be accessible for fire extinguisher application.

(2) The compartment may be inaccessible, but must be equipped with a fire detector system that warns the pilot station, and the compartment must have ceiling and sidewall floor panels constructed of materials that have been subjected to and meet the vertical self-extinguishing tests of appendix F to part 23.

(3) The compartment must be constructed and sealed to contain any fire.

The FAA cannot predict the designs of cargo and baggage compartment for future airplanes. If manufacturers choose to use smoke detectors, however, no more than 2 smoke detectors would be required per airplane. An aerospace engineer could determine the most appropriate location and design the smoke detector system in approximately 30 hours at a burdened rate of $60 per hour, for a total cost of $1,800 per certification. Two detectors, including wiring and installation, are estimated to cost about $4,550. Maintenance costs for the smoke detectors would cost approximately $100 per year. Materials that would meet the vertical self-extinguishing tests of appendix F (see option 2 in the discussion above) would result in incremental costs of less than $200 per airplane.

The FAA estimates that it would cost $500 to construct a sealed compartment, or a total of $1,000 for 2 compartments, if the manufacturer chooses that method of complying with the proposed requirement (see option 3 in the discussion above).

Irrespective of the individual compliance method, the benefits of the

proposed provision would come from the increased likelihood that a cargo or baggage compartment fire would either be extinguished or contained.

Section 23.1303 Flight and Navigation Instruments

Revised § 23.1303(d) would add the requirement for a free air temperature indicator for those airplanes whose performance must be based on weight, altitude, and temperature. This requirement already applies to turbine powered airplanes. The proposal would extend the requirement to reciprocating engine powered airplanes of more than 6,000 pounds. Industry sources estimate that the proposed requirement would cost an incremental $500 in engineering design per affected airplane model and $350 per production airplane. Any additional weight would be negligible. The potential benefits of the proposal would accrue from the requirement that the information necessary to determine the performance envelope of the airplane be available to the pilot.

Proposed § 23.1303(g) would identify specific instruments, and limits of those instruments, required for commuter category airplanes. Proposed § 23.1303(g)(1) states that if airspeed limitations vary with altitude, the airspeed indicators must show the variation of the maximum operating limit speed (V_{MO}) with altitude. Industry sources indicate that an airspeed indicator with V_{MO} "pointer" would cost $1,000 more than one without. Two airspeed indicators are required on commuter airplanes, therefore, the incremental cost of this requirement would be $2,000 per commuter category airplane produced. The potential safety benefit of the proposal would derive from the requirement that the information necessary to determine the maximum operating limit speed be available at all altitudes.

Proposed § 23.1303(g)(3) would require (for commuter category IFR-approved airplanes with passenger seating configurations of 10 more) a third, independent, attitude indicator (AI). Industry sources estimate that an aerospace engineer could design and document a third attitude instrument system in 100 hours at a burdened rate of $60 per hour, totalling $6,000 per certification. It is estimated that an AI would cost approximately $8,000, including a standby battery, and that the installation would cost $2,200 for 40 hours of a mechanic's time at a burdened rate of $55 per hour. However, proposed § 23.1311(a)(5), discussed below, would delete the requirement for a rate-of-turn indicator when an independent attitude indicator is installed. The costs associated with a rate-of-turn indicator include: 40 hours of design and documentation costs, $1,000 per indicator, and 40 hours of installation. Therefore, the *incremental* cost for an IFR-approved airplane with a passenger seating capacity of 10 or more would be $3,600 for 60 hours of engineering (100 hours for the AI, minus 40 hours for the rate-of-turn indicator); $7,000 for the instrument ($8,000 for the AI, minus $1,000 for the rate-of-turn indicator); and no additional cost for the installation (40 hours for the AI, minus 40 hours for the rate-of-turn indicator).

The potential safety benefits of a third, independent attitude indicator would derive from the reduced potential for erroneous attitude information. Currently, two attitude instruments are required for a ten passenger, IFR approved commuter category airplane. Service experience has shown that a failure can occur whereby an attitude indicator can appear to be working when it is actually providing incorrect information. During such a failure, pilots may have difficulty determining which instrument to follow, and hazardous flight attitudes may result. A third attitude indicator would allow the crew to retain reliable attitude information even in cases where one instrument is not operating correctly.

Section 23. 1326 Pitot Heat Indication System

Proposed new G23.1326 would require the installation of a pitot tube heat indicating system on those airplanes required to be equipped with a heated pitot tube. Heated pitot tubes ensure that moisture will not freeze in the tube and block or partially block the airspeed system.

A pitot heat indicating system, including an in-line current sensor, panel light, and associated wiring, would cost approximately $500. According to industry sources, an aerospace engineer could design and document such a system in 20 hours at a burdened rate of $60 per hour, totalling $1,200. A mechanic could install the system in 20 hours at a burden rate of $55 per hour, totalling $1,100. The estimated non-recurring cost per certification, therefore, would total $2,800 ($1,200 for design, $500 for the certification airplane's indicator, and $1,100 for installation of that indicator). The estimated cost per production airplane would be $1,600 ($500 for the system and $1,100 for installation).

The National Transportation Safety Board (NTSB) investigated a series of single model accidents that occurred between May 1989 and March 1991. During that period, five fatal accidents and a near fatal incident occurred in the United States. Two additional fatal accidents involving the same airplane model occurred in foreign countries. The NTSB's analysis indicated that four of the five U.S. accidents probably involved ice blockage of the pitot tubes because the pilots failed to activate pitot heat before flying into freezing instrument meteorological conditions. The Board recommended (A–92–86) that the FAA consider requiring a pitot heat operating light on small airplanes certificated to operate in icing conditions.

A pitot heat indicating system would advise the pilots of any inoperative heating element in the pitot tube and that subsequent inaccuracies could result. The proposed provision would reduce the likelihood that pilots would rely on inaccurate airspeed information resulting from a blocked or partially blocked pitot tube.

Section 23.1353 Storage Battery Design and Installation

Proposed new § 23.1353(h) would require that, in the event of a complete loss of the primary electrical power generating system, airplane battery capacity must be sufficient to supply at least 30 minutes of electrical power to those loads essential to the continued safe flight and landing of the airplane.

In some cases, manufacturers may need to install larger batteries with greater capacities to comply with the proposed requirements. The FAA estimates that the size and capacity of a larger battery would add no more than a few pounds (incremental operating costs of less than $10 per year) and $20 to $30 of additional cost for the battery.

On some airplanes, a "load shedding" procedure, where the pilot would sequentially turn off certain equipment, could be required either in place of or in addition to a larger battery. The procedure would be provided in the pilot's operating handbook (POH). The FAA estimates that an aerospace engineer could establish a load shedding procedure in 10 hours at a burdened rate of $60 per hour, for a total cost of $600 per affected certification.

Irrespective of the method of compliance, the proposal would increase the likelihood that sufficient electrical power would be available to safely land the airplane in the event of an electrical generating system failure

Section 23.1359 Electrical System Fire Protection.

Proposed § 23.1359(c) would provide burn criteria for electrical wire and

cables. A proposed revision to appendix F to part 23 would add appropriate wire testing criteria. Demonstrating and documenting that electrical wires and cables meet the requirements of this provision would take an aerospace engineer approximately 4 hours at a burdened rate of $60 per hour, for a total of $240 per certification. The requirement and testing criteria would increase the likelihood that necessary wires and cables would continue to function in the event of a fire.

Section 23.1365 Electrical Cables and Equipment

Proposed § 23.1365(d) would add a requirement for the identification of electrical cables, terminals, and connectors. Different colored wires and/or tags could be used in conjunction with a wiring diagram to identify the cables, terminals, and connectors. The FAA estimates that a draftsman could design and document this identification system in 80 hours at a burdened rate of $55 per hour, a total of $4,400 per certification. Incremental installation costs would be approximately $100 per airplane.

The increasing use of electrical systems in part 23 airplanes has added to the difficultly of wiring installation. The proposed requirement for cable identification would increase the likelihood that cables would be correctly installed initially and would be correctly reinstalled as part of later maintenance or modification.

Section 23.1401 Anticollision Light System

The proposal would revise § 23.1401 to require the installation of an anticollision light system on all part 23 airplanes. Current § 23.1401 requires an anticollision light system only if certification for night operations is requested. Many manufacturers currently install anticollision light systems on all airplanes they produce.

Industry sources estimate that an aerospace engineer could design and document an anticollision light system in 40 hours at a burdened rate of $60 per hour, for a total of $2,400 per affected certification. The system would cost $500 and would take a mechanic approximately 20 hours to install at a burdened rate of $55 per hour, a total of $1,600 per affected airplane ($500 + (20 hours × $55 per hour) = $1,600). The weight penalty would be negligible. Only those future models that would not otherwise have anticollision light systems would actually incur incremental costs as a result of this provision.

The number of airplanes that have been added to the small airplane fleet and the increasing speeds resulting from improved technology, especially turbine engines, warrant the use of anticollision lights for day operations as well as night. The FAA Accident and Incident data for the period 1984 through 1990 show that 269 aircraft were involved in midair collisions in which 108 fatalities occurred. When the data were filtered (to account for night operations, IFR conditions, and aircraft not affected by this proposal), it shows that at least 167 airplanes were involved in accidents or incidents that occurred in day VFR conditions. The reports do not reveal whether the airplanes were using anticollision lights at the time of the accident.

The FAA holds that requiring the installation of anticollision lights on all newly certificated airplanes, and requiring their operation during day operations (as proposed by revised § 91.209 and discussed later in this evaluation), would reduce the number of daylight, midair accidents. Even if the proposed requirement were only 25 percent effective, the 6-year accident history indicates that approximately 17 fatalities could be avoided during a similar 6-year period.

Section 23.1431 Electronic Equipment

This proposal would add three new paragraphs to § 23.1431. Proposed new paragraph (c) would require that airplanes required to be operated by more than one flightcrew member must be evaluated to determine if the flightcrew members can converse without difficulty when they are seated at their duty stations. If the required evaluation shows that the noise level does not impair conversation, no further action would be required. If the evaluation shows that conversation would be difficult, however, an intercommunication system would be required.

The FAA estimates that an evaluation of cockpit noise could be conducted in conjunction with other certification testing, therefore, no incremental costs are associated with the evaluation. An aerospace engineer could design an intercom system in 20 hours at a burdened rate of $60 per hour, for a total of $1,200 per affected certification. The FAA estimates that the addition of an intercom system would cost approximately $500 per airplane. A mechanic could install the system in approximately 20 hours at a burdened rate or $55 per hour. The total incremental production cost for an affected airplane, therefore, would be $1,600 ($500 + 20 hours × $55 per hour)).

Proposed new paragraph (d) would require that if the communication equipment that is installed includes any means of switching from the receive mode to the transmit mode, the equipment must use "off-on" transmitter switching that turns the transmitter off when it is not being used. The cost of this feature is included in the $500 cost of the intercom, described above.

NTSB investigation of at least two commuter accidents determined that excessive cockpit noise levels probably adversely affected the ability of the flight crews to communicate (Bar Harbor Airlines, Flight 1808, August 25, 1985, 8 fatalities; and Henson Airlines, Flight 1517, September 23, 1985, 14 fatalities.)

As a result, the Board recommended (A–86–113) that the FAA require the installation and use of crew interphone systems in the cockpit of airplanes operating under part 135. The benefit of the proposed requirement would derive from the increased likelihood that flightcrew members would be able to converse without difficulty and that the safety hazard of miscommunication would be reduced.

Section 23.1447 Equipment Standards for Oxygen Dispensing Units

Proposed new § 23.1447(a)(4) would require that if radio equipment is installed in an airplane, flightcrew oxygen dispensing units must be designed to allow use of the communication equipment when oxygen is being used.

Industry sources estimate that an oxygen mask with an integral microphone costs $1,000 more than an oxygen mask without a microphone. The costs per affected airplane, therefore, would be $2,000 for two masks. The benefit of the proposed requirement is that it would allow flightcrew communication under all operating conditions, including operations when oxygen is required.

Section 23.1453 Protection of Oxygen Equipment From Rupture

This proposed new section would clarify the rupture protection needed for oxygen system installation. Rupture protection for oxygen systems is currently required by the application of the structures load requirements of part 23. The addition of § 23.1453(a) would clarify the application of these load requirements and would identify the need to consider maximum temperatures and pressures that may be present. Section 23.1453(b) would identify the protection to be provided

for high pressure oxygen sources and the high pressure lines that connect these sources to the oxygen system shutoff valves.

Industry sources estimate that an aerospace engineer could analyze and document the loads on each element of the oxygen system in 16 hours at a burdened rate of $60 per hour, for a total cost of $960. The routing of oxygen pressure sources and lines to protect them from unsafe temperatures and crash landings would be part of an airplane's basic design and would not impose incremental costs.

Section 91.209 Aircraft Lights

Proposed new § 91.209(b) would require airplanes equipped with an anticollision light system to operate those lights during all operations, including daytime VFR.

The incremental cost of this provision would be incurred for light bulb replacement. The FAA estimates that a light bulb for an anticollision light system costs approximately $50 and that this provision would necessitate an incremental bulb replacement every two years. Accordingly, the cost is projected to equal $25 per year, per affected operating airplane.

In summary, the FAA holds that the benefits of the proposed rule, though not directly quantifiable, would exceed the expected costs.

Regulatory Flexibility Determination

The Regulator Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The proposed amendments would not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. Instead, the proposed systems airworthiness standards would be harmonized with those of foreign aviation authorities and would lessen the restraints on trade.

Federalism Implications

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.

Conclusion

The FAA proposes to revise the airworthiness standards to provide systems and equipment standards for normal, utility, acrobatic, and commuter airplanes that are the same as the standards that will be proposed for the same category airplanes by the Joint Aviation Authorities in Europe. If adopted, the proposed revision would reduce the regulatory burden on the United States and European airplane manufacturers by relieving them on the need to show compliance with different standards each time they seek certification approval of an airplane in a different country.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, 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. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT:**

List of Subjects

14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

14 CFR Part 91

Agriculture, Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Canada, Cuba, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Safety, Smoking.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23 and 91 of the Federal Aviation Regulations (14 CFR part 23 and 91) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.677 is amended by revising paragraph (a) to read as follows:

§ 23.677 Trim systems.

(a) Proper precautions must be taken to prevent inadvertent, improper, or abrupt trim tab operation. There must be means near the trim control to indicate to the pilot the direction of trim control movement relative to airplane motion. In addition, there must be means to indicate to the pilot the position of the trim device with respect to both the range of adjustment and, in the case of lateral and directional trim, the neutral position. This means must be visible to the pilot and must be located and designed to prevent confusion. The pitch trim indicator must be clearly marked with a position or range within which it has been demonstrated that take-off is safe for all center or gravity positions and each flap position approved for takeoff.

* * * * *

3. A new § 23.691 is added to read as follows:

§ 23.691 Artificial stall barrier system.

If the function of an artificial stall barrier, for example, stick pusher, is necessary to show compliance with § 23.201(c), the system must comply with the following:

(a) With the system adjusted for operation, the plus and minus airspeeds at which downward pitching control will be provided must be established.

(b) Considering the plus and minus airspeed tolerances established by paragraph (a) of this section, and airspeed must be selected for the activation of the downward pitching control that provides a safe margin above any airspeed at which any unsatisfactory stall characteristics occur.

(c) In addition to the stall warning required by § 23.207, a warning that is clearly distinguishable to the pilot under all expected flight conditions without requiring the pilot's attention, must be provided for faults that would

prevent the system from providing the required pitching motion.

(d) Each system must be designed so that the artificial stall barrier can be quickly and positively disengaged by the pilots to prevent unwanted downward pitching of the airplane by a quick release (emergency) control that meets the requirements of § 23.1329(b).

(e) A preflight check of the complete system must be established and the procedure for this check made available in the Airplane Flight Manual (AFM). Preflight checks that are critical to the safety of the airplane must be included in the limitations section of the AFM.

(f) For those airplanes whose design includes an autopilot system:

(1) A quick release (emergency) control installed in accordance with § 23.1329(b) may be used to meet the requirements of paragraph (d) of this section, and

(2) The pitch servo for that system may be used to provide the stall downward pitching motion.

(g) In showing compliance with § 23.1309, the system must be evaluated to determine the effect that any announced or unannounced failure may have on the continued safe flight and landing of the airplane or the ability of the crew to cope with any adverse conditions that may result from such failures. This evaluation must consider the hazards that would result from the airplane's flight characteristics if the system was not provided, and the hazard that may result from unwanted downward pitching motion, which could result from failures at airspeeds above the selected stall speed.

4. Section 23.697 is amended by adding a new paragraph (c) to read as follows:

§ 23.697 Wing flap controls.

* * * * *

(c) If compliance with § 23.145(b)(3) necessitates wing flap retraction to positions that are not fully retracted, the wing flap control lever settings corresponding to those positions must be positively located such that a definite change of direction of movement of the lever is necessary to select settings beyond those settings.

5. Section 23.701 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 23.701 Flap interconnection.

(a) * * *

(1) Be synchronized by a mechanical interconnection between the movable flap surfaces that is independent of the flap drive system; or by an approved equivalent means; or

(2) Be designed so that the occurrence of any failure of the flap system that would result in an unsafe flight characteristic of the airplane is extremely improbable; or

* * * * *

6. A new § 23.703 is added to read as follows:

§ 23.703 Takeoff warning system.

For commuter category airplanes, unless it can be shown that a lift or longitudinal trim device which affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selected out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes and temperatures for which certification is requested.

§ 23.723 [Amended]

7. Section 23.723(b) is amended by changing the word "reserved" to "reserve".

8. Section 23.729 is amended by revising paragraph (e) and by adding a new paragraph (g) to read as follows:

§ 23.729 Landing gear extension and retraction system.

* * * * *

(e) *Position indicator.* If a retractable landing gear is used, there must be a landing gear position indicator (as well as necessary switches to actuate the indicator) or other means to inform the pilot that each gear is secured in the extended (or retracted) position. If switches are used, they must be located and coupled to the landing gear mechanical system in a manner that prevents an erroneous indication of either "down and locked" if each gear is not in the fully extended position, or of "up and locked" if each landing gear is not in the fully retracted position.

* * * * *

(g) *Equipment located in the landing gear bay.* If the landing gear bay is used as the location for equipment other than the landing gear, that equipment must be designed and installed to minimize damage.

9. Section 23.735 is amended by redesignating paragraph (c) as paragraph (d), by revising the introductory text of paragraph (a), and by adding new paragraphs (c) and (e) to read as follows:

§ 23.735 Brakes.

(a) Brakes must be provided. The landing brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods:

* * * * *

(c) During the landing distance determination required by § 23.75, the pressure on the wheel braking system must not exceed the pressure specified by the brake manufacturer.

* * * * *

(e) In addition, for commuter category airplanes, the rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods—

(1) The brake kinetic energy absorption requirements must be based on a conservative rational analysis of the sequence of events expected during a rejected takeoff at the design takeoff weight.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula—

$KE = 0.0443\ WV^2/N$

where,

KE=Kinetic energy per wheel (ft.-lbs.);
W=Design takeoff weight (lbs.);
V=Ground speed associated with the maximum value of V_1 selected in accordance with § 23.51(c)(1);
N=Number of main wheels with brakes.

10. A new § 23.745 is added to read as follows:

§ 23.745 Nose/tail wheel steering.

(a) If nose/tail wheel steering is installed, it must be demonstrated that its use does not require exceptional pilot skill during takeoff and landing, in crosswinds and in the event of an engine failure; or its use must be limited to low speed maneuvering.

(b) Movement of the pilot's steering control must not interfere with the retraction or extension of the landing gear.

11. Section 23.775 is amended by revising paragraphs (a) and (c), by redesignating paragraph (d) as (e) and paragraph (e) as (d), by revising the newly designated paragraph (e), and by adding a new paragraph (h) to read as follows:

§ 23.775 Windshields and windows.

(a) The internal panels of windshields and windows must be constructed of a nonsplintering material, such as nonsplintering safety glass.

* * * * *

(c) On pressurized airplanes, if certification for operation up to and including 25,000 feet is requested, an enclosure canopy including a representative part of the installation must be subjected to special tests to account for the combined effects of continuous and cyclic pressurization loadings and flight loads, or compliance with the fail-safe requirements of paragraph (d) of this section must be shown.

* * * * *

(e) The windshield and side windows forward of the pilot's back when the pilot is seated in the normal flight position must have a luminous transmittance value of not less than 70 percent.

* * * * *

(h) In addition, for commuter category airplanes, the following applies:

(1) Windshield panes directly in front of the pilots in the normal conduct of their duties, and the supporting structures for these panes must withstand, without penetration, the impact of a two-pound bird when the velocity of the airplane (relative to the bird along the airplane's flight path) is equal to the airplane's maximum approach flap speed.

(2) The windshield panels in front of the pilots must be arranged so that, assuming the loss of vision through any one panel, one or more panels remain available for use by a pilot seated at a pilot station to permit continued safe flight and landing.

12. Section 23.783 is amended by revising paragraph (b) and by adding a new paragraph (g) to read as follows:

§ 23.783 Doors.

* * * * *

(b) Passenger doors must not be located with respect to any propeller disk or any other potential hazard so as to endanger persons using that door.

* * * * *

(g) If lavatory doors are installed, they must be designed to preclude an occupant from becoming trapped inside the lavatory. If a locking mechanism is installed, it must be capable of being unlocked from outside of the lavatory.

13. Section 23.785 is amended by adding introductory text and by revising paragraph (b) to read as follows:

§ 23.785 Seats, berths, litters, safety belts and shoulder harnesses.

There must be a seat or berth for each occupant that meets the following:

* * * * *

(b) Each forward-facing or aft-facing seat/restraint system in normal, utility, or acrobatic category airplanes must consist of a seat, a safety belt, and a shoulder harness, with a metal-to-metal latching device as required by § 23.1413, that are designed to provide the occupant protection provisions required in § 23.562. Other seat orientations must provide the same level of occupant protection as a forward-facing or aft-facing seat with a safety belt and a shoulder harness, and must provide the protection provisions of § 23.562.

* * * * *

14. Section 23.787 is revised to read as follows:

§ 23.787 Baggage and cargo compartments.

(a) Each baggage and cargo compartment must:

(1) Be designed for its placarded maximum weight of contents and for the critical load distributions at the appropriate maximum load factors corresponding to the flight and ground load conditions of this part.

(2) Have means to prevent the contents of any compartment from becoming a hazard by shifting, and to protect any controls, wiring, lines, equipment or accessories whose damage or failure would affect safe operations.

(3) Have a means to protect occupants from injury by the contents of any compartment, located aft of the occupants and separated by structure, when the ultimate forward inertial load factor is 9g and assuming the maximum allowed baggage or cargo weight for the compartment.

(b) Designs that provide for baggage or cargo to be carried in the same compartment as passengers must have a means to protect the occupants from injury when the baggage or cargo is subjected to the inertial loads resulting from the ultimate static load factors of § 23.561(b)(3), assuming the maximum allowed baggage or cargo weight for the compartment.

(c) For airplanes that are used only for the carriage of cargo, the flightcrew emergency exits must meet the requirements of § 23.807 under any cargo loading conditions.

15. A new § 23.791 is added to read as follows:

§ 23.791 Passenger information signs.

For those airplanes in which the flightcrew members cannot observe the other occupants' seats or where the flightcrew members' compartment is separated from the passenger compartment, there must be at least one illuminated sign (using either letters or symbols) notifying all passengers when seat belts should be fastened. Signs that notify when seat belts should be fastened must:

(a) When illuminated, be legible to each person seated in the passenger compartment under all probable lighting conditions; and

(b) Be installed so that a flightcrew member can, when seated at the flightcrew member's station, turn the illumination on and off.

16. Section 23.807 is amended by revising paragraphs (b) introductory text and (b)(5) and by adding new paragraphs (a)(4) and (b)(6) to read as follows:

§ 23.807 Emergency exits.

(a) * * *

(4) Emergency exits must not be located with respect to any propeller disk or any other potential hazard so as to endanger persons using that exit.

(b) *Type and operation.* Emergency exits must be movable windows, panels, canopies, or external doors, openable from both inside and outside the airplane, that provide a clear and unobstructed opening large enough to admit a 19-by-26-inch ellipse. Auxiliary locking devices used to secure the airplane must be designed to be overridden by the normal internal opening means. The inside handles of emergency exits that open outward must be adequately protected against inadvertent operation. In addition, each emergency exit must—

* * * * *

(5) In the case of acrobatic category airplanes, allow each occupant to abandon the airplane at any speed between V_{SO} and V_D; and

(6) In the case of utility category airplanes certificated for spinning, allow each occupant to abandon the airplane at the highest speed likely to be achieved in the maneuver for which the airplane is certificated.

* * * * *

§ 23.841 [Amended]

17. Section 23.841 is amended in paragraph (a) by removing the number "31,000" and replacing it with "25,000".

18. Section 23.853 is amended by revising the section heading to read as follows:

§ 23.853 Passenger and crew compartment interiors.

* * * * *

19. A new § 23.855 is added to read as follows:

§ 23.855 Cargo and baggage compartment fire protection.

(a) Sources of heat within each cargo and baggage compartment that are capable of igniting the compartment contents must be shielded and insulated to prevent such ignition.

(b) Each cargo and baggage compartment must be constructed of materials that meet the appropriate provisions of § 23.853(d)(3).

(c) In addition for commuter category airplanes, each cargo and baggage compartment must:

(1) Be located where the presence of a fire would be easily discovered by the pilots when seated at their duty station, or it must be equipped with a smoke or fire detector system to give a warning at the pilots' station, and provide sufficient access to enable a pilot to effectively reach any part of the compartment with the contents of a hand held fire extinguisher, or

(2) Be equipped with a smoke or fire detector system to give a warning at the pilots' station and have ceiling and sidewall liners and floor panels constructed of materials that have been subjected to and meet the 45 degree angle test of Appendix F of this part. The flame may not penetrate (pass through) the material during application of the flame or subsequent to its removal. The average flame time after removal of the flame source may not exceed 15 seconds, and the average glow time may not exceed 10 seconds. The compartment must be constructed to provide fire protection that is not less than that required of its individual panels; or

(3) Be constructed and sealed to contain any fire within the compartment.

20. Section 23.867 is amended by revising the heading that precedes the section and the section heading to read as follows:

Electrical Bonding and Lightning Protection

§ 23.867 Electrical bonding and protection against lightning and static electricity.

* * * * *

21. Section 23.1303 is amended by revising the introductory text; by amending paragraph (d) by inserting the words "reciprocating engine-powered airplanes of more than 6,000 pounds maximum weight and" between the words "For" and "turbine"; by amending paragraph (e) concluding text by adding a line to read, "The lower limit of the warning device must be set to minimize nuisance warning;" at the end of the paragraph and by adding new paragraphs (f) and (g) to read as follows:

§ 23.1303 Flight and navigation instruments.

The following are the minimum required flight and navigation instruments:

* * * * *

(f) When an attitude display is installed, the instrument design must not provide any means, accessible to the flightcrew, of adjusting the relative positions of the attitude reference symbol and the horizon line beyond that necessary for parallax correction.

(g) In addition, for commuter category air planes:

(1) If airspeed limitations vary with altitude, the airspeed indicator must have a maximum allowable airspeed indicator showing the variation of V_{MO} with altitude.

(2) The altimeter must be a sensitive type.

(3) Having a passenger seating configuration of 10 or more, excluding the pilot's seats and that are approved for IFR operations, a third attitude instrument must be provided that:

(i) Is powered from a source independent of the electrical generating system;

(ii) Continues reliable operation for a minimum of 30 minutes after total failure of the electrical generating system;

(iii) Operates independently of any other attitude indicating system;

(iv) Is operative without selection after total failure of the electrical generating system;

(v) Is located on the instrument panel in a position acceptable to the Administrator that will make it plainly visible to and usable by any pilot at the pilot's station; and

(vi) Is appropriately lighted during all phases of operation.

§ 23.1307 [Amended]

22. Section 23.1307 is amended by removing paragraphs (a) and (b); and by removing the designation from paragraph (c).

23. Section 23.1309 is amended by adding a new paragraph (a)(4) to read as follows:

§ 23.1309 Equipment, systems, and installations.

(a) * * *

(4) In a commuter category airplane, must be designed to safeguard against hazards to the airplane in the event of their malfunction or failure.

* * * * *

24. Section 23.1311 is revised to read as follows:

§ 23.1311 Electronic display instrument systems.

(a) Electronic display indicators, including those with features that make isolation and independence between powerplant instrument systems impractical, must:

(1) Meet the arrangement and visibility requirements of § 23.1321.

(2) Be easily legible under all lighting conditions encountered in the cockpit, including direct sunlight, considering the expected electronic display brightness level at the end of an electronic display indicator's useful life. Specific limitations on display system useful life must be contained in the Instructions for Continued Airworthiness required by § 23.1529.

(3) Not inhibit the primary display of attitude, airspeed, altitude, or powerplant parameters needed by any pilot to set power within established limitations, in any normal mode of operation.

(4) Not inhibit the primary display of engine parameters needed by any pilot to properly set or monitor powerplant limitations during the engine starting mode of operation.

(5) Have an independent magnetic direction indicator and either an independent secondary mechanical altimeter, airspeed indicator, and attitude instrument or individual electronic display indicators for the altimeter, airspeed, and attitude indicator that are independent from the airplane's primary electrical power system. These secondary instruments may be installed in panel positions that are displaced from the primary positions specified by § 23.1321(d), but must be located where they meet the pilots' visibility requirements of § 23.1321(a).

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

(7) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553, or visual displays that alert the pilot to abnormal operational values or approaches to established limitation values, for each parameter required to be displayed by this part.

(b) The electronic display indicators, including their systems and installations, and considering other airplane systems, must be designed so that one display of information essential for continued safe flight and landing will remain available to the crew, without need for immediate action by any pilot for continued safe operation, after any single failure or probable combination of failures.

(c) As used in this section, "instrument" includes devices that are physically contained in one unit, and devices that are composed of two or more physically separate units or components connected together (such as a remote indicating gyroscopic direction indicator that includes a magnetic sensing element, a gyroscopic unit, an amplifier, and an indicator connected together). As used in this section, "primary" display refers to the display of a parameter that is located in the instrument panel such that the pilot looks at it first when wanting to view that parameter.

§ 23.1321 [Amended]

25. Section 23.1321 is amended by removing the words "certificated for flight under instrument flight rules or of more than 6,000 pounds maximum weight" from paragraph (d) introductory test.

26. Section 23.1323 is amended by redesignating paragraph (c) as (e); by removing paragraph (d); by redesignating paragraph (e) as new paragraph (d); by removing the words "in flight and" from the first sentence of redesignated paragraph (e); and by adding new paragraphs (c) and (f) to read as follows:

§ 23.1323 Airspeed indicating system.

* * * * *

(c) The design and installation of each airspeed indicating system must provide positive drainage of moisture from the pitot static plumbing.

* * * * *

(f) For commuter category airplanes, where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

§ 23.1325 [Amended]

27. Section 23.1325 is amended by inserting the words "or icing" between the words "meteorological" and "conditions" in paragraph (g).

28. A new § 23.1326 is added to read as follows:

§ 23.1326 Pitot heat indication systems.

If a flight instrument pitot heating system is installed to meet the requirements specified in § 23.1323(d), an indication system must be provided to indicate to the flight crew when that pitot heating system is not operating. The indication system must comply with the following requirements:

(a) The indication provided must incorporate an amber light that is in clear view of a flightcrew member.

(b) The indication provided must be designed to alert the flight crew if either of the following conditions exist:

(1) The pitot heating system is switched "off".

(2) The pitot heating system is switched "on" and any pitot tube heating element is inoperative.

§ 23.1329 [Amended]

29. Section 23.1329(b) is amended by adding the parenthetical phrase "(both stick controls, if the airplane can be operated from either pilot seat)" between the words, "or on the stick control," and the word "such".

30. Section 23.1337 is amended by revising the section heading, by revising the introductory text of paragraph (b), by redesignating paragraphs (b)(4) and (b)(5) as paragraph (b)(5) and (b)(6), respectively, and by adding a new paragraph (b)(4) to read as follows:

§ 23.1337 Powerplant instruments installation.

* * * * *

(b) *Fuel quantity indication.* There must be a means to indicate to the flightcrew members the quantity of usable fuel in each tank during flight. An indicator calibrated in appropriate units and clearly marked to indicate those units must be used. In addition:

* * * * *

(4) There must be a means to indicate the amount of usable fuel in each tank when the airplane is on the ground (such as by a stick gauge);

* * * * *

31. Section 23.1351 is amended by removing paragraph (b)(4), by redesignating paragraphs (b)(5) as (b)(4), by adding a sentence to the end of paragraph (f) that reads, "The external power connection must be located so that its use will not result in a hazard to the airplane or ground personnel", and by revisiting paragraphs (b)(2), (b)(3), and (c)(3) to read as follows:

§ 23.1351 General.

* * * * *

(b) * * *

(2) Electric power source must function properly when connected in combination or independently.

(3) No failure or malfunction of any electric power source may impair the ability of any remaining source to supply load circuits essential for safe operation.

* * * * *

(c) * * *

(3) Automatic means must be provided to prevent either damage to any generator/alternator or adverse effects on the airplane electrical system due to reverse current. A means must also be provided to disconnect each generator/alternator from the battery and other generators/alternators.

* * * * *

32. Section 23.1353 is amended by adding a new paragraph (h) to read as follows:

§ 23.1353 Storage battery design and installation.

* * * * *

(h) In the event of a complete loss of the primary electrical power generating system, the battery must be capable of providing at least 30 minutes of electrical power to those loads that are essential to continue safe flight and landing. The 30 minute time period includes the time needed for the pilots to recognize the loss of generated power and take appropriate load shedding action.

33. A new § 23.1359 is added to read as follows:

§ 23.1359 Electrical system fire protection.

(a) Each component of the electrical system must meet the applicable fire protection requirement of §§ 23.863 and 23.1182.

(b) Electrical cables, terminals, and equipment in designated fire zones that are used during emergency procedures must be fire-resistant.

(c) Insulation on electrical wire and electrical cable must be self-extinguishing when tested at an angle of 60 degrees in accordance with the applicable portions of Appendix F of this part, or other approved equivalent methods. The average burn length must not exceed 3 inches (76 mm) and the average flame time after removal of the flame source must not exceed 30 seconds. Drippings from the test specimen must not continue to flame for more than an average of 3 seconds after falling.

§ 23.1361 [Amended]

34. Section 23.1361(c) is amended by removing the last two words "in flight".

35. Section 23.1365 is amended by revising paragraph (b) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 23.1365 Electrical cables and equipment.

* * * * *

(b) Any equipment that is associated with any electrical cable installation and that would overheat in the event of circuit overload or fault must be flame resistant. The equipment and the electrical cables must not emit dangerous quantities of toxic fumes.

* * * * *

(d) Means of identification must be provided for electrical cables, terminals, and connectors.

(e) Electrical cables must be installed such that the risk of mechanical damage and/or damage caused by fluids, vapors, or sources of heat, is minimized.

(f) Where a cable cannot be protected by a circuit protection device or other overload protection, it must not cause a fire hazard under fault conditions.

36. Section 23.1383 is revised to read as follows:

§ 23.1383 Taxi and landing lights.

Each taxi and landing light must be designed and installed so that:

(a) No dangerous glare is visible to the pilots.

(b) The pilot is not seriously affected by halation.

(c) It provides enough light for night operations.

(d) It does not cause a fire hazard in any configuration.

37. Section 23.1401 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 23.1401 Anticollision light system.

(a) *General.* The airplane must have an anticollision light system that:

* * * * *

38. Section 23.1431 is amended by adding new paragraphs (c), (d), and (e) to read as follows:

§ 23.1431 Electronic equipment.

* * * * *

(c) For those airplanes required to have more than one flightcrew member, or whose operation will require more than one flightcrew member, the cockpit must be evaluated to determine if the flightcrew members, when seated at their duty station, can converse without difficulty. If the airplane design includes provision for the use of communication headsets, the evaluation must also consider conditions where headsets are being used. If the evaluation shows conditions under which it will be difficult to converse, an intercommunication system must be provided.

(d) If installed communication equipment includes transmitter "off-on" switching, that switching means must be designed to return from the "transmit" to the "off" position when it is released and ensure that the transmitter will return to the off (non transmitting) state.

(e) If provisions for the use of communication headsets are provided it must be demonstrated that the flightcrew members will receive all aural warnings when any headset is being used.

39. Section 23.1435 is amended by revising paragraph (c) to read as follows:

§ 23.1435 Hydraulic systems.

* * * * *

(c) *Accumulators.* A hydraulic accumulator or reservoir may be installed on the engine side of any firewall if—

(1) It is an integral part of an engine or propeller system, or

(2) The reservoir is nonpressurized and the total capacity of all such nonpressurized reservoirs is one quart or less.

40. Section 23.1447 is amended by revising paragraphs (d) and (e) and by adding a new paragraph (a)(4) to read as follows:

§ 23.1447 Equipment standards for oxygen dispensing units.

* * * * *

(a) * * *

(4) If radio equipment is installed, the flightcrew oxygen dispensing units must be designed to allow the use of that equipment and to allow communication with any other required crew member while at their assigned duty station.

* * * * *

(d) For a pressurized airplane designed to operate at flight altitudes above 25,000 feet (MSL), the dispensing units must meet the following:

(1) The dispensing units for passengers must be connected to an oxygen supply terminal and be immediately available to each occupant wherever seated.

(2) The dispensing units for crewmembers must be automatically presented to each crewmember before the cabin pressure altitude exceeds 15,000 feet, or the units must be of the quick-donning type, connected to an oxygen supply terminal that is immediately available to crewmembers at their station.

(e) If certification for operation above 30,000 feet is requested, the dispensing units for passengers must be automatically presented to each occupant before the cabin pressure altitude exceeds 15,000 feet.

* * * * *

41. A new § 23.1451 is added to read as follows:

§ 23.1451 Fire protection for oxygen equipment.

Oxygen equipment and lines must:

(a) Not be installed in any designated fire zones.

(b) Be protected from heat that may be generated in, or escape from, any designated fire zone.

(c) Be installed so that escaping oxygen cannot come in contact with and cause ignition of grease, fluid, or vapor accumulations that are present in normal operation or that may result from the failure or malfunction of any other system.

42. A new § 23.1453 is added to read as follows:

§ 23.1453 Protection of oxygen equipment from rupture.

(a) Each element of the oxygen system must have sufficient strength to withstand the maximum pressure and temperature, in combination with any externally applied loads arising from consideration of limit structural loads, that may be acting on that part of the system.

(b) High pressure oxygen sources and the lines between the source and the shutoff means must be:

(1) Protected from unsafe temperatures; and

(2) Located where the probability and hazard of rupture in a crash landing are minimized.

43. Section 23.1461 is amended by revising paragraph (a) to read as follows:

§ 23.1461 Equipment containing high energy rotors.

(a) Equipment, such as Auxiliary Power Units (APU) and constant speed drive units, containing high energy rotors must meet paragraphs (b), (c), or (d) of this section.

* * * * *

44. Appendix F to part 23 is amended by revising the introductory paragraph, by amending paragraph (c) to change the reference from paragraph (e) to paragraph (g), by amending paragraph (d) to change the reference from paragraph (f) to paragraph (h), by redesignating current paragraph (f) as paragraph (h), and by revising paragraph (b) and adding new paragraphs (f) and (g) to read as follows:

Appendix F to Part 23—Test Procedure

An acceptable test procedure for self-extinguishing materials for showing compliance with §§ 23.853, 23.855 and 23.1359.

* * * * *

(b) *Specimen configuration.* Except as provided for materials used in electrical wire and cable insulation and in small parts, materials must be tested either as a section cut from a fabricated part as installed in the airplane or as a specimen simulating a cut section, such as: a specimen cut from a flat sheet of the material or a model of the fabricated part. The specimen may be cut from any location in a fabricated part; however, fabricated units, such as sandwich panels, may not be separated for a test. The specimen thickness must be no thicker than the minimum thickness to be qualified for use in the airplane,

except that: (1) Thick foam parts, such as seat cushions, must be tested in ½-inch thickness; (2) when showing compliance with § 23.853(d)(3)(v) for materials used in small parts that must be tested, the materials must be tested in no more than ⅛-inch thickness; (3) when showing compliance with § 23.1359(c) for materials used in electrical wire and cable insulation, the wire and cable specimens must be the same size as used in the airplane. In the case of fabrics, both the warp and fill direction of the weave must be tested to determine the most critical flammability conditions. When performing the tests prescribed in paragraphs (d) and (e) of this appendix, the specimen must be mounted in a metal frame so that (1) in the vertical tests of paragraph (d) of this appendix, the two long edges and the upper edge are held securely; (2) in the horizontal test of paragraph (e) of this appendix, the two long edges and the edge away from the flame are held securely; (3) the exposed area of the specimen is at least 2 inches wide and 12 inches long, unless the actual size used in the airplane is smaller; and (4) the edge to which the burner flame is applied must not consist of the finished or protected edge of the specimen but must be representative of the actual cross section of the material or part installed in the airplane. When performing the test prescribed in paragraph (f) of this appendix, the specimen must be mounted in a metal frame so that all four edges are held securely and the exposed area of the specimen is at least 8 inches by 8 inches.

* * * * *

(f) *Forty-five degree test.* A minimum of three specimens must be tested and the results averaged. The specimens must be supported at an angle of 45 degrees to a horizontal surface. The exposed surface when installed in the aircraft must be face down for the test. The specimens must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550 °F. Suitable precautions must be taken to avoid drafts. The flame must be applied for 30 seconds with one-third contacting the material at the center of the specimen and then removed. Flame time, glow time, and whether the flame penetrates (passes through) the specimen must be recorded.

(g) *Sixty-degree test.* A minimum of three specimens of each wire specification (make and size) must be tested. The specimen of wire or cable (including insulation) must be placed at an angle of 60 degrees with the horizontal in the cabinet specified in paragraph (c) of this appendix, with the cabinet door open during the test or placed within a chamber approximately 2 feet high x 1 foot x 1 foot, open at the top and at one vertical side (front), that allows sufficient flow of air for complete combustion but is free from drafts. The specimen must be parallel to and approximately 6 inches from the front of the chamber. The lower end of the specimen must be held rigidly clamped. The upper end of the specimen must pass over a pulley or rod and must have an appropriate weight attached to it so that the specimen is held tautly throughout the flammability test. The test specimen span between lower clamp and upper pulley or rod must be 24 inches and must be marked 8 inches from the lower end to indicate the central point for flame application. A flame from a Bunsen or Tirrill burner must be applied for 30 seconds at the test mark. The burner must be mounted underneath the test mark on the specimen, perpendicular to the specimen and at an angle of 30 degrees to the vertical plane of the specimen. The burner must have a nominal bore of three-eighths inch, and must be adjusted to provide a three-inch-high flame with an inner cone approximately one-third of the flame height. The minimum temperature of the hottest portion of the flame, as measured with a calibrated thermocouple pyrometer, may not be less than 1,750 °F. The burner must be positioned so that the hottest portion of the flame is applied to the test mark on the wire. Flame time, burn length, and flaming time of drippings, if any, must be recorded. The burn length determined in accordance with paragraph (h) of this appendix must be measured to the nearest one-tenth inch. Breaking of the wire specimen is not considered a failure.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

45. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 21, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g).

46. Section 91.205 is amended by redesignating paragraphs (b)(11) through (b)(16) as paragraphs (b)(12) through (b)(17), respectively, and by adding a new paragraph (b)(11) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(b) * * *

(11) For small civil airplanes certificated after [INSERT DATE OF THIS AMENDMENT], in accordance with part 23, as amended by amendment 23-[INSERT AMENDMENT NUMBER], an approved aviation red or aviation white anticollision light system. In the event of failure of any light of the anticollision light system, operation of the aircraft may continue to a location where repairs or replacement can be made.

* * * * *

47. Section 91.209 is revised to read as follows:

§ 91.209 Aircraft lights.

No person may:

(a) During the period from sunset to sunrise (or, in Alaska, during the period a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 6 degrees below the horizon)—

(1) Operate an aircraft unless it has lighted position lights;

(2) Park or move an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft—

(i) Is clearly illuminated;

(ii) Has lighted position lights; or

(iii) Is in an area that is marked by obstruction lights;

(3) Anchor an aircraft unless the aircraft—

(i) Has lighted anchor lights; or

(ii) Is in an area where anchor lights are not required on vessels; or

(b) Operate an aircraft that is equipped with an anticollision light system, unless it has lighted anticollision lights. However, the anticollision lights need not be lighted when the pilot-in-command determines that, because of operating conditions, it would be in the interest of safety to turn the lights off.

Issued in Washington DC on July 14, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 94–17798 Filed 7–21–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
July 22, 1994

Part VI

Department of the Interior

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting; Notice

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Pub. L. 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: August 16–18, 1994, 9:00 a.m. to 5:30 p.m.; the Inn of the Mountain Gods, Mescalero, New Mexico, (505) 257–5141. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 320 SIB; 1849 C Street NW.; Washington, DC, 20240; Telephone number (202) 208–2631.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will decide on recommendations for its final report to the Secretary of the Interior and the Appropriations Committees of the Congress. The Task Force will reconcile differences among the structural and management systems recommendations submitted by its various work groups to arrive at consensus decisions on formal recommendations from the complete Task Force on organizational and management system changes for the Bureau of Indian Affairs. Proposals for restructuring the Bureau of Indian Affairs area offices will be presented by the Area Directors and Task Force members from each area and the Department of the Interior's streamlining plan for the Bureau of Indian Affairs will be discussed. Public attendance and participation in this meeting are encouraged, and time for public comments has been scheduled.

Dated: July 18, 1994.

Faith Roessel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–17930 Filed 7–21–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
July 22, 1994

Part VII

The President

Presidential Determination 94–32—
Presidential Determination on Radio Free Europe/Radio Liberty Relocation

Federal Register
Vol. 59, No. 140
Friday, July 22, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–32 of July 12, 1994

Presidential Determination on RFE/RL Relocation

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 308(k) of the United States International Broadcasting Act of 1994 (Public Law 103–236) (the "Act"), I hereby certify that significant national interest requires a relocation of the operations of RFE/RL, Incorporated from Munich, Germany, to Prague, Czech Republic, before the confirmation of a new Board of Broadcasting Governors can be completed.

You are authorized and directed to transmit this determination to the appropriate committees of the Congress (as defined in section 314 of the Act) and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 12, 1994.

[FR Doc. 94–18130
Filed 7–21–94; 12:16 pm]
Billing code 4710–10–M

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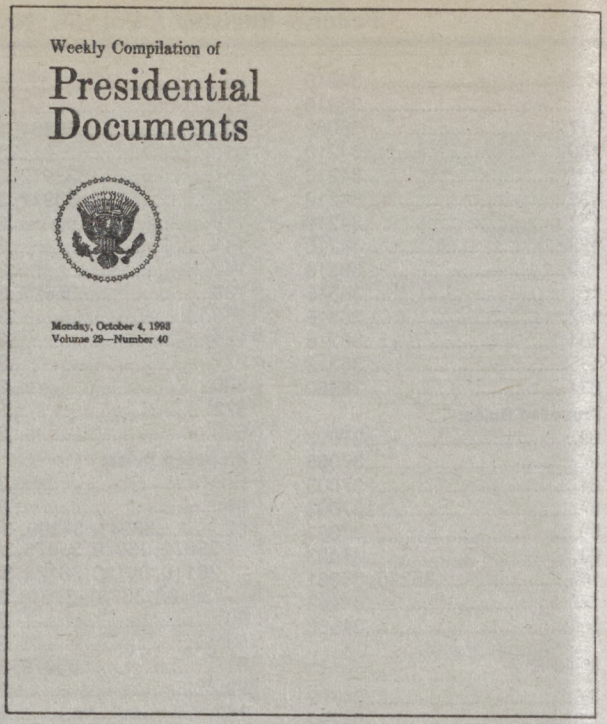
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