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April 17, 1997

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2703

Employee Responsibilities and Conduct

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Removal of rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is repealing its rule providing an employee exemption from application of the financial conflict of interest prohibition at 18 U.S.C. 208(a). The removal of this rule is in response to publication by the Office of Government Ethics (OGE) of a superseding, executive branch-wide rule that describes the circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006; telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Commission's rule, codified at 29 CFR 2703.3, an employee's ownership of shares of stock, bonds, or other corporate securities and shares in a mutual fund, regulated fund, or regulated investment company was exempted from application of the financial conflict of interest prohibition at 18 U.S.C. 208(a) if the aggregate fair market value of such holdings did not exceed $5,000 in a single enterprise. On December 18, 1996, OGE published a final rule entitled ''Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest),'' which superseded the Commission's rule. *See* 61 FR 66830–66851, Dec. 18, 1996, as corrected at 62 FR 1361, Jan. 9, 1997. OGE's new rule, codified at 5 CFR Part 2640 and made effective January 17, 1997, describes the circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived. The removal of 29 CFR 2703.3 does not affect the Commission's prohibited financial interests rule, codified at 5 CFR 8401.102. *See* 61 FR 39869–39870, July 31, 1996.

II. Matters of Regulatory Procedure

The Commission has determined that the removal of 29 CFR 2703.3 is not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that the removal of 29 CFR 2703.3 would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply because the removal of 29 CFR 2703.3 does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2703

Conflict of interests, Government employees.

For the reasons set forth in the preamble, the Federal Mine Safety and Health Review Commission is amending title 29 of the Code of Federal Regulations as follows:

PART 2703—[AMENDED]

1. The authority citation for part 2703 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 CFR 2638.202.

§ 2703.3 [Removed]

2. Section 2703.3 of 29 CFR is removed.

Dated: April 10, 1997.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 97–9848 Filed 4–16–97; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86–7B]

Cable Compulsory Licenses: Definition of Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting final regulations recognizing that satellite master antenna television (SMATV) systems are eligible as cable systems under section 111 of the Copyright Act to obtain a compulsory license to retransmit broadcast signals to their subscribers. The regulations provide guidance as to who should file and how to report distant signals.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or Tanya Sandros, Attorney Advisor, Copyright Office, Library of Congress, Washington, D.C. 20540, (202–707–8380) or Telefax (202–707–8366).

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act, 17 U.S.C., establishes a mechanism by which cable systems may obtain a compulsory license to make secondary transmissions to their subscribers of copyrighted works performed on broadcast stations. A compulsory license is attractive to users of copyrighted material because it gives them guaranteed access to and a guaranteed price for copyrighted works, and avoids the costs of negotiating with each individual copyright owner. As a result, many providers of broadcast signals have sought to qualify as cable systems under section 111, so that they may obtain a cable compulsory license.

Consequently, on October 15, 1986, the Copyright Office published a Notice of Inquiry inviting public comment on whether satellite master antenna television systems (SMATV), multichannel multipoint distribution

systems (MMDS),[1] or satellite carriers[1] qualify as cable systems under section 111 of the Copyright Act. 51 FR 36705 (Oct. 15, 1986). As part of the inquiry, the Office solicited specific comments on how an individual SMATV operation qualifying as a cable system would file statements of account, and on who would be deemed the owner of a SMATV system. The inquiry concerning SMATV systems was based on the following understanding of how a SMATV operates:

> SMATV systems use TVROs [television receive-only satellite dish] to receive transmissions via satellite, and a master antenna for receipt of over the air television signals. The programming is then combined and distributed by cable to subscribers, primarily in apartment houses and other multi-unit residential buildings.

51 FR 36706 (1986).

After analysis of the comments to the Notice of Inquiry, the Copyright Office concluded that SMATV systems could qualify as cable systems and issued a Notice of Proposed Rulemaking proposing regulations by which SMATV systems could obtain a compulsory license to retransmit broadcast signals. 56 FR 31580 (July 11, 1991). At that time, the Office also acknowledged its practice of accepting filings from SMATV operators, without ruling on their sufficiency or adequacy, during the period that the Office considers whether such filings are appropriate. 56 FR 31596 (1991). The Office further advised those SMATV operators, who had previously filed Statements of Account during prior accounting periods without guidance or knowledge of the new rules, that they need not amend these filings. This understanding, however, does not preclude any facility from amending its prior filings under the new regulations, after they are issued in final form.

Comments

Responding to the proposed regulations on the eligibility of SMATV systems for the cable compulsory license, the Office received direct comments from:

—Liberty Cable Company, Inc. (Liberty), a SMATV system operator in the New York City area.
—MaxTel Cablevision, a SMATV system owner and operator, Western Cable Communications, Inc., a SMATV system owner and operator, and National Private Cable Association, an association of SMATV systems operators, equipment manufacturers, vendors, and program distributors, jointly (MaxTel et. al.);
—Mid-Atlantic Cable, Stellar Communications, Inc., TeleCom Satellite Systems Corp., Telesat Cablevision, Inc., 21st Century Technology Group, Inc., all SMATV system operators, and National Satellite Programming Network, Inc., a provider of programming and support services to SMATV systems operators, jointly (Mid-Atlantic et. al.);
—the Motion Picture Association of America, Inc. (MPAA), a trade association that represents copyright owner-claimants for section 111 royalties;
—the National Cable Television Association (NCTA), a cable television trade association;
—National CableSystems Associates, (NCSA) owner and operator of 25 SMATV systems in the Atlanta, Georgia area;
—Pepper & Corazzini, a law firm representing independently owned and cable-affiliated SMATV systems;
—Satellite Television of New York Associates, d/b/a Community Home Entertainment, (Community), the SMATV operator of Co-Op City, Bronx, New York;
—Spectradyne, Inc. (Spectradyne), provider of free-to-guest satellite video programming to hotels; and
—Turner Broadcasting System, Inc. (TBS), licensee of superstation WTBS, Atlanta, Georgia.

The Office also received reply comments from:

—MaxTel, *et. al.;*
—MPAA;
—Major League Baseball, the National Basketball Association, and the National Hockey League (the Professional Sports Leagues); and
—NCTA.

Eligibility for the Section 111 Compulsory License

The following commentators agree with the Copyright Office's conclusion that SMATV systems qualify as cable systems for section 111 purposes: Community, Liberty, Maxtel et. al., Mid-Atlantic et. al., MPAA, NCSA, Pepper & Corazzini, Spectradyne, and TBS.

NCTA takes no position on the question of SMATV eligibility.

The Professional Sports Leagues oppose the eligibility of SMATV systems as cable systems because they argue that Congress intended to draw a distinction between traditional cable and other retransmission media, such as MATV systems (the predecessor systems to SMATVs, similar in all respects to SMATV systems except without the capacity to receive satellite transmissions) when they exempted MATV systems from copyright liability in section 111, so long as they retransmitted only local signals to their subscribers. Professional Sports Leagues, reply comments at 7–8. Thus, having afforded MATV systems such an exemption, the Professional Sports Leagues argue that the remainder of section 111 is intended to apply to traditional cable systems. The Professional Sports Leagues also argue that the section 111 compulsory license was based on economic necessity, and that in 1976, traditional cable systems could not exist without the compulsory license, but such economic necessity was not true of MATV systems then, or SMATV systems now. Reply comments at 8.

This argument was raised in the previous round of comments and responded to by the Office in the 1991 Notice of Proposed Rulemaking where the Office said that the section 111(a)(1) exemption was intended merely to ensure that residents of multiple unit dwellings had access to local television signals. 56 FR 31595 (July 11, 1991). The section 111(a)(1) exemption does not prohibit a master antenna television system from importing distant signals nor does it address the consequences of importing distant signals. The Office considered that such a system would have copyright liability. Whether it must meet that liability through negotiation with the copyright owners or could meet it by obtaining a compulsory license is the issue, and the fact that Congress gave MATV systems an exemption for local retransmissions does not affect the analysis.

Nor does the Office agree that the analysis should depend on whether SMATV systems would still be economically viable without the compulsory license. As the Professional Sports Leagues themselves point out, many cable systems today would be economically viable without the compulsory license, but nothing in section 111 would render a cable system ineligible because it was economically sound. The viability of a provider of broadcast signals with or without the compulsory license is not the question; the question is whether Congress intended the providers to be included in section 111.

TBS agrees that SMATV systems qualify as cable systems, but disagrees

[1] On January 29, 1992, the Office concluded its inquiry into the definition of a ''cable system'' in Docket No. 86–7B and issued a regulation denying both ''wireless'' cable operators and satellite carriers eligibility for the cable compulsory license. 57 FR 3284 (January 29, 1992). Subsequent to the issuance of this regulation, Congress passed the Satellite Home Viewer Act of 1994, Public Law 103–369, which amended the definition of a ''cable system'' in section 111 to include ''wireless'' cable systems, such as the multichannel multipoint distribution systems.

with certain aspects of the Copyright Office's analysis. It argues that the Office should not look to whether a particular video provider constitutes a ''local medium of limited availability,'' or to whether the FCC has affirmatively approved retransmissions by a particular type of facility, but should confine itself to addressing whether a SMATV system ''retransmits broadcast signals to paying subscribers by wires, cables, or other communications channels.'' TBS, comments at 13–14. In other words, TBS argues that the Copyright Office should only look at the section 111 definition of a cable system. However, as the Office has stated previously, section 111 must be construed in accordance with Congressional intent and as a whole, not just in reference to one particular section. 57 FR 3292 (Jan. 29, 1992). The Office notes that at the time Congress created the cable compulsory license, the FCC regulated the cable industry as a highly localized medium of limited availability, suggesting that Congress, cognizant of the FCC's regulations and the market realities, fashioned a compulsory license with a local rather than a national scope. This being so, the Office retains the position that a provider of broadcast signals be an inherently localized transmission media of limited availability to qualify as a cable system. 56 FR 31595 (July 11, 1991).

It is therefore the Office's conclusion, after considering the above comments, that SMATV systems are cable systems for purposes of section 111.

Identifying a SMATV System

While the Copyright Office has discussed the eligibility of SMATV systems for the cable compulsory license and described how a SMATV system operates in its initial Notice of Inquiry, the Office has chosen not to define a SMATV system in its regulations, although SMATV systems present unique compulsory license reporting issues which require clarification in the Copyright Office's rules. None of the commentators raised the issue, suggesting that the nature and operation of a SMATV system is generally understood within the industry. We note, too, that the Federal Communications Commission, while regulating SMATV systems in various ways, has never defined a SMATV system in its regulations. Yet, all parties must operate with a common understanding as to what is a SMATV system. To this end, the Office believes an examination of the FCC regulatory policy toward SMATV systems is useful for determining the characteristics of a SMATV system.

Since 1966, the FCC's definition of a cable system excluded those systems serving multiple unit dwellings. See, *Second Report and Order on CATV Regulation*, 2 FCC 2d 725 (1966). These excluded systems were apparently originally MATVs (Master Antenna Television Systems), but were later thought to include SMATVs. In the 1984 Cable Act, Congress specifically excluded from the definition of a ''cable system'' ''a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way * * *.'' 47 U.S.C. 522(7) (1984). The House Report to the Cable Act described the exemption as applying to ''a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings (in other words, a satellite master antenna television system), unless such facility or facilities use a public right-of-way.'' H.R. Rep. No. 934, 98th Cong., 2d Sess. 44 (1984).

Congress modified the section 522(7) exemption in the Telecommunications Act of 1996. The section now exempts from the definition of a cable system ''a facility that serves subscribers without using any public right-of-way.'' 47 U.S.C. 522(7) (1996). The new exemption certainly continues to include SMATV systems, but has been broadened to include other types of retransmission facilities such as wireless cable.

While the Office believes that the history of communications regulation of SMATV systems is relevant to determining what is a SMATV system, we acknowledge that it is not dispositive for the copyright inquiry. We do not believe that the FCC requirement of not crossing a public right-of-way is important for section 111 purposes because the distinction only determines whether such a facility will be regulated as a cable system for FCC purposes, as opposed to defining what a SMATV system is or does. Consequently, we are identifying as SMATV systems only those facilities which receive television signals from satellites and retransmit them to subscribers residing in multiple unit dwellings, such as apartment complexes and hotels.

Party Responsible for Filing the Statement of Account and Remitting Royalties

In the Notice of Proposed Rulemaking, the Office proposed that the party responsible for filing the statement of account and remitting royalties on behalf of a SMATV system should be the building owner where the SMATV system is operating, not the entity that provides the signals and maintains the facility.

This was proposed for two reasons. First, it was observed that satellite carriers are often the signal providers for a building, and to allow a satellite carrier to designate itself as the owner of the cable system could qualify a satellite carrier as a cable system, a result contrary to the Office's conclusion that satellite carriers are not cable systems.

Second, designating the distributors of the broadcast signals as the filer might result in lower reported gross receipts, because the distributor would report the rate it charged the building, but not any add-ons, if there were any, that the building owner might charge the residents or guests.

1. Concerns About Requiring Building Owners To File

The Office's question about who should be the filer elicited the greatest amount of discussion from the commentators. Uniformly, the comments state that the filer should not necessarily be the building owner. The commentators' greatest concern is that if the responsibility to file is placed on the building owner, many building owners will be inclined to avoid the responsibility by either replacing the SMATV system with a traditional cable system or ceasing to provide video programming altogether. These concerns were addressed in the comments. See Spectradyne, comments at 3–4; NCSA, comments at 6–7; Mid-Atlantic et. al., comments at 4; and Community, comments at 3–4.

2. Comments Addressing Copyright Office's Concerns

Many of the commentators who believe the system operator, not the building owner, should be the filer, sought to allay the Office's concerns about satellite carrier eligibility and the potential for underreporting gross receipts.

As to whether satellite carriers that distribute signals to SMATV systems would qualify as cable systems, Pepper and Corazzini assert,

> The satellite carrier would never be in a position to designate itself as the cable system. Where the owner of a hotel or multi-unit dwelling provides the service itself, it purchases the signals from the satellite carrier or the carrier's distributor. The satellite carrier does not exercise any control or management responsibility over the SMATV system, nor does the carrier have

any contractual privity with the subscribers. This is true whether the SMATV service is provided by the hotel or an owner of a multi-unit dwelling or by an [sic] SMATV operator.

Pepper & Corazzini, comments at 5.

Similarly, Maxtel *et. al.* states,

It is not the satellite carrier who is the signal distributor to the customers of the SMATV operator any more than that satellite carrier is the signal distributor to the customers of the traditional franchised cable television operator. The satellite carrier merely distributes signals to the headend facility of either the SMATV operator or the cable franchisee * * * Contrary to the direct transmission between a satellite carrier and an individual single family home TVRO [television receive-only satellite dish], there is always an intermediary retransmitter between the satellite carrier and the subscriber residing within an apartment complex, for example. Thus, the satellite carrier would never be designated as the owner of the cable system for filing purposes and the Copyright Office need not be concerned over any anomaly with its determination that ''satellite carriers do not and cannot qualify for the cable compulsory license.''

MaxTel *et. al.*, comments at 5.

Spectradyne addresses the possibility, disputed by Pepper & Corazzini and MaxTel *et. al.*, that a satellite carrier could both deliver the distant signal and be the SMATV system operator. It argues that the Copyright Office's concerns can be met in the case of a satellite carrier which happens also to be a SMATV operator, because ''the [compulsory] license would apply only to the SMATV element of the satellite carrier's business. In order to be free from copyright infringement liability for the remaining portions of its operation (ground to transponder to ground) the satellite carrier would either have to qualify as a passive carrier or negotiate copyright licenses. There is no anomaly in this.'' Spectradyne, comments at 5.

The commentators also believe that the potential for underreporting the gross receipts can be avoided.

Spectradyne states that ''any fear of revenue under-reporting can be relieved by imposing on system operators the obligation to report not only amounts received by them but the higher of the amounts they receive and any amounts collected by the hotel operator from guests for the privilege of viewing the tier of service at issue.'' Spectradyne, comments at 6–7.

MaxTel *et. al.* posits three possible situations concerning bulk rates that may or may not reflect the total gross receipts.

First, most SMATV operators contracting with private property owners do not provide such service on a bulk rate basis, but rather charge individual subscribers directly for the service. Second, most property owners desiring a bulk rate contract do so to increase occupancy, and thus do not even charge a premium for the cable service. Third, traditional franchised cable television operators also enter into bulk rate contracts with private property owners, in which the owner can charge the residents a higher fee than the property owner paid the cable franchisee for the service. Yet the Copyright Office has not found the cable system owner in that circumstance to be the property owner as opposed to the cable franchisee * * * If the Copyright Office wishes to rectify the fact that the gross receipts figure will necessarily not include any additional charges rendered by a property owner authorizing service under a bulk rate contract, then the Copyright Office should adopt regulations applicable to both SMATV operators and cable franchisees.

MaxTel et. al., comments at 7.

Mid-Atlantic et. al. argues that the definition of the SMATV system operator can be made flexible enough so that if there is no additional charge by the building owner, the business operating the SMATV system is the SMATV system operator, but if there is an additional charge by the building owner, as reflected in subscription agreements with the individual subscribers in the building, then the building owner would be the one designated in that instance as the SMATV system operator. Mid-Atlantic *et. al.*, comments at 5.

3. Commentators' Recommended Definition of Filer

Community recommends that the filer be ''the entity that provides the service to the actual subscriber or to the tenant or unit owner.'' Community, comments at 4.

Liberty recommends a definition of the filer that would allow either the building owner or the SMATV system operator to make the filings and the payments, according to whichever arrangement made sense to the SMATV system operator and building operator, provided that the building operator could designate an agent to sign the Statement of Account. Liberty, comments at 1–2. Similarly, Spectradyne recommends ''permitting either the building owner or the system operator to file the statement of account.'' Spectradyne, comments at 4.

Mid-Atlantic et. al. recommends that the filer should be the operator of the SMATV system, whether that is the building owner or a third party who has a contract with the building owner to provide the service. Mid-Atlantic *et. al.*, comments at 2.

MaxTel *et. al.* recommends that the filer should be ''the owner of the headend facility and the recipient of the subscriber revenues.'' MaxTel *et. al.*, comments at 9. MPAA supported this recommendation. MPAA, reply comments at 16. Similarly, NCSA recommends defining the filer as ''that party who both provides the cable TV service to the ultimate subscriber or television viewer and also receives payment from said subscriber or television viewer for the service either directly or indirectly through a third party.'' NCSA, comments at 11. Likewise, Pepper & Corazzini recommends that the filer be ''the entity that is in charge of the operation of the system and the collection of subscriber revenues.'' Pepper and Corazzini, comments at 8.

4. Discussion

The Office appreciates the concern expressed by SMATV system operators that if the building owner is required to be the filer, some building owners might refuse to take on that responsibility, to the detriment of the SMATV system operator. Therefore, the Office agrees that the building owner who is uninvolved with the SMATV system operation may not, in that circumstance, be the best one to file the statement of account.

In searching for the best solution, the Office is inclined to agree with NCSA, that the filer should be the party that provides the retransmission service and receives the payment, either through a bulk rate charged to the building owner, or by individually billing the subscriber, or by any other billing arrangement.

The Office also appreciates the distinction drawn by Spectradyne between a satellite carrier acting in its capacity as a SMATV system operator and a satellite carrier acting in its capacity as the deliverer of the distant signal. The Office agrees that the satellite carrier could also be the SMATV system operator for that portion of the satellite carrier's operation for which it performs the functions of a SMATV system operator, but not for the direct delivery of the distant signals.

Similarly, a building owner could also be a SMATV system operator, if the building owner is the one that provides the retransmission service and collects the payments from the subscribers.

Furthermore, the Office acknowledges the points raised by MaxTel *et al.* about bulk rates and the importance of ensuring that any rules adopted for SMATV system are consistent with the Office's policy toward traditional cable systems. Therefore, the gross receipts that shall be reported shall be those collected by the filer, either directly from the subscribers or indirectly through a third party.

In no case shall gross receipts for the SMATV facility be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission by the SMATV facility. As a result, if the building owner is the SMATV system operator because he or she provides the retransmission service, but does not charge his or her residents, tenants, or guests, because it is a ''free'' service, the building owner, nonetheless, reports as gross receipts the amount that he or she pays the satellite carrier for the cost of bringing in the broadcast signals.

Calculation of Royalties for Form 3 SMATV Systems

In the Notice of Proposed Rulemaking, the Office stated that SMATV systems that file as Form 3 systems—those grossing $292,000 or more per semiannual accounting period—would be required to comply with the signal carriage and market quota regulations applied by the FCC to cable systems when making their royalty calculations, even though SMATV systems that did not use the public rights-of-way were not, in fact, subject to such regulations.

This proposal is supported by MPAA and NCTA, who each argued that if SMATV systems are to qualify as cable systems, they should be treated the same way as traditional cable systems. MPAA, reply comments at 16–17; NCTA, comments at 2.

This proposal is opposed by Community. Community argues that the Copyright Office is bound to follow the law, and that, under FCC rules, SMATV systems not using the public rights-of-way were not subject to distant signal quotas. Therefore, the Copyright Office may not impose 3.75% rate charges for signals that SMATV systems were permitted to import before 1981. Furthermore, Community states that it received an opinion letter from the General Counsel of the Copyright Office in 1984 confirming Community's interpretation of the law. Community, comments at 2–3, Attachment C.

In reply, NCTA argues that the Copyright Office is not so restrained as Community asserts, and that the Office may make common sense responses to problems that arise during the implementation of section 111, so long as those responses are not inconsistent with congressional intent. NCTA believes it is logical for the Office to conclude that since Congress intended new technologies to be eligible for the cable license, it did not intend to treat these new technologies more favorably than traditional cable systems. Finally, NCTA notes that the Copyright Office requires newly constructed cable systems to pay 3.75% rate royalties even though they were never subject to the FCC's distant signal rules. NCTA, reply comments at 1–3.

The Office's main goal in administering section 111 is to implement Congress' intent. Congress recently addressed the issue of how to apply the definition of a cable system to new technologies when it amended section 111(f) to include multichannel multipoint distribution service systems, otherwise known as MMDS or ''wireless cable,'' as cable systems. Satellite Home Viewer Act of 1994, Public Law 103–369, 108 Stat. 3477. Congressional intent is manifest in both the Senate and House reports. The Senate report stated:

> The committee intends ''wireless'' cable and traditional wired cable systems to be placed on equal footing with respect to their royalty obligations under the cable compulsory license, so that one not have an unfair advantage over the other due to differences in their regulatory status under FCC rules. The committee expects the Copyright Office, in applying section 111 to ''wireless'' cable systems, should treat ''wireless'' cable systems as if they were subject to the same FCC rules and regulations that are applicable to wired cable systems.

Sen. Rep. 407, 103d Cong., 2nd Sess., at 14 (1994).

Similarly, the House Report stated,

> Because the purpose of this legislation is to place wired and wireless cable systems on a level playing field, in calculating the fees payable by wireless systems, reference should be made to the same FCC rules that would be applicable if the system were wired, e.g., the distant signal quota rules for purposes of determining whether the 3.75% of gross receipts rate is applicable.

H. R. Rep. 703, 103d Cong., 2nd Sess., at 19 (1994).

Any reliance that Community believes should be placed on the 1984 opinion letter from the Office's General Counsel is now clearly superseded by this expression of Congress' intent. Therefore, the Office will require Form 3 SMATV systems to calculate their distant signal royalties on the same basis as traditional cable systems.

Commonly Owned or Controlled SMATV Systems in Contiguous Communities and SMATV Systems Operating From the Same Headend

Section 111(f) states that for purposes of determining the royalty fee, two or more cable systems in contiguous communities under common ownership or control, or operating from one headend, shall be considered as one system.

In the Notice of Proposed Rulemaking, the Office stated that it had received a request from NCTA to address its petition to reinterpret section 111(f) to provide that two or more cable systems would have to be in contiguous communities under common ownership and control and operating from one headend before they would be required to file as one individual cable system. The Office responded to NCTA's petition by stating that the issue was being addressed in another rulemaking proceeding and would not be examined here. 56 FR 31596 (July 11, 1991).

However, several commentators submitted comments on a related issue asking what constitutes ''contiguous communities'' in the context of SMATV systems.

Pepper & Corazzini argues that because most SMATV systems do not use the public rights-of-way, by their very nature, they are stand alone operations and are not contiguous with each other, even when they are in the same community. Pepper & Corazzini believe they should be considered contiguous only when they are physically on adjoining properties or are interconnected by wire or radio. Pepper & Corazzini, comments at 7. These comments are supported by MaxTel et al. MaxTel, reply comments at 3–4.

MPAA and NCTA disagree with Pepper & Corazzini and MaxTel et al. They both argue that SMATV systems should be treated the same way as cable systems and that the same interpretation of contiguous communities should apply. NCTA proposes that the Office should require commonly owned or controlled SMATV systems to be considered a single cable system when they are located in the same or contiguous communities, or when they operate from the same headend. NCTA, comments at 2–3. MPAA supports NCTA's proposal. MPAA, reply comments at 16.

The Copyright Office agrees with MPAA and NCTA that Congress' intent is to treat new technologies on the same basis as traditional cable systems. It would be inequitable if a SMATV system operator, serving several buildings within a community, were considered to be operating separate cable systems, while a cable operator in that same community serving several non-adjoining households is considered a single system.

Therefore, the Office concludes that a SMATV system operator is a single cable system when it serves multiple unit dwellings in the same community or in contiguous communities, using political boundaries to determine when communities are contiguous.

Accordingly, the Copyright Office and the Library of Congress adopts the following rules.

List of Subjects in 37 CFR Part 201

Cable compulsory license, Cable systems, Satellite master antenna television systems.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II, is amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 201.17 [Amended]

2. Section 201.17(b)(1) is amended by adding ''In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission.'' after the first sentence.

3. Section 201.17(b)(2) introductory text is amended by adding ''The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees.'' after the third sentence.

4. Section 201.17(e)(2)(i) is amended by adding ''The ''owner'' of the cable system is the individual or entity that provides the retransmission service and collects payment from the end user either directly or indirectly through a third party.'' after the first sentence.

Dated: April 3, 1997.

Marybeth Peters,

Register of Copyrights.

Approved By:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–9919 Filed 4–16–97; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0029a; FRL–5697–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate five rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_X emissions from boilers, steam generators, process heaters, stationary internal combustion engines, stationary gas turbines, and glass melting furnaces in the San Francisco Bay area. EPA has evaluated the rules and is taking direct final action to approve them under provisions of the CAA regarding EPA actions on SIP submittals, and SIPs for national primary and secondary ambient air quality standards. The rules are being approved into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment.

DATES: This action is effective on June 16, 1997 unless adverse or critical comments are received by May 19, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

Applicability

This document addresses EPA's direct final action for the following BAAQMD rules: Regulation 9, Rule 7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; Regulation 9, Rule 8, Nitrogen Oxides and Carbon Monoxide Emissions from Stationary Internal Combustion Engines; Regulation 9, Rule 9—Nitrogen Oxides from Stationary Gas Turbines; Regulation 9, Rule 11—Nitrogen Oxides and Carbon Monoxide from Utility Electric Power Generating Boilers; and Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces.

These BAAQMD rules were adopted on September 15, 1993, January 20, 1993, September 21, 1994, November 15, 1995 and January 19, 1994, respectively. They were submitted by the State of California on July 23, 1996. The rules were found to be complete on January 17, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V.[1] EPA is taking direct final action to approve all five rules into the SIP.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992 document should be referred to for further information on the NO_X requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas.[2]

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] The San Francisco Bay Area was designated as a moderate nonattainment area for ozone, and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X category since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls by May 31, 1995 for those sources where installation by that date is practicable.

NO_X emissions contribute to the production of ground level ozone and smog. The five BAAQMD rules control emissions of NO_X from commercial and industrial boilers, steam generators, and process heaters; stationary internal combustion engines; stationary gas turbines; electric power generating boilers; and glass melting furnaces. The rules were adopted as part of the BAAQMD's efforts to achieve the National Ambient Air Quality Standard for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. They were submitted in response to the CAA requirements cited above.

However, subsequent to the complete submittal of the BAAQMD NO_X rules pursuant to the CAA, the district applied for an exemption from the NO_X RACT requirements pursuant to section 182(f)(3). The BAAQMD's exemption request was submitted along with amendments to the BAAQMD's request for redesignation to attainment of the ozone standard. The basis for the BAAQMD's exemption request was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO_X measures. While the BAAQMD had adopted and submitted the measures in response to both the State and Federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. The district was able to demonstrate with three years of monitoring data that the Federal ozone standard was reached without having implemented the NO_X control measures. Subsequently, EPA evaluated the exemption request and published an approval for the BAAQMD's petition for a NO_X RACT exemption on May 22, 1995 (60 FR 27028).

While the BAAQMD was no longer required to submit NO_X RACT rules pursuant to section 182(b)(2), the BAAQMD incorporated several of the previously submitted NO_X rules as contingency measures in its ozone maintenance plan as a requirement for redesignation to attainment. Since being redesignated to attainment of the ozone standard,[3] the Bay Area has recorded violations of the Federal ozone standard, therefore triggering the contingency measures of the maintenance plan. In accordance with the redesignation maintenance plan, and at the request of the BAAQMD, EPA is incorporating the NO_X measures into the SIP. The BAAQMD resubmitted the contingency measures being acted on in this document on July 23, 1996. This action encompasses part of the measures identified in the plan as contingency measures.

EPA Evaluation and Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement and various EPA policy guidance documents.[4] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions. However, because these measures are being incorporated into the SIP as maintenance measures for the area's redesignation plan, the rules are not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rules are being incorporated into the SIP as attainment maintenance measures for ozone. They are therefore being evaluated against the emissions reductions committed to in the maintenance plan, and SIP enforceability guidelines.

EPA is approving these measures, although some areas for improvement have been identified. Refer to the technical support document, dated January 24, 1997, for further analysis of the rules and areas identified for improvement. The BAAQMD rules will strengthen and maintain the SIP and together are estimated to achieve 32.4–34 tons per day of NO_X emissions upon full implementation. EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, all five rules are being approved under section 110(k)(3) of the CAA as meeting the applicable requirements of section 110(a) and part D.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 16, 1997, unless, by May 19, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 16, 1997.

Regulatory Process

Unfunded Mandates

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

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to

[3] See 60 FR 27028 (May 22, 1995).

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Regulatory Flexibility Act

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

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

Executive Order 12866

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

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 6, 1997.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(D) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(D) Bay Area Air Quality Management District.

(*1*) Regulation 9, Rule 7, adopted on September 15, 1993; Regulation 9, Rule 8, adopted on January 20, 1993; Regulation 9, Rule 9, adopted on September 21, 1994; Regulation 9, Rule 11, adopted on November 15, 1995; Regulation 9, Rule 12, adopted on January 19, 1994.

* * * * *

[FR Doc. 97–9946 Filed 4–16–97; 8:45 am]

BILLING CODE 6560–50–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–6972a; FRL–5711–1]

Limited Approval and Limited Disapproval of Implementation Plans; Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a limited approval, limited disapproval action on State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. The SIP revisions consist of the State's 15 Percent Rate of Progress (ROP) Plan and contingency plan. The 15 percent ROP and contingency plans were submitted to satisfy CAA provisions that require ozone nonattainment areas classified as moderate and above to devise plans to reduce volatile organic compound (VOC) emissions 15 percent by 1996 when compared to a 1990 baseline.

DATES: This rule is effective May 19, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, Environmental Protection Agency, Region I, One Congress Street, 11th Floor, Boston, Massachusetts, 02203, and at the Rhode Island Department of Environmental Management, Division of Air Resources, 291 Promenade Street, Providence, Rhode Island, 02908–5767. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: On October 30, 1996 (61 FR 55943), EPA published a notice of proposed rulemaking (NPR) for the State of Rhode Island. One portion of the NPR consisted of a proposed limited approval, limited disapproval of a revision to the Rhode Island SIP establishing a 15 Percent VOC emission reduction plan and contingency plan. The formal SIP revision was submitted by Rhode Island on March 15, 1994 and updated on May 23, 1994.

The 15 Percent and Contingency plans submitted by Rhode Island outline

a strategy to reduce hydrocarbon emissions in the Providence, Rhode Island serious nonattainment area. The specific components of the State's plans and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

The Rhode Island Department of Environmental Management (DEM) was the sole commenter on the NPR. Their comments are contained within a November 26, 1996 letter to Susan Studlien, Deputy Director, Office of Ecosystem Protection. The region has responded fully to the RI–DEM comments in a response to comments memorandum available in the docket for this action. A summary of these comments and EPA's responses appears below.

Comment—Motor Vehicle Inspection and Maintenance (I/M): The DEM acknowledges that implementation of an I/M program has not yet occurred, but points out that much work has occurred over the past several years to initiate such a program. The DEM feels that EPA's recent flexibility in the design of such programs, while laudable, has made it difficult to finalize any particular program. A brief history of the State's efforts in this area is then provided.

Response: EPA recognizes the actions taken to date by Rhode Island with regard to the implementation of an I/M program in the State. However, Rhode Island has not complied with the requirements of the Clean Air Act and EPA regulations which required that states start such programs by January 1, 1995. Rhode Island correctly notes that EPA has been modifying requirements to provide greater flexibility to states for I/M programs, and that EPA has allowed time for states to take advantage of these new provisions.

The National Highway Systems Designation Act (NHSDA) provided an opportunity with a very short time window for states to submit test-and-repair programs without the penalty previously utilized by EPA for calculating emissions from such programs, and in addition provided time for program startup. The states which took advantage of this opportunity are required to start their programs no later than November 15, 1997 in order for a full two year test cycle to occur by November 15, 1999, the date for 15% plan compliance. (There is one NHSDA program that will not start until 1998, but it has a one year test cycle.)

Rhode Island did not submit an I/M program under the NHSDA. Rhode Island is not implementing the program currently authorized in the State and has not yet proposed a substitute program. It is EPA's understanding that Rhode Island currently envisions starting testing of motor vehicles in late 1998 or early 1999, and will most likely adopt a biennial program. That schedule puts the State about one year behind virtually all other States that need emission reductions from auto emissions testing to meet the 15 percent emission reduction requirement. Since Rhode Island's 15% plan relies heavily upon the emission reductions from a motor vehicle emission testing program, the timeframe for achieving the 15 percent VOC reductions is similarly delayed. In an August 1996 memorandum from John Seitz and Margo Oge to the Regional Air Directors, EPA articulated that emission reductions from revised I/M programs that occur before November, 1999 will be allowed to count towards 15% plan emission reductions. The continued delay by Rhode Island in implementing a motor vehicle emission inspection program will make meeting the November 1999 target date increasingly difficult for the State.

Comment—Other Deficiencies: The DEM notes that EPA's proposal identifies several minor discrepancies between EPA's calculation of appropriate emission reductions and the reductions calculated by the State, as described below:

1. Comment—Submittal of Drafts, AIM Credit: The RI–DEM notes that they had submitted the regulations relied upon within the 15% plan, as well as the 15% plan itself, to EPA in draft form. EPA reviewed and commented on the draft regulations and the draft 15% plan, and should have identified these minor problems through that process but did not. Several of the problems cited, for example, the lack of inclusion of windshield wiper fluid in the consumer and commercial products rule, could have easily been addressed at that time. Additionally, EPA changed the amount of credit states could take due to the EPA's pending national rule on architectural and industrial maintenance (AIM) coatings after Rhode Island submitted its 15% plan. The DEM feels that the EPA's delay in proposing approval or disapproval of the State's plan should not be grounds for discounting credit due to a revised estimate of the emission reductions from the pending AIM rule.

Response: The DEM's 15% plan, and four VOC control regulations relied upon in the plan to achieve emission reductions were submitted in early 1994. EPA used the best information available at the time drafts of these documents were submitted to review and analyze the emission reduction claims made by the state, and made a good faith effort to identify all errors at that time. A minor discrepancy (0.05 tons per day) in the amount of credit claimed from plant shutdowns was not detected at that time, but was noted subsequent to the final submittal by the state.

During 1995, EPA finalized a report to Congress on VOC emissions from the consumer and commercial product category. Information contained in that report allowed EPA to perform a detailed analysis of the emission reductions claimed by Rhode Island from its rule on this emission source category. That review disclosed that the State had overestimated the emission reductions likely to result from this rule.

EPA agrees that Rhode Island correctly calculated the amount of credit likely to occur from the EPA's pending AIM rule based on EPA guidance available at the time of the State's submittal. However, EPA later revised the emission reduction estimate downward based on a better understanding of what the provisions of the final rule would be. The DEM could have revised its plan in light of the new guidance. EPA believes that the best information available should be used in making determinations on the emission reductions within the 15% plan, and therefore feels that the most recent guidance memorandum on credit from the AIM rule is the appropriate tool to use to analyze the State's credit claim.

With regard to delays by EPA in processing the State's SIP, EPA did not feel it was appropriate to move forward with an approval or disapproval of Rhode Island's 15% plan given the uncertain status of the State's auto emission testing program. EPA chose to propose disapproval of the State's plan when it became clear that significant delays were occurring in the implementation of the program.

2. Comment—Air Toxics and Non-Control Technique Guideline (CTG) Reductions: The DEM's comments reflect that EPA's only reason for not approving the emission reduction credit generated by these programs is that they have not been submitted to EPA as SIP revisions. The DEM notes that since the reductions have occurred, according to the Transportation Conformity Regulation, these deficiencies could be protected by a protective finding and should not trigger the transportation consequences indicated in the proposed disapproval.

Response: Section 182(b)(1)(C) of the Clean Air Act requires creditable reductions to be in a State's implementation plan, EPA rules, or

Title V permits. As discussed within the proposed action, Rhode Island can receive credit from these programs by incorporating the relevant documents into the State's SIP.

The DEM's claim that pursuant to the EPA's Transportation Conformity Regulation these deficiencies could be protected by a protective finding is not correct. EPA's rationale for not proposing to institute a protective finding was based on the failure of the state to implement an auto emission testing program, not on the failure to incorporate air toxics and non-CTG orders into the State's SIP. The failure to implement the auto emission testing program has made the State's mobile source emission budget unrealistic, and therefore a protective finding was not proposed.

3. Comment—Basis for Proposed Disapproval: The DEM notes their understanding that based on conversations with EPA staff, the non-I/M deficiencies noted in the proposed disapproval would not of themselves have led EPA to propose disapproval of the State's 15% plan, and that a recalculation of the State's 15% plan using updated growth assumptions could negate the need for these non- I/M reductions. DEM requests that EPA's final rule should clearly state that the failure to secure I/M reductions formed the basis of EPA's action, and that the other issues may not be an issue once the ROP calculations are updated.

Response: EPA agrees that it based its proposed disapproval action primarily on the failure of the State to secure I/M reductions. The proposed disapproval notice contained a table outlining the magnitude of the noncreditable emission reductions from which it can clearly be seen that the failure to achieve reductions from I/M caused the majority of the shortfall. EPA also agrees that the other issues may not be of consequence once the State revises its plan. It is possible that the State will design and implement an I/M program that will achieve sufficient reductions to yield an approvable 15% plan without addressing EPA's issues on the non-I/M elements of the plan. But a great deal depends on the design and timing of Rhode Island's I/M program, which is still so uncertain that EPA cannot predict whether Rhode Island will ultimately need to revise the non-I/M elements of its plan. Additionally EPA notes that the State's current intention to revise its 15% plan to incorporate updated growth assumptions presents an opportunity for the State to make these minor corrections and to submit the SIP revisions necessary to make the non-CTG and air toxics emission reductions creditable towards the 15% reduction.

Comment—Proposed Action, Conformity Lapse: The DEM notes that EPA's proposal stipulates that a conformity lapse will occur 120 days after a final disapproval action, and that after the lapse no new project level conformity determinations may be made. The DEM agrees that this is consistent with EPA's current conformity rule, but points out that under a proposed revision to the EPA's conformity rule published in July of 1996, a lapse would be imposed 2 years after a final disapproval action, and that a conformity freeze rather than a lapse would be imposed 120 days after a final disapproval action.

The DEM notes that the 15% plan was submitted in the Spring of 1994, and that EPA, by proposing action on the plan at this point in time, gives the appearance of attempting to rush the action through so that a lapse will occur in the State instead of the less punitive freeze. The DEM feels this is inappropriate, particularly in light of the State's good faith efforts to implement I/M in the State. Accordingly, DEM urges EPA to delay finalizing the disapproval action until the conformity amendments are finalized. DEM, in turn, will continue to move forward with I/M as expeditiously as possible, and will introduce I/M legislation in January of 1997. The DEM also pledges to update its 15% plan and submit a revised plan to the EPA as an SIP revision.

Response: EPA did not propose action on Rhode Island's 15% plan in the fall of 1996 in an attempt to ensure that a conformity lapse, rather than a freeze, occur. Contrary to Rhode Island's suggestion that EPA is hurrying this action, EPA has been exceedingly deliberate in its approach to Rhode Island's 15% plan and I/M program. The EPA has delayed action on most 15% plans because most of these plans relied substantially on the reductions from I/M programs, and most I/M programs have been delayed. In 1995, EPA revised its criteria for acceptable I/M programs. The goal of the revised I/M criteria was to give states flexibility in the design of such programs. The NHSDA of 1995 outlines the EPA's revised I/M criteria, and set a timetable for States to implement the revised criteria. Rhode Island did not meet this timetable, and it was that failure that finally led EPA to propose disapproval of Rhode Island's 15% plan. Although EPA hopes that Rhode Island is committed to implementing I/M, the fact is that the State is significantly behind similar efforts being made by other States.

On January 17, 1997, EPA's Regional Administrator sent a letter to Governor Almond addressing the issue of the timing of a conformity lapse. Within that letter, EPA notes that once the proposed revisions to the conformity rule are finalized, Rhode Island will be subject to their provisions, regardless of when the final disapproval action is published for the State's 15% plan. Therefore, if EPA's conformity rule is finalized as it was proposed, and prior to the expiration of the 120 day conformity lapse clock required by the current conformity rule, a conformity freeze rather than a lapse will be imposed on the state. If EPA's conformity rule is finalized after expiration of the 120 day clock, a lapse would go into effect. The lapse, however, would convert to a freeze once EPA's conformity rule is finalized, presuming the final conformity rule reflects the position on this issue articulated in the proposal.

Final Action

The EPA is issuing a limited approval, limited disapproval of the Rhode Island 15 Percent ROP and Contingency plans. The Rhode Island 15 Percent ROP plan will not achieve enough reductions to meet the requirements of section 182(b)(1) of the CAA. Additionally, the portion of the State's contingency plan consisting of the two VOC control regulations does not meet the requirements of section 172(c)(9) of the CAA. These regulations are triggered upon failure of the State to meet ROP requirements, but are not also triggered by failure of the State to attain the NAAQS for ozone by the area's attainment date as required by section 172(c)(9). In light of these deficiencies, the EPA cannot grant full approval of these plan revisions under Section 110(k)(3) and Part D.

However, the EPA may grant a limited approval of the submitted plans under section 110(k)(3) and section 301(a) since the rules making up the 15 Percent Plan and the Contingency Plan will result in VOC emission reductions and will strengthen the SIP. Thus, the EPA is issuing a limited approval of the Rhode Island 15 Percent Plan and Contingency Plan under sections 110(k)(3) and 301(a) of the CAA.

The EPA is also issuing a limited disapproval of the Rhode Island 15 Percent plan under sections 110(k)(3) and 301(a) because the submittal does not fully meet the requirements of section 182(b)(1) of the CAA for the 15 Percent Rate of Progress Plans, and the plan does not achieve the required emission reductions. In addition, the EPA is issuing a limited disapproval of

the Rhode Island Contingency plan. The plan does not meet the requirements of sections 172(c)(9) and 182(c)(9) for contingency measures because the plan, if implemented, will not achieve the required 3 percent emission reduction. Additionally, the plan does not fully meet the requirements of section 172(c)(9) regarding implementation of contingency measures if the area's attainment date is not met according to the schedule outlined within the CAA.

Rhode Island has expressed its intention to submit a revised vehicle I/M program. The additional reductions from vehicle I/M may serve to correct the shortfall identified in this proposed **Federal Register** Action. Alternatively, Rhode Island could implement its existing I/M program. To gain full approval of its 15 percent plan, Rhode Island will need to submit a revised plan that documents the necessary enforceable reductions, such as those resulting from a revised I/M program or other enforceable measures, to meet the 15 percent rate of progress requirements and include sufficient contingency measures to achieve a 3 percent reduction.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: The imposition of emission two for one offset requirements, and loss of certain highway funding. The 18-month period referred to in section 179(a) will begin on the effective date established in the final limited disapproval action. If the deficiency is not corrected within 6 months of the imposition of the first sanction, the second sanction will apply. This sanctions process is set forth at 59 FR 39832 (Aug. 4, 1994), to be codified at 40 CFR 52.31. Moreover, within two years of the final disapproval of a required SIP submission, the EPA shall promulgate a federal implementation plan (FIP) under section 110(c).

On January 18, 1995, the EPA made a completeness determination on the Rhode Island 15 percent plans with an approval of the established motor vehicle emission budget for use in transportation conformity determinations. Because the motor vehicle emission budget is based to a significant extent upon an I/M program not being implemented by Rhode Island, EPA has determined that budget is no longer credible. EPA, therefore, is rescinding the protective finding [1] through this final disapproval action. EPA is notifying the State, the Metropolitan Planning Organizations, the U.S. Federal Highway Agency, and the U.S. Federal Transit Administration of the effect of a disapproval action on conformity in Rhode Island. Under the current Transportation Conformity Regulations, the conformity status of the transportation plan and transportation improvement program shall lapse 120 days after the effective date of EPA's final disapproval without a protective finding, and no new project-level conformity determinations may be made. Furthermore, no new transportation plan, TIP, or projects may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted, found complete, and conformity to this submission is determined.

The timeframe for the conformity lapse, which as discussed above is 120 days after the effective date of EPA's final disapproval action, could be changed by a revision to EPA's conformity rule. On July 9, 1996, EPA published (61 FR 36112) a proposed rule which would modify the Transportation Conformity rule. A key provision contained in the proposal was a change in the penalty that occurs 120 days after a final disapproval action. Instead of a lapse, a less punitive conformity freeze was proposed to occur in 120 days. In EPA's proposed conformity rule revision, the more restrictive lapse would be imposed 2 years after a final disapproval action. Therefore, if the conformity rule is finalized as proposed, the conformity lapse will take place 2 years from the effective date of the final disapproval action, and a freeze would be imposed in the period between 120 days and 2 years following the effective date of this action. Rhode Island will ultimately be subject to the provisions contained in EPA's final conformity rule.

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

[1] *Protective finding* means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA's limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this limited disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this limited disapproval action does not

have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Regulatory Flexibility Act as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Dated: March 8, 1997.

John P. DeVillars,

Regional Administrator, EPA Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2070 Identification of plan.

* * * * * *

(c) * * *

(50) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on March 15, 1994. The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA is approving only the following portions of these submittals: 15 Percent Plan—the EPA is approving the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating, printing operations, marine vessel loading, plant closures (0.79 tons per day approved out of 0.84 claimed), cutback asphalt, auto refinishing, stage II, reformulated gas in on-road and off-road engines, and tier I motor vehicle controls. Contingency Plan—the EPA is approving the calculation of the required emission reduction, and a portion of the emission reduction credits claimed from Consumer and Commercial products (1.1 tons per day approved out of 1.9 tons claimed), and architectural and industrial maintenance (AIM) coatings (1.9 tons per day approved out of 2.4 tons claimed). EPA is concurrently disapproving portions of these SIP submissions, as discussed within § 52.2084(a)(2).

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated March 15, 1994, submitting a revision to the Rhode Island State Implementation Plan.

2. Section 52.2084 is amended by adding paragraph (a)(2) to read as follows:

§ 52.2084 Rules and Regulations.

* * * * *

(a) * * *

(2) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on March 15, 1994. The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA is disapproving the following portions of these SIP submittals: 15 Percent Plan—Emission reductions claimed from motor vehicle inspection and maintenance program, non-CTG sources, air toxic sources, and plant closures (0.05 tons per day disapproved out of 0.84 tons claimed). Contingency Plan—a portion of the credit claimed from consumer and commercial products (0.8 tons per day disapproved out of 1.9 tons claimed), and a portion of the credit claimed from AIM coatings (0.5 tons per day disapproved out of 2.4 tons claimed).

[FR Doc. 97–9949 Filed 4–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0016; FRL–5802–6]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the Governor of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) in the Denver area. The SIP revisions were submitted to satisfy certain Federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Denver and, among other things, contain enforceable control measures. The bulk of the revisions were submitted on March 30, 1995. Revisions to Colorado Regulation No. 13 (oxygenated fuels), which is one of the control measures relied on in the SIP, were adopted by the Air Quality Control Commission

(AQCC) on October 19, 1995 and submitted to EPA on December 22, 1995. EPA proposed to approve the March 30, 1995 submission on October 3, 1996. On December 6, 1996, EPA published a supplemental proposal to approve the Denver PM_{10} SIP based on the October 19, 1995 version of Regulation No. 13 rather than the prior version. This action supersedes EPA's July 25, 1994, final limited approval of certain control measures found in the State's June 7, 1993 Denver PM_{10} SIP submittal.

DATES This action will become effective on May 19, 1997.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466; Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530; and the Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Callie Videtich at (303) 312–6434.

SUPPLEMENTARY INFORMATION:

I. Background

The Denver, Colorado area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991) and 40 CFR 81.306 (specifying PM_{10} nonattainment designation for the Denver metropolitan area). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in Part D, Subparts 1 and 4, of Title I of the Act.[2]

The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale. In this rulemaking action on the Colorado moderate PM_{10} SIP for the Denver nonattainment area, EPA is applying its interpretations considering the specific factual issues presented.

Those States containing initial moderate PM_{10} nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following plan provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a new source review (NSR) permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). On January 14, 1993, the State submitted regulation revisions for the construction of new and modified major stationary sources. On August 18, 1994, EPA partially approved the State's NSR program for the Denver PM_{10} nonattainment area because the State had not yet submitted NSR provisions for sources of PM_{10} precursors (i.e., NO_X and SO_2) in the Denver area (see 59 FR 42300). On August 25, 1994, Colorado submitted additional NSR provisions for precursor emissions. EPA took final action on that SIP submittal on January 21, 1997 (62 FR 2910). Thus, the State has a fully-approved NSR permitting program in place for the Denver moderate PM_{10} nonattainment area.

States were also required to submit contingency measures for PM_{10} moderate nonattainment areas by November 15, 1993. The contingency measures for the Denver PM_{10} nonattainment area were initially submitted by the Governor on December 9, 1993. However, those control measures were later incorporated into the revised March 30, 1995 PM_{10} SIP to help demonstrate attainment and maintenance. Thus, the State developed new contingency measures, and on November 17, 1995, the Governor submitted those measures to EPA. EPA took direct final rulemaking action on the contingency measures SIP submittal on September 23, 1996 (61 FR 49682). Because no adverse comments were received for the direct final rulemaking, the rule became effective on December 23, 1996.

On June 7, 1993, the Governor submitted a SIP for Denver to EPA which was intended to satisfy those elements due November 15, 1991. On December 20, 1993, EPA proposed to conditionally approve that SIP and also proposed to approve the SIP's control measures for their limited purpose of strengthening the Colorado SIP (58 FR 66326). On July 25, 1994, EPA granted limited approval of the control measures for the limited purpose of strengthening the SIP (59 FR 37698).

During review of the technical information supporting the June 1993 SIP, EPA examined information which raised concerns about the accuracy of the SIP's attainment demonstration. The SIP's technical support documentation suggested that the contribution from PM_{10} ''precursors'' (*i.e.*, NO_X and SO_2) in the base year winter season may have been underestimated. Since the attainment demonstration provided with that SIP predicted a value of 149.9 $\mu g/m^3$ over 24 hours, virtually any increase in precursor PM_{10} levels would result in predicted violations of the 24-hour standard.

In the December 20, 1993, proposed rulemaking action, EPA requested public comment on its proposal to grant conditional approval of the SIP in light of the precursor issue. EPA reviewed the information submitted during the public comment period and concluded that precursors were underestimated by 5.4 $\mu g/m.^3$ Based upon this finding, EPA

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

delayed taking final action on the proposed conditional approval to allow the State an opportunity to develop additional controls to offset this increase. EPA never proceeded with the conditional approval. On March 30, 1995, the Governor submitted a SIP revision intended to provide controls to offset the increase in precursor emissions and provide credible attainment and maintenance demonstrations. Based on this SIP revision, EPA proposed approval of the PM_{10} SIP on October 3, 1996 (61 FR 51631).

On July 18, 1995, and April 22, 1996, the Governor submitted additional revisions to the SIP which establish mobile source emissions budgets for PM_{10} and NO_X. These budgets are used under EPA regulations for making transportation related conformity determinations as required by section 176(c) of the Act. EPA's transportation conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated. EPA proposed approval of these emissions budgets on October 3, 1996 along with the Denver PM_{10} SIP. However, EPA is not taking final action on the two emissions budgets in order to more thoroughly consider comments received during the public comment period. These emissions budgets are not necessary to meet the Act's requirements for moderate PM_{10} nonattainment areas and, therefore, will be addressed in a separate rulemaking.

EPA became aware after proposing approval of the PM_{10} SIP that the version of Regulation No. 13 (oxygenated fuels) that was one of the control measures relied on in the Denver PM_{10} SIP had been replaced by the October 19, 1995 version of Regulation No. 13. The Governor submitted this version to EPA as a SIP revision on December 22, 1995. The October 19, 1995 version eliminates the last two weeks from the program and calls for a 3.1% program rather than a 2.7% program. On December 6, 1996 (61 FR 64647) EPA published a supplemental document that, among other things, proposed to approve the Denver PM_{10} SIP with the October 19, 1995 version of Regulation No. 13 substituted for the prior version. EPA received no comments regarding this aspect of the supplemental document and is proceeding with its approval of the Denver PM_{10} SIP based on the October 19, 1995 version of Regulation No. 13.

EPA has already approved the October 19, 1995 version of Regulation No. 13 as part of the Denver carbon monoxide (CO) SIP. The acting Regional Administrator for EPA Region VIII signed a **Federal Register** document approving the Denver CO SIP on January 31, 1997, but at the time this document was prepared, that approval had not yet been published in the **Federal Register**.

II. Response to Public Comments

EPA received numerous comments on its proposed approval of the Denver PM_{10} SIP and the PM_{10} and NO_X emissions budgets. In this document, EPA is addressing only those comments submitted on the Denver PM_{10} SIP. The comments received regarding the emissions budgets will be addressed in a later rulemaking action. The comments received on the Denver PM_{10} SIP and EPA's responses follow.

1. The SIP revision fails to contain control measures to limit motor vehicle emissions from current vehicle miles traveled (VMT) or revised projections of VMT growth and does not provide for attainment.

As EPA noted in its approval of the Denver CO SIP, the Denver Regional Council of Governments (DRCOG) produced revised estimates of daily vehicle miles traveled in the summer and fall of 1996. In early 1996, DRCOG made some improvements to its transportation demand model (used for transportation planning, and to produce estimates of future VMT and speeds for air quality planning purposes) and validated the model with actual 1995 traffic counts recorded in Denver. These adjustments led to revised estimates of approximately 49 million miles per day of traffic in the Denver area (the previous modeled estimate had been approximately 45 million miles per day). The commentor referred to these revised estimates and suggested that EPA should disapprove the SIP on this basis, or conditionally approve the SIP and request that the State submit additional controls.

EPA believes that the increases in VMT are not sufficient to warrant revisions to the PM_{10} SIP or its disapproval. EPA believes that it is reasonable to allow some margin of error for VMT projections in attainment demonstrations. This is because these projections are by their nature inexact. For CO SIPs, EPA has recognized this in the General Preamble and other guidance (see 57 FR 13532 and Section 187 VMT Forecasting and Tracking Guidance, January 1992). EPA applied these policies in its approval of the Denver CO SIP and believes it is reasonable to extend them to the Denver PM_{10} SIP.

It must be emphasized that only part of the estimated VMT increase is due to actual growth in traffic in the Denver region; the rest is due to use of improved methodologies for traffic counting in the region. For this reason, EPA believes it is more appropriate to consider the impact of actual growth in VMT by examining counts based on a consistent methodology, that is, the HPMS-based VMT Tracking Program. In November 1996, Colorado submitted its 1996 report of 1995 actual annual VMT, as required by section 187 of the Act for CO SIPs. This report showed that actual 1995 VMT were 4.4% greater than the CO SIP projections and 1.3% greater than the most recent revised projection for 1995. These exceedances are within the allowable limits of EPA's VMT Tracking Program guidance for CO SIPs (5.0% and 3.0% for the respective VMT projections). EPA established these tolerances in recognition of the uncertainty inherent in attempting to measure actual VMT in a large urban area. Since the most recent reported actual annual VMT is within these allowable tolerances, EPA is not requiring the State to revise either the CO or PM_{10} SIPs.

One other factor that should be noted is that virtually all of the growth in the metro area has occurred not in the downtown area, where the violations of the NAAQS have been monitored, but in outlying portions of the metro area. Thus, EPA would expect that VMT in the downtown area would increase at a lower rate than VMT for the metro area as a whole. This is supported by traffic counts at locations near downtown, which show that traffic in the central area increased at a rate of approximately 2–3% per year between 1990 and 1995, even though DRCOG estimates that traffic has increased approximately 4.5% per year region wide.

2. Enforceability requirements of the Act are not satisfied for some control measures. EPA and the State lack enforcement authority for woodburning control measures relied on in the SIP.

The commentor indicates that although the State's woodburning program requires that certification programs for new or replaced stoves be enforced through local building codes, there is no provision for enforcement by the State in the event the local government fails to adopt the certification requirement or fails to enforce the code. In fact, Regulation No. 4, Section II.A, prohibits the sale of wood stoves that do not meet the

emission standards of 40 CFR 60.532(b)(1) or (2). There is no exemption in the regulation for areas with local prohibitions. Thus, the State has the ability to directly enforce the certification program for woodburning stoves. And, because this provision will be part of the SIP, EPA and citizens will also be able to enforce it.

For new and remodeled woodburning fireplaces, it is true that local building codes and ordinances serve as the primary mechanism for implementation and enforcement. However, Section VIII of Regulation No. 4 requires the local jurisdictions to implement and enforce the local codes and ordinances. The State has the authority to enforce this requirement for implementation and enforcement. (See 25–7–115(l)(a), C.R.S.) Because this requirement is being approved by EPA, EPA and citizens will also have the ability to enforce it. Also, it appears that because these local codes and ordinances have been adopted as part of the SIP, the State may have the ability to enforce them directly pursuant to 25–7–128(l), C.R.S. EPA is approving them as part of the SIP, which will enable EPA and citizens to enforce them.

For any local jurisdiction that has not adopted the relevant provisions for fireplaces into a building code or ordinance as of January 1, 1993, Section VII.A of Regulation No. 4 prohibits the installation of a fireplace unless it is of a type specified in Section VII.A. The State may enforce this requirement. Because EPA is approving this requirement, EPA and citizens will also have the ability to enforce it.

3. VMT reduction measures are not adopted measures and are not enforceable.

One commentor mentioned that several programs and projects administered by the Regional Transportation District (RTD) in Denver were included in the SIP modeling, but were not adopted as transportation control measures and/or made enforceable. These projects include RTD's MAC light rail line, bus service to Denver International Airport, and three discount/free bus pass programs. All of these programs have been implemented, and the SIP's assumption that these activities would continue to be implemented seems reasonable to EPA. The MAC light rail line is a vital transportation link to downtown and serves as the starting point for a second line proceeding down the southwest corridor, which has been approved and is under development, and a proposed third line in the southeast corridor, which is currently being evaluated as part of a Major Investment Study in that corridor. Bus service to the airport has been implemented, and there are no current plans to discontinue it. The discount bus pass programs mentioned in the SIP have proven quite popular, helping to ensure their continuation. It seems more reasonable for the SIP to assume that these RTD activities would continue than to assume they would be terminated.

States are authorized to base SIP emission inventories on reasonable assumptions regarding the makeup of the transportation network in future years. Most of the inputs to the transportation modeling process represent informed assumptions, including the extent and location of population and employment, speeds, mode choice, and participation in trip-reduction activities. The impacts of these assumptions by their nature are impractical to make enforceable; there are no mechanisms through which the SIP can force population growth to occur in one area and not another, or can force citizens to participate in carpools or ride the bus. Likewise, assumptions about the future transportation network are reflected in the transportation data used to generate the inventory, but are not practical to make enforceable. Each transportation project in the transportation plan and Transportation Improvement Program (TIP) would have to be included in the SIP, and the SIP would have to be revised each time a new plan and TIP were generated. Also, many projects which do not reduce VMT still have a localized benefit for air quality such as the E470 beltway, which reduces CO in the central metro area. However, it would be inappropriate to include a VMT- and emissions-generating project like E470 in an SIP as a control measure.

4. Modeling. One commentor criticized the accuracy of DRCOG's transportation modeling, and cited concerns from Environmental Defense Fund's Michael Replogle. The commentor did not supply a copy of Mr. Replogle's testimony and EPA does not have it in its possession. Thus, EPA has no basis to respond to specific concerns Mr. Replogle might have had. However, EPA believes the transportation modeling for the SIP was adequate and consistent with EPA guidance. EPA's guidance (Procedures for Preparing Emissions Projections, EPA–450/4–91–019, July 1991) establishes minimum criteria for network modeling which DRCOG has met. In fact, DRCOG has exceeded guidance requirements, which would allow the use of less robust methods than network modeling. For example, the New York City CO SIP (which EPA has also approved) was not based on network modeling. EPA's guidance generally advises states to use the best tools they have available. Neither EPA's inventory nor SIP guidance is written in such a way as to advance the state of the art of VMT modeling in areas required to prepare SIPs or to require these areas to address every identifiable shortcoming with their particular modeling techniques. Regarding the commentor's assertions about VMT growth since the SIP was submitted, the reader should refer to EPA's response, above, regarding this issue.

5. The regional network. One commentor stated that the DRCOG regional transportation network could not be properly used for SIP purposes because of inaccurate assumptions made within the modeling regarding whether certain projects would or would not be built.

The commentor specifically noted that the construction of the final segment of E470 was not included in DRCOG's long-range transportation modeling, ostensibly because funding was not available for that project, while several light rail projects were included in the modeling even though funding for those projects is not certain. However, none of these projects were intended to be completed during the timeframe of the SIP's attainment and maintenance demonstrations (i.e., by the end of December 1998) and are not included in the SIP modeling. Thus, EPA's approval of the SIP is not affected in any way by the implementation or delay of these projects.

The commentor also states that its ALTLOP—alternative list of projects—would have produced lesser growth in PM_{10} than DRCOG's list of projects. EPA notes that it cannot substitute its judgement for the State's or DRCOG's regarding which projects or controls to implement as long as the Act's requirements are met. The SIP demonstrates attainment and maintenance of the PM_{10} standard with the mix of projects selected by DRCOG.

6. Monitoring and air sampling. A commentor indicated that further information would be forthcoming relating to continuity of monitoring, siting of monitors and whether tire wear particles are properly accounted for. EPA did not receive any further information on this subject and so has no basis upon which to respond. It should be noted that Colorado's State-wide SIP, which includes the Denver monitoring network, was reviewed and approved by EPA on September 23, 1993 (see 58 FR 49434) as meeting the requirements of 40 CFR Parts 53 and 58, and the appendices to Part 50.

7. Conformity. One commentor makes comments under this heading that go to the validity of the SIP. The commentor suggests that a value of 149.9 μg/m^3 is too close to the NAAQS of 150 μg/m^3 to be considered attainment, particularly when the projections used to effect this razor thin margin are acknowledged to have been ''low''. Regarding the 149.9 μg/m^3 value, EPA regulations dictate that this value is considered attainment of the standard. See 40 CFR 50.6 and Part 50, Appendix K. By ''projections'', EPA assumes the commentor is referring to the VMT projections relied on for the attainment and maintenance demonstrations. As explained in response to another comment, above, the difference between estimates of actual VMT and projections of VMT contained in the SIP falls within a reasonable margin of error and does not warrant a revision to or disapproval of the SIP. The reader should refer to the comment and response, above, for a more complete discussion of this issue.

The last sentence of the commentor's comment appears to relate to the emissions budgets. EPA is not acting on the budgets in this action and will defer its response until it acts on the budgets.

8. Other. One commentor endorsed EPA's proposed approval of the Denver element of the PM_{10} SIP, citing air quality monitoring data collected since 1992 that is below the current standard as evidence that the plan is working. This comment requires no response.

III. This Action

EPA is approving the SIP revisions submitted by the Governor of Colorado for the purpose of bringing about the attainment of the NAAQS for PM_{10}. The revisions were submitted to satisfy certain federal requirements for moderate PM_{10} nonattainment areas. The bulk of the revisions were adopted by the AQCC on October 20, 1994 with an amendment on December 15, 1994 and were submitted by the Governor on March 30, 1995. However, revisions to Regulation No. 13 (oxygenated fuels) were adopted by the AQCC on October 19, 1995 and submitted to EPA on December 22, 1995. EPA is basing its approval of the PM_{10} SIP on this October 19, 1995 version of Regulation No. 13 rather than the version relied on in the March 30, 1995 submission. Also, the State submitted a number of technical support documents to EPA after the original June 7, 1993 PM_{10} SIP submittal that explain or are relied on by the March 30, 1995 submittal and comprise part of the basis for EPA's approval. These documents were submitted on June 8, 1993, June 10, 1993, June 25, 1993, July 19, 1993, August 5, 1993, September 3, 1993, September 21, 1993, October 20, 1993, December 12, 1993, January 19, 1994, December 23, 1994, March 3, 1995, and November 8, 1995.

It should be noted that the March 30, 1995 submission, in addition to including new control measures, also relies on control measures to which EPA granted limited approval on July 25, 1994 (59 FR 37698). The current action granting full approval to the PM_{10} SIP supersedes EPA's limited approval. To avoid confusion, EPA is referencing in the regulatory materials that are part of this document both new provisions and provisions to which EPA gave limited approval in its July 25, 1994 action. These later provisions include portions of Regulation No. 1 and Regulation No. 4 that, through administrative error, EPA inadvertently failed to reference in the incorporation by reference section of the July 1994 action. To correct this clerical error, EPA is now incorporating all of Regulation No. 4, and all of Regulation No. 1 except Section V. As noted in EPA's action of December 3, 1986 (51 FR 43610), the sources subject to Section V of Regulation No. 1 are no longer operating, and thus, there is no reason to act on Section V.

EPA is approving the control strategies that are relied upon in the March 30, 1995 submission as well as the attainment and maintenance demonstrations contained therein. EPA views the following measures as reasonable, enforceable, and responsible for PM_{10} emissions reductions in the Denver PM_{10} nonattainment area: (1) Colorado Regulation No. 4 which regulates residential wood burning; (2) local woodburning ordinances and resolutions; (3) Colorado Regulation No. 16 which establishes street sanding and sweeping requirements; (4) the federal tailpipe standards, which provide an ongoing benefit due to fleet turnover, and Colorado Regulations 11, 12, and 13 which were developed by the State and approved by EPA independently from the PM_{10} SIP but are included because of their particulate emission reduction benefit; (5) Colorado Regulation No. 1, which provides stationary source emission control regulations for particulates, smokes, carbon monoxide and sulfur oxides [3]; and (6) individual stationary source permit revisions for Public Service Company Cherokee facility, Purina Mills, Electron Corporation, TRIGEN—Colorado Energy Corporation [4], Rocky Mountain Bottle Company, Conoco Refinery, and Adolph Coors Brewery. The State's submission demonstrates attainment of the PM_{10} NAAQS by December 31, 1994, with continued maintenance of the standard through December 31, 1997.

A more detailed discussion of the individual source contributions and their associated control measures (including available control technology) can be found in the Technical Support Document accompanying EPA's October 3, 1996 proposed approval of the Denver moderate PM_{10} nonattainment area SIP (61 FR 51631). As noted elsewhere in this action, EPA received comments on the proposed action to approve the Denver PM_{10} SIP. EPA believes that the responses set forth in this action adequately address the comments and is proceeding with the approval as proposed.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Act. EPA has determined that this action conforms to those requirements.

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

IV. Executive Order (EO) 12866

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

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify

[3] Carbon monoxide is not relevant to the PM_{10} SIP. However, EPA is incorporating by reference Section IX of Regulation No. 1 that relates to CO to accurately reflect the reorganization of the regulation.

[4] Permit changes for TRIGEN achieve PM_{10} SIP precursor emission reductions to accommodate precursor emission increases at the Rocky Mountain Bottle facility (formerly the Coors Glass Plant). While these revisions to the emissions limits are acceptable for meeting RACM/RACT requirements, EPA's action herein regarding these limits does not in any manner relieve these companies of the obligation to comply with any nonattainment NSR permitting requirements that might apply to such changes in emissions limits.

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

SIP revision approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval process does not impose any new requirements, EPA certifies that this final rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

VI. Unfunded Mandates

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

EPA has determined that today's final approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. These Federal actions approve pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and record keeping requirements, Sulfur dioxide, and Volatile organic compounds.

Dated: February 28, 1997.

Jack W. McGraw,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(82) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(82) The Governor of Colorado submitted the Denver moderate nonattainment area PM_{10} State Implementation Plan (SIP) with a letter dated March 30, 1995. The Governor submitted revisions to Regulation No. 13, one of the control measures relied on in the PM_{10} SIP, on December 22, 1995. These submittals as well as support documentation submittals made on June 8, 1993, June 10, 1993, June 25, 1993, July 19, 1993, August 5, 1993, September 3, 1993, September 21, 1993, October 20, 1993, December 12, 1993, January 19, 1994, December 23, 1994, March 3, 1995, and November 8, 1995 satisfy those moderate PM_{10} nonattainment area SIP requirements due for the Denver PM_{10} nonattainment area on November 15, 1991. EPA is approving the SIP. This approval replaces the previous limited approval at 40 CFR 52.320(c)(61).

(i) Incorporation by reference.

(A) Regulation No. 4, ''Regulation on the Sale of New Woodstoves and the Use of Certain Woodburning Appliances During High Pollution Days,'' 5 CCR 1001–6, as adopted by the Air Quality Control Commission on June 24, 1993, effective August 30, 1993.

(B) Local woodburning ordinances and resolutions.

(*1*) Arvada, Colorado. Ordinance number 2451, effective November 2, 1987, regarding woodburning restrictions.

(*2*) Aurora, Colorado. Ordinance numbers 87–118 and 92–14, effective May 22, 1987 and May 22, 1992, respectively, regarding woodburning restrictions.

(*3*) Boulder, Colorado. Ordinance numbers 5007 and 5445, adopted November 25, 1986 and April 21, 1992, respectively, regarding woodburning restrictions.

(*4*) Broomfield, Colorado. Ordinance number 794, effective November 24, 1988, regarding woodburning restrictions.

(*5*) Denver, Colorado. Ordinance numbers 293 and 1018, approved May 30, 1990 and December 16, 1993, respectively, regarding woodburning restrictions.

(*6*) Douglas County, Colorado. Resolution number 991–128, adopted November 14, 1991, regarding woodburning restrictions.

(*7*) Englewood, Colorado. Ordinance numbers 31 and 39, passed on July 20, 1992, regarding woodburning restrictions.

(*8*) Federal Heights, Colorado. Ordinance number 565, adopted January 5, 1988, regarding woodburning restrictions.

(*9*) Glendale, Colorado. Ordinance numbers 2 and 14, adopted January 5, 1988 and effective on October 20, 1992, respectively, regarding woodburning restrictions.

(*10*) Greenwood Village, Colorado. Ordinance numbers 17 and 9, effective July 9, 1988 and March 25, 1992, respectively, regarding woodburning restrictions.

(*11*) Jefferson County, Colorado. Resolution numbers CC89–873 and CC90–617, dated December 29, 1989 and August 7, 1990, respectively, regarding woodburning restrictions.

(*12*) Lafayette, Colorado. Ordinance number 24; series 1988, effective November 15, 1988, regarding woodburning prohibitions.

(*13*) Lakewood, Colorado. Ordinance numbers 0–86–113 and 0–92–61, effective December 1, 1986 and November 28, 1992, respectively, regarding woodburning restrictions.

(*14*) Littleton, Colorado. Ordinance numbers 51 and 26, passed on December 6, 1988 and August 18, 1992, respectively, regarding woodburning restrictions.

(*15*) Longmont, Colorado. Ordinance number 0–89–1, adopted December 27, 1988, regarding woodburning restrictions.

(*16*) Mountain View, Colorado. Ordinance number 90–5, approved on January 7, 1991, regarding woodburning restrictions.

(*17*) Sheridan, Colorado. Ordinance numbers 22 and 1, approved October 25, 1988 and February 9, 1993, respectively, regarding woodburning restrictions.

(*18*) Thornton, Colorado. Ordinance numbers 2120 and 2194, adopted October 28, 1991 and September 28, 1992, respectively, regarding woodburning restrictions.

(*19*) Westminster, Colorado. Ordinance numbers 1742 and 2092, enacted on November 9, 1987 and December 28, 1992, respectively, regarding woodburning restrictions.

(C) Regulation No. 16, ''Concerning Material Specifications for, Use of, and Clean-up of Street Sanding Material,'' 5 CCR 1001–18, as adopted by the Air Quality Control Commission on September 22, 1994, effective November 30, 1994.

(D) Regulation No. 1, ''Emission Control Regulations for Particulates, Smokes, Carbon Monoxide, and Sulfur Oxides for the State of Colorado,'' 5 CCR 1001–3, Sections I–IV and VI–IX, and Appendices A and B, as adopted by the Air Quality Control Commission on August 19, 1993, effective October 20, 1993; with revisions to Sections VII and VIII, adopted by the Air Quality Control Commission on September 22, 1994, effective November 30, 1994.

(E) Public Service Company Cherokee facility SO_2 emission limitations for the power facility.

(*1*) Permit 86AD352(1), effective date November 13, 1986, regulates SO_2 emissions at Unit #1.

(*2*) Permit 86AD352–2, effective date April 30, 1992, regulates SO_2 emissions at Unit #4.

(F) Purina Mills Inc. total PM_{10} emissions limitations at the animal feed manufacturing facility.

(*1*) Permit 93AD1008–1, effective date October 19, 1993, regulating emissions at the finished product loadout facility.

(*2*) Permit 93AD1008–2, effective date October 19, 1993, regulating emissions at the grain receiving facility.

(G) Electron Corporation total PM_{10} emission limitations at the gray iron foundry.

(*1*) Permit 93AR1363–1, effective date January 12, 1994, regulating emissions at the Table shot blaster and associated baghouse.

(*2*) Permit 93AR1363–2, effective date January 12, 1994, regulating emissions at the five grinding booths-stand and associated baghouse.

(*3*) Permit 93AR1363–3, effective date January 12, 1994, regulating emissions at the five grinding booths-hand and associated baghouse.

(*4*) Permit 93AR1363–4, effective date January 12, 1994, regulating emissions at the Muller-25 sand system and associated baghouse.

(*5*) Permit 93AR1363–5, effective date January 12, 1994, regulating emissions at the Coleman core oven-sand.

(*6*) Permit 93AR1363–6, effective date January 12, 1994, regulating emissions at the Spinner wheelabrator and associated baghouse.

(*7*) Permit 93AR1363–7, effective date January 12, 1994, regulating emissions at the Sand sile-core room and associated baghouse.

(*8*) Permit 93AR1363–8, effective date January 12, 1994, regulating emissions from pouring of molten iron (casting) and castings cooling.

(*9*) Permit 93AR1363–9 effective date January 12, 1994, regulating emissions at three tumble blast machines and associated baghouse.

(*10*) Permit 93AR1363–10, effective date January 12, 1994, regulating emissions at two mullers-80A and associated baghouse.

(*11*) Permit 93AR1363–11, effective date January 12, 1994, regulating emissions at the Casting shakeout hood and associated baghouse.

(*12*) Permit 93AR1363–12, effective date January 12, 1994, regulating emissions at the Casting-disamatic mold and associated baghouse.

(*13*) Permit 93AR1363–13, effective date January 12, 1994, regulating emissions at the Sand silo-disamatic and associated baghouse.

(*14*) Permit 93AR1363–14, effective date January 12, 1994, regulating emissions at the Sand silo-air set room and associated baghouse.

(*15*) Permit 93AR1363–15, effective date January 12, 1994, regulating emissions at two electric induction furnaces and associated baghouse.

(*16*) Permit 93AR1363–16, effective date January 12, 1994, regulating emissions at two Inducto-Therm electric induction furnaces model #2000/4, serial nos. 40102 and 40103, and associated baghouse.

(*17*) Permit 93AR1363–17, effective date January 12, 1994, regulating emissions from chemicals used in core making process.

(*18*) Permit 93AR1363–18, effective date January 12, 1994, regulating emissions at the Loop shakeout and associated baghouse.

(*19*) Permit 93AR1363–19, effective date January 12, 1994, regulating emissions at the Floor shakeout and associated baghouse.

(*20*) Permit 93AR1363–20, effective date January 12, 1994, regulating emissions at the Reclaim sand and associated baghouse.

(*21*) Permit 93AR1363–21 effective date January 12, 1994, regulating emissions at the Sand heater/cooler and associated baghouse.

(*22*) Permit 93AR1363–22, effective date January 12, 1994, regulating emissions at the Paint spray booth.

(H) TRIGEN-Colorado Energy Corporation permit emissions limitations at two boilers.

(*1*) Permit 10JE660, effective date February 25, 1997, regulating emissions at the #4 boiler: tangential fired cogeneration steam boiler.

(*2*) Permit 11JE305–1, effective date February 19, 1997, regulating emissions at the #5 boiler: tangential fired cogeneration steam boiler.

(I) Rocky Mountain Bottle Company emission limitations on three furnaces.

(*1*) Permit 92JE129–1, effective date June 29, 1995, regulating emissions at the KTG glass melting furnaces #1, #2 and #3.

(J) Conoco Refinery allowable emission limitations from the refinery.

(*1*) Permit 90AD524, effective date March 20, 1991, regulating a Tulsa natural gas fired 20MMbtu/hour heater equipped with low-NO_X burners.

(*2*) Permit 90AD053, effective date March 20, 1991, regulating process heaters H–10, H–11 and H–27 and process boilers B4, B6, and B8 all burning fuel gas only.

(*3*) Permit 91AD180–3, effective December 28, 1992, regulating the three stage Claus sulfur recovery unit with tail gas recovery unit.

(ii) Additional material.

(A) Regional Air Quality Council, ''Guidelines for Reducing Air Pollution from Street Sanding'' sets voluntary guidelines for public works departments to follow to reduce the amount of street

sand applied, and includes recommendations for increasing the effectiveness of street cleaning operations.

3. Section 52.332 is amended by adding paragraph (f) to read as follows:

§ 52.332 Moderate PM_{10} Nonattainment Area Plans.

* * * * *

(f) On March 30, 1995, and November 17, 1995, the Governor of Colorado submitted the moderate PM_{10} nonattainment area plan for the Denver area. The March 30, 1995 submittal was made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for the Denver PM_{10} nonattainment area on November 15, 1991. The November 17, 1995 submittal was also made to satisfy the PM_{10} contingency measure requirements which were due for Denver on November 15, 1993.

[FR Doc. 97–9948 Filed 4–16–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 116]

RIN 2127–AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection Child Restraint Systems

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

ACTION: Interim final rule; request for comments.

SUMMARY: This document amends Standard No. 213, ''Child Restraint Systems,'' to modify the air bag warning label which rear-facing child seats are required to bear beginning May 27, 1997. This document responds to a request from Mercedes-Benz, asking that the standard allow for additional wording in the required text of the label. NHTSA by this document makes final on an interim basis the amendment requested by Mercedes, which would clarify the warning and which would not lessen the safety of child restraints. The agency also solicits comments on this amendment. Because this amendment will clarify the required warning label and will relieve a restriction currently imposed by the standard, NHTSA has determined that it is in the public interest to make the changes effective immediately on an interim basis. Assuming that a final rule is issued, the final rule would respond to any comments and would be effective upon publication in the **Federal Register**.

DATES: Effective April 11, 1997. Comments must be received by June 2, 1997.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FURTHER INFORMATION CONTACT:

For nonlegal issues: Mary Versailles, Office of Safety Performance Standards, NPS–31 , telephone (202) 366–2057.

For legal issues: Deirdre Fujita, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992.

Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: This document amends Standard No. 213, ''Child Restraint Systems,'' on an interim basis to modify the air bag warning label which rear-facing child seats are required to bear beginning May 27, 1997. This document also solicits comments on this amendment. The requirement for the label was adopted by a November 27, 1996 final rule (61 FR 60206),[1] which also adopted new warning label requirements for vehicles with air bags. The labels will help reduce the adverse effects of air bags, especially for children, by increasing the number of people who place child restraints in the rear seat instead of the front.

The requirement for the enhanced child seat label is set forth in S5.5.2(k) of Standard 213. The requirement specifies, among other things, the exact content of the message that must be provided by the label. The message of the label must be preceded by a heading (''WARNING''), with an alert symbol, and state the following:

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under. Also required for the label is a pictogram showing a rear-facing child seat being impacted by an air bag, surrounded by a red circle with a slash across it. Flexibility as to the content of the label is not provided; thus, additional wording is not permitted.

On April 2, 1997, Mercedes asked NHTSA to amend the warning label for child restraints that meet certain criteria. Mercedes has developed a rear-facing child restraint system that has a device that automatically cuts off the passenger-side air bag in vehicles designed to respond to such a device. Mercedes intends to market this child restraint initially to customers purchasing vehicles without rear seats, and that are equipped with the cutoff feature. The cutoff feature makes it possible to safely use a child restraint system on the front seat of these vehicles without subjecting the child to risk of injury from an air bag deployment. While NHTSA recommends that any child be in the rear seat of a vehicle equipped with one, if Mercedes later installs the cutoff feature in vehicles with rear seat, the cutoff feature will avoid the risk of injury from an air bag deployment if a rear-facing child seat in used on the front seat. Mercedes believes that the first statement (''DO NOT place rear-facing child seat on front seat with air bag'') is inappropriate for child restraints with a feature to turn off the air bag. It could also be potentially confusing to owners of these vehicles who have such a child restraint, when they have been instructed that the child restraint will automatically deactivate the air bag and thus can be used on the front seat. The amendment requested by Mercedes would amend the sentence stating ''DO NOT place rear-facing child seat on front seat with air bag'' by adding the phrase ''unless air bag is off.''

The statements on the air bag warning label were designed to improve the likelihood that people will read the label, understand its message, and place child restraint systems in the rear seat. The required phrase ''DO NOT place rear-facing child seat on front seat with air bag'' is incomplete and possibly confusing for child restraint systems, such as the Mercedes system, that automatically deactivate the air bag in vehicles, since those child restraints are intended for use on and marketed as appropriate for front seat positions on vehicles equipped with complimentary air bag cutoff devices. Adding the phrase ''unless air bag is off'' at the end of the statement clarifies the message and tailors it more appropriately for a system such as the one offered by Mercedes. Moreover, NHTSA already permits vehicles that have manual cutoff switches for the passenger-side

[1] Corrected December 4, 1996 (61 FR 64297), December 11, 1996 (61 FR 65187), and January 2, 1997 (62 FR 31).

air bag to add the phrase ''unless air bag is off'' to the end of a warning about never placing a rear-facing child restraint in the front seat. (S4.5.1(b)(2) of Standard No. 208, as amended November 11, 1996.) Since NHTSA can see no diminution of safety resulting from this change, the agency tentatively amends the standard to accommodate Mercedes' request.

The following restrictions would be placed on the ability to add the words. The phrase ''unless air bag is off'' may be added to a label on a child restraint, provided that the restraint is equipped with a device that—

(a) automatically deactivates the passenger-side air bag; and

(b) activates a telltale light in the vehicle that complies with S4.5.4.3 of Standard 208.

NHTSA believes these conditions are needed to ensure that a rear-facing child restraint will be safely used on a passenger seat with an air bag. These conditions reduce the likelihood that a child restraint would be used with an active air bag.

Because this amendment clarifies a requirement and avoids possible confusion resulting from the required labeling, NHTSA finds for good cause that an immediate amendment of the requirement is in the public interest.

Submission of Comments

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

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

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

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

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

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The amendments pertain to optional label changes that are minor in nature. The agency concludes that the impacts of the amendments are so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirements or costs on manufacturers, but instead will permit a manufacturer to use an optional label on its child restraint if conditions on the use of the label are met. Further, since no price increases are associated with the rule, small organizations and small governmental units are not be affected in their capacity as purchasers of child restraints.

C. Paperwork Reduction Act

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

D. National Environmental Policy Act

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

E. Executive Order 12612 (Federalism)

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

F. Civil Justice Reform

This rule has no any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

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

2. Section 571.213 is amended by revising the introductory text of S5.5.2(k), revising the introductory text of paragraph S5.5.2(k)(4), and adding S5.5.2(k)(5), to read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

S5.5.2 * * *

(k) At the manufacturer's option, child restraint systems manufactured before May 27, 1997 may comply with

the requirements of S5.5.2(k)(4) or S5.5.2(k)(5) as appropriate, instead of the requirements of S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii).

* * * * *

(4) Except as provided in (k)(5) of this section, in the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after May 27, 1997, instead of the warning specified in S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii) of this standard, a label that conforms in content to Figure 10 and to the requirements of S5.5.2(k)(4)(i) through S5.5.2(k)(4)(iii) of this standard shall be permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and easily readable.

* * * * *

(5) If a child restraint system is equipped with a device that automatically deactivates the passenger-side air bag in a vehicle and activates a telltale light in the vehicle that complies with S4.5.4.3 of FMVSS No. 208, the label specified in Figure 10 may include the phrase ''unless air bag is off'' after ''on front seat with air bag.''

* * * * *

Issued on April 11, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–9879 Filed 4–11–97; 4:59 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 041497A]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), April 14, 1997, until 1200 hrs, A.l.t., July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

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

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) for the second season, the period April 1, 1997, through June 30, 1997, as 300 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 1997 Pacific halibut bycatch mortality allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: April 14, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–9961 Filed 4–14–97; 3:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 74
Thursday, April 17, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ANE–13]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–3 and –3B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking that would have added a new airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–3 and –3B series turbofan engines. That action proposed to amend an existing AD and would have required the installation of a riveted oil distributor, Part Number (P/N) 335–305–804–0. Since the issuance of the NPRM, the manufacturer has advised the Federal Aviation Administration (FAA) that the entire CFM56–3 and –3B fleet has been retrofitted with the new riveted oil distributor, P/N 335–305–804–0, and that there are no oil distributors, P/N 335–305–800–0, presently in service. The FAA has therefore reviewed its position, and has concluded that the proposed actions are unnecessary. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7132, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to supersede an airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–3 and –3B engines, was published in the **Federal Register** on December 2, 1986 (51 FR 43383). The proposed rule would have amended the existing AD that requires initial and repetitive inspections of the transfer gearbox for radial driveshaft oil distributor looseness and condition of the spirolock. The proposed rule would have required a riveted oil distributor, Part Number (P/N) 335–305–804–0, to be installed in accordance with CFMI CFM56–3/–3B Service Bulletin No. 72–253, dated June 27, 1986, as a terminating action to the repetitive inspection program.

Since the issuance of the NPRM, the manufacturer has advised the Federal Aviation Administration (FAA) that the entire CFM56–3 and –3B fleet has been retrofitted with the new riveted oil distributor, P/N 335–305–804–0, and that there are no oil distributors, P/N 335–305–800–0, presently in service, nor does the manufacturer plan to introduce any into service in the future. The installation of the riveted oil distributor provides a permanent fix for oil distributor looseness and eliminates the need for repetitive inspections. The FAA has therefore reviewed its position, and has concluded that the proposed actions are unnecessary.

Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this final rule 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 86–ANE–13, published in the **Federal Register** on December 2, 1986 (51 FR 43383), is withdrawn.

Issued in Burlington, Massachusetts, on April 8, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–9882 Filed 4–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require one-time inspections to verify proper installation and to detect chafing and/or damage of certain rerouted wire bundles; to verify if certain protective grommets are installed properly and to detect missing grommets; and various follow-on actions. This proposal is prompted by a report of smoke and fire in the lower left-hand side of the E1–1 rack of the electrical equipment bay due to chafing of wire bundles as a result of missing protective grommets. The actions specified by the proposed AD are intended to prevent chafing of wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay.

DATES: Comments must be received by May 27, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–222–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

Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2790; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–222–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during power-up of a Boeing Model 757 series airplane, smoke and fire were coming from the lower left-hand side of the E1–1 rack of the electrical equipment bay. Investigation revealed the source of ignition to be electrical arcing caused by chafing of wire bundles, having part numbers (P/N) W2608 and W4508, at the upper lip of stringer R–23L at approximately station 450. These wire bundles had been improperly routed during incorporation of Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, and Boeing Service Bulletin 757–24A0025, Revision 1, dated December 17, 1987. Further investigation revealed that the protective grommets on the upper lip of stringer R–23L were missing on several other Model 757 series airplanes that also had been modified in accordance with those service bulletins. These protective grommets are intended to prevent chafing of the wire bundles. These conditions, if not corrected, could result in smoke and fire at the E1–1 rack of the electrical equipment bay.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, and Boeing Service Bulletin 757–24A0025, Revision 1, dated December 17, 1987, which describe, among other things, procedures for replacement of certain grommets with new grommets or installation of a new grommet, if a certain grommet is improperly installed or missing.

The FAA has also reviewed and approved Boeing Production Installation Drawing 288N4329, Revision H, which describes procedures for installation of a protective grommet on the upper edge of intercostal R–23L at approximately station 450 between the intercostal and wire bundles having P/N's W2608 and W4508.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the following:

1. Performing a one-time inspection to verify proper installation and to detect chafing and/or damage of the wire bundles, having P/N's W4508, W2608, and W2604, paying particular attention to the area where the wire bundles are routed through the web supports and the area over the upper edge of intercostal R–23L;

2. Repairing of chafed or damaged rerouted wire bundles;

3. Loosening wire bundle clamps, adjusting wire bundles to achieve proper clearances, and retightening the wire bundle clamps, if the wire bundles are installed improperly;

4. Performing a one-time inspection to verify if certain protective grommets are installed properly and to detect missing grommets, and replacing improperly installed grommets with new grommets or installing new grommets, as applicable;

5. Performing a one-time inspection to determine if a protective grommet is installed on the upper edge between the intercostal and rerouted wire bundles having P/N's W2608 and W4508, at intercostal R–23L at approximately station 450; and

6. Installing a protective grommet between the wire bundles and intercostal, if no protective grommet is installed.

Accomplishment of the inspections and re-installation of affected wire bundles and protective grommets will prevent chafing of the wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay.

The replacement and certain grommet installations would be required to be accomplished in accordance with the service bulletins described previously. Certain other installations would be required to be accomplished in accordance with Boeing Production Installation Drawing 288N4329. The repair would be required to be accomplished in accordance with Boeing Standard Wiring Practices Manual 20–10–13.

Cost Impact

There are approximately 62 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $120 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–222–AD.

Applicability: Model 757 series airplanes, on which Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, and/or Boeing Service Bulletin 757–24A0025, Revision 1, dated December 17, 1987, has been accomplished; excluding variable numbers NA003, NA004, NA007, NA009, NA010, NA012 through NA016 inclusive, and NA021; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a one-time inspection to verify proper installation and to detect chafing and/or damage of the wire bundles, having part numbers (P/N) W4508, W2608, and W2604. Pay particular attention to the area where the wire bundles are routed through the web supports and the area over the edge of intercostal R–23L.

(i) If the wire bundles are installed properly and no chafing or damage is detected, no further action is required by this paragraph.

(ii) If any chafing or damage is detected, prior to further flight, repair it in accordance with Boeing Standard Wiring Practices Manual 20–10–13.

(iii) If any wire bundle is installed improperly, prior to further flight, loosen the wire bundle clamps, adjust the wire bundles to achieve proper clearances, and retighten the wire bundle clamps.

(2) Perform a one-time inspection to verify if all protective grommets identified in Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, are installed properly and to detect missing grommets. If any grommet is improperly installed or missing, prior to further flight, replace the grommet with a new grommet or install a new grommet, as applicable, in accordance with the alert service bulletin.

(3) Perform a one-time inspection to determine if a protective grommet is installed on the upper edge of intercostal R–23L at approximately station 450 between the intercostal and wire bundles having P/N's W2608 and W4508. If no protective grommet is installed, prior to further flight, install one between the wire bundles and intercostal, in accordance with Boeing Production Installation Drawing 288N4329, Revision H.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (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, Seattle ACO.

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

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

Issued in Renton, Washington, on April 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–9880 Filed 4–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 96N–0135]

RIN 0910–AA91

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Draft Rule; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of draft rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft rule that would provide that animal protein derived from mammalian tissues is a food additive subject to certain provisions in the Federal Food, Drug, and Cosmetic Act. The agency is making this draft available because of the complex scientific and regulatory issues involved regarding transmissible spongiform encephalopathies and ruminant feeds. The agency invites the public to submit comments with questions and concerns about the draft.

DATES: Written comments must be received in the Dockets Management Branch by 4:30 p.m. d.s.t. April 28, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, or you may fax the comments to 301–594–3215.

FOR FURTHER INFORMATION CONTACT: George A. (Bert) Mitchell, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5587.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 3, 1997 (62 FR 552), FDA published a proposed rule that would prohibit the use of protein derived from ruminant and mink tissues in ruminant feeds. The agency took this action due to concerns about the

possible effects if transmissible spongiform encephalopathies, especially bovine spongiform encephalopathy, were to be spread through animal feed. (See the preamble to the January 3, 1997, proposal for a full discussion of this issue.) After considering the comments on the proposal, given the complex issues involved, the agency has decided to make this draft available to the general public under §§ 10.40(f) and 10.80(d)(2). These provisions allow the agency to make this draft available for discussion of questions and concerns about the draft. In this instance, FDA is conducting this discussion by inviting written comments with questions and concerns about the draft which will be addressed in any final rule that is published. The agency emphasizes that the draft rule does not represent final agency action or the agency's final decision on this regulation.

Interested persons may, on or before April 28, 1997, submit to the Dockets Management Branch (address above) written comments regarding this draft rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 15, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

The text of the draft rule is set forth below:

For the reasons discussed in the preamble, FDA hereby issues a draft rule that would amend 21 CFR part 589 as follows:

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

1. The authority citation for 21 CFR part 589 continues to read as follows:

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

2. New § 589.2000 is added to subpart B to read as follows:

§ 589.2000 Animal proteins prohibited in ruminant feed.

(a) *Definitions.* (1) *Protein derived from mammalian tissues* means any protein-containing portion of mammalian animals, excluding: Blood and blood products; gelatin (including amino acids and dicalcium phosphate derived from gelatin); inspected and processed meat products which have been cooked and offered for human consumption (plate waste and used cellulosic food casings); milk products (milk and milk proteins); and any product whose only mammalian protein consists entirely of porcine protein.

(2) *Renderer* means any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps. The term includes persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers (as defined here) whose intended use for the products may include animal feed. The term includes renderers that also blend animal protein products.

(3) *Blender* means any firm or individual which obtains processed animal protein from more than one source or from more than one species, and subsequently mixes (blends) or redistributes an animal protein product.

(4) *Feed manufacturer* includes manufacturers of complete and intermediate feeds intended for animals, and includes on-farm in addition to off-farm feed manufacturing and mixing operations.

(5) *Nonmammalian protein* includes proteins from nonmammalian animals.

(6) *Distributor* includes distributors of complete and intermediate feeds intended for animals.

(7) *Ruminant* means any member of the order of animals which has a stomach with four chambers (rumen, reticulum, omasum, and abomasum) through which feed passes in digestion. The order includes, but is not limited to, cattle, buffalo, sheep, goats, deer, elk, and antelopes.

(b) *Food additive status.* The Food and Drug Administration has determined that protein derived from mammalian tissues for use in ruminant feed is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). The use or intended use in ruminant feed of any material that contains protein derived from mammalian tissues causes the feed to be adulterated and in violation of the act, unless it is the subject of an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter.

(c) *Requirements for renderers that are not included in paragraph (e) of this section.* (1) Renderers that manufacture products that contain or may contain protein derived from mammalian tissues and that are intended for use in animal feed shall take the following measures to ensure that materials identified in paragraph (b) of this section are not used in the feed of ruminants:

(i) Label the materials as follows: ''Do not feed to cattle or other ruminants''; and

(ii) Maintain records sufficient to track the materials throughout their receipt, processing, and distribution and make the copies available for inspection and copying by the Food and Drug Administration.

(2) Renderers described in paragraph (c)(1) of this section will be exempted from the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section if they:

(i) Use exclusively a manufacturing method that has been validated by the Food and Drug Administration to deactivate the agent that causes transmissible spongiform encephalopathy (TSE) and whose design has been made available to the public;

(ii) Use routinely a test method that has been validated by the Food and Drug Administration to detect the presence of the agent that causes TSE's and whose design has been made available to the public. Products found to contain the agent that causes TSE's shall be labeled ''Not for Use in Animal Feed.'' Records of the test results shall be made available for inspection by the Food and Drug Administration; or

(iii) Use exclusively a method for controlling the manufacturing process that minimizes the risk of the TSE agent entering the product and whose design has been made available to the public and validated by the Food and Drug Administration.

(3) Renderers described in paragraph (c)(1) of this section will be exempted from the requirements of paragraph (c)(1)(ii) of this section if they use a permanent method, approved by FDA, to make a mark indicating the presence of the materials. If the marking is by the use of an agent that cannot be detected on visual inspection, the renderer must use an agent whose presence can be detected by a method that has been validated by the Food and Drug Administration and whose design has been made available to the public.

(d) *Requirements for protein blenders, feed manufacturers, and distributors that are not included in paragraph (e) of this section.* (1) Protein blenders, feed manufacturers, and distributors that manufacture, blend, process, and distribute products that contain or may contain protein derived from mammalian tissues shall comply with paragraph (c)(1) of this section.

(2) Protein blenders, feed manufacturers, and distributors, shall be exempt from paragraphs (d)(1) of this section if they:

(i) Purchase animal products from renderers that certified compliance with paragraph (c)(2) of this section or purchase such materials from parties that certify that the materials were purchased from renderers that certified compliance with paragraph (c)(2); or

(ii) Comply with the requirements of paragraph (c)(2) of this section where appropriate.

(3) Protein blenders, feed manufacturers, and distributors shall be exempt from paragraph (c)(1)(ii) of this section if they:

(i) Purchase animal protein products that are marked in accordance with paragraph (c)(3) of this section or purchase such materials from renderers that certified compliance with paragraph (c)(3) of this section, or purchase such materials from parties that certify that the materials were purchased from renderers that certified compliance with paragraph (c)(3) of this section; or

(ii) Comply with the requirements of paragraph (c)(3) of this section where appropriate.

(4) Pet food products that are sold or are intended for sale at retail are exempt from the labeling requirements in paragraphs (c) and (d) of this section. However, if the pet food products are sold or are intended for sale as distressed or salvage items for possible use in ruminant feed, then such products shall be labeled in accordance with paragraphs (c) or (d) of this section, as appropriate.

(5) Copies of certifications as described in paragraphs (d)(2) and (d)(3) of this section,

shall be made available for inspection and copying by the Food and Drug Administration.

(e) *Requirements for persons that intend to separate mammalian and nonmammalian materials.* (1) Renderers, protein blenders, feed manufacturers, distributors, haulers and others that manufacture, process, blend and distribute both protein products derived from mammalian tissues or feeds containing such products, and protein products from other animal tissues or feeds containing such products, and that intend to keep those products separate shall:

(i) Comply with paragraphs (c)(1) or (d)(1) of this section as appropriate except that the labeling requirement shall apply only to products derived from mammalian (other than pure porcine) tissues or feeds containing such products;

(ii) In the case of a renderer, obtain nonmammalian or pure porcine materials only from single-species facilities;

(iii) Provide for measures to avoid commingling or cross-contamination:

(A) Maintain separate equipment or facilities for the manufacture, processing, or blending of such materials; or

(B) Use clean-out procedures or other means adequate to prevent carry-over of protein derived from mammalian tissues into animal protein or feeds that may be used for ruminants; and

(iv) Maintain written procedures specifying the clean-out procedures or other means, and specifying the procedures for separating mammalian (other than pure porcine) materials from nonmammalian materials from the time of receipt until the time of shipment.

(2) Renderers, blenders, feed manufacturers, and distributors will be exempted from appropriate requirements of paragraph (e)(1) of this section, if they meet the appropriate criteria for exemption under paragraphs (c)(2) or (c)(3), and paragraphs (d)(2) or (d)(3) of this section.

(f) *Requirements for establishments and individuals that are responsible for feeding ruminant animals.* Establishments and individuals that are responsible for feeding ruminant animals shall maintain copies of purchase invoices and labeling for all feeds containing animal protein products received, and make the copies available for inspection and copying by the Food and Drug Administration.

(g) *Adulteration and misbranding.* (1) Animal protein products, and feeds containing such products, that are not in compliance with paragraphs (c) through (f) of this section, excluding labeling requirements, will be deemed adulterated under section 402(a)(2)(C) or (a)(4) of the act.

(2) Animal protein products, and feeds containing such products, that are not in compliance with the labeling requirements of paragraphs (c) through (f) of this section will be deemed misbranded under section 403(a)(1) of the act.

(h) *Inspection; records retention.* (1) Records that are to be made available for inspection and copying, as required by this section, shall be kept for a minimum of 2 years.

(2) Written procedures required by this section shall be made available for inspection and copying by the Food and Drug Administration.

[FR Doc. 97–10132 Filed 4–15–97; 3:17 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208288–90]

RIN 1545–AP36

Filing Requirements for Returns Claiming the Foreign Tax Credit; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document announces a hearing on proposed regulations published on January 13, 1997, which relates to the substantiation requirements for taxpayers claiming foreign tax credits.

DATES: The public hearing will be held on Wednesday, June 18, 1997, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, May 19, 1997.

ADDRESSES: The public hearing will be held in Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20044. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, *Attn:* CC:DOM:CORP:R [REG–208288–90], Room 5226, Washington, DC, 20044.

FOR FURTHER INFORMATION CONTACT: Evangelista Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 905 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** for Monday, January 13, 1997 (62 FR 1700).

The rules of § 601.601(a)(3) of the ''Statement of Procedural Rules'' (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, May 19, 1997, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answer thereto.

Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–9978 Filed 4–16–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0029b; FRL–5697–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which control oxides of nitrogen (NO_X) from industrial boilers, steam generators, and process heaters; stationary internal combustion engines; stationary gas turbines; electric power generating boilers; and glass melting furnaces. The intended effect of proposing approval of these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules are being approved into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment. In the Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed

action, no further activity is contemplated in relation to this action. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 19, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns the following BAAQMD rules: Regulation 9, Rule 7, NO_X and CO from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; Regulation 9, Rule 8, NO_X and CO Emissions from Stationary Internal Combustion Engines; Regulation 9, Rule 9, NO_X from Stationary Gas Turbines; Regulation 9, Rule 11, NO_X and CO from Utility Electric Power Generating Boilers; and Regulation 9, Rule 12, NO_X from Glass Melting Furnaces. These rules were submitted to EPA by the California Air Resources Board on July 23, 1996. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Date signed: February 7, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–9947 Filed 4–16–97; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of amendments to CITES Appendices proposed by foreign countries and public meeting.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. Any country that is a party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces the tentative negotiating positions of the United States on proposals submitted by Parties other than the United States and invites information and comments on these proposals in order to develop negotiating positions for the U.S. delegation. The proposals will be considered at the tenth regular Meeting of the Conference of the Parties (COP10) to be held in Harare, Zimbabwe, June 9–20, 1997.

DATES: The U.S. Fish and Wildlife Service (Service) will consider all comments received through May 9, 1997, in developing negotiating positions. In addition the public will have opportunity for input at a public meeting to be held on April 25, 1997 (see elsewhere in this notice). The Service plans to publish a notice of its negotiating positions prior to COP10.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Fax number 703–358–2276. Comments and other information received will be available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall A. Howe (animal proposals) or Dr. Bruce MacBryde (plant proposals), Office of Scientific Authority, at the above address; telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to regulate international trade in certain animal and plant species which are or may become threatened with extinction and are listed in Appendices to the Convention. Currently, 135 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions for the Parties, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for improving the effectiveness of the Convention. The tenth regular meeting of the Conference of the Parties (COP10) will be held in Harare, Zimbabwe, June 9–20, 1997.

This notice is part of a series of notices which, together with public meetings, encourage the public to participate in the development of the U.S. positions for COP10. In a March 1, 1996 **Federal Register** notice (61 FR 8019), the Service requested public recommendations or draft proposals to amend Appendix I or II that the United States might consider proposing at COP10. That notice described the provisions of CITES for listing species in the Appendices and set forth information requirements for proposals, based on new listing criteria adopted by the Parties at COP9. **Federal Register** notices on August 28, 1996 (61 FR 44324) and December 20, 1996 (61 FR 67293) requested additional comments from the public on species proposals still being considered after review of materials received in response to the March 1, 1996, notice. On the basis of a thorough review of comments received, the Service identified those proposals that met the listing criteria and presented the most compelling bases for amending the Appendices. These proposals to amend the Appendices were submitted to the CITES Secretariat on January 10, 1997, to be considered and voted upon by the Parties at COP10. The decisions on the various proposals and the rationale for each will be published in another **Federal Register** notice.

This notice announces proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties and sets forth tentative negotiating positions of the United States on foreign proposals. CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also includes species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at the meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses and the Secretariat's own findings and recommendations to all Parties no later than 30 days before the meeting. Amendments to the Appendices are adopted by a two-thirds majority of the Parties present and voting.

Information Sought

The Service solicits comments on tentative negotiating positions for the United States on proposed species amendments submitted by Parties other than the United States. Information is also sought on the biological status of the affected species, on the amount and type of trade in specimens of the species, and on the impact of trade on their populations, especially as it relates to any potential effects on survival of the species in all or parts of its range. Comments that provide this information based on the new criteria for adding or removing species from the Appendices (Resolution Conf. 9.24) would be especially helpful. The Service will solicit comments on tentative U.S. positions for items on the COP10 agenda other than proposed amendments to the Appendices, in another **Federal Register** notice.

The present, tentative negotiating positions for the United States are based mainly on review of information presented in the proposals submitted by proponents and in terms of the criteria in Resolution Conf. 9.24, adopted at COP9. Several proposals have not yet been fully translated into English from the Spanish or French. Because information provided in some of the proposals or otherwise available to the Service is too incomplete to allow a thorough review of their merits, several of the tentative negotiating positions presented may be revised as additional biological and trade data are obtained. Final guidance for the delegation is to be based on the best available biological and trade information, including comments received in response to this notice and discussions at COP10 with other governments, scientists, and technical experts.

Proposals

In accordance with the provisions of Article XV, paragraph 1(a) of the Convention the following CITES Parties, in addition to the United States, have submitted proposals for changes to Appendices I and II of the Convention: Argentina, Australia, Bangladesh, Bolivia, Botswana, Bulgaria, Canada, China, Cuba, Denmark, Finland, Germany, India, Japan, Jordan, Madagascar, Mexico, Namibia, Netherlands, New Zealand, Norway, Peru, South Africa, Switzerland, Tanzania, Thailand, Uganda, Venezuela, and Zimbabwe.

A total of 63 proposals on plant and animal species were submitted by countries other than the United States, including 9 proposals that were submitted based on the ''Periodic Review'' concept first adopted at the 1981 Conference of the Parties in New Delhi, India. The Periodic Review process seeks to correct or clarify the inclusion of species listed at the Plenipotentiary Conference and COP1, before listing criteria were adopted. Some of the proposals submitted by Switzerland under this process recommend the deletion from the Appendices of those species that have not been reported in trade, unless the species should be included in Appendix II because of similarity in appearance to related taxa that do appear in trade.

It is the U.S. position (and has been at earlier COPs) that the lack of reported trade for some species should not be the sole basis for their deletion from the Appendices. The lack of reported trade for some species proposed for deletion from the Appendices may be due to (1) their rarity, (2) effective limits on trade by range States for the benefit of the species in that the range States may determine that trade would be detrimental to the survival of the species, or (3) the lack of proper documentation on the reporting of trade. Consequently, the Service does not believe that lack of appearance in trade is, by itself, a sufficient reason to warrant the removal of a taxon from the Appendices. In establishing a tentative negotiating position on these ''Periodic Review'' delisting proposals, the Service considered the degree of vulnerability of the species and the likelihood of it entering trade, and the net conservation effect of delisting.

Proposals submitted by Parties other than the United States are listed in the following table. Tentative negotiating positions and the basis for making them are indicated. These tentative positions were developed largely on the basis of the information contained in the proposals unless the Service has information on the species in its files, particularly from earlier COPs or meetings of permanent CITES committees. If insufficient population and/or trade information was provided, the United States' current position is to either oppose the proposal or consider it still under review, depending upon the particular circumstances, pending receipt of additional information. The complete text of each proposal received is available for public inspection at the Service's Office of Scientific Authority (see **ADDRESSES** above). The text of any referenced resolution from previous meetings of the Conference of the Parties is available from the Service's Office of Scientific Authority or Office of Management Authority.

Proposed amendments and tentative United States negotiating positions are as follows:

Species	Proposed amendment	Proponent	Tentative U.S. position
Mammals			
Order Diprotodontia:			
Burramys parvus (Mountain pygmy possum).	Deletion from Appendix II	Australia	Support.[1]
Dendrolagus bennettianus (Bennett's tree kangaroo).	Deletion from Appendix II	Australia	Support.[1]
Dendrolagus lumholtzi (Lumholtz's tree kangaroo).	Deletion from Appendix II	Australia	Support.[1]
Order Xenarthra:			
Chaetophractus nationi (Hairy armadillo).	Inclusion in Appendix I	Bolivia	Support.[1]
Order Cetacea:			
Eschrichtius robustus (Gray whale)	Transfer of the Eastern Pacific stock from Appendix I to II.	Japan	Oppose.[2]
Balaenoptera acutorostrata (Minke whale).	Transfer of the Okhotsk Sea West Pacific and the Southern Hemisphere stocks from Appendix I to II.	Japan	Oppose.[2]
Balaenoptera acutorostrata (Minke whale).	Transfer of the Northeast Atlantic and the North Atlantic Central stocks from Appendix I to II.	Norway	Oppose.[2]
Balaenoptera edeni (Bryde's whale)	Transfer of the North Pacific Western stock from Appendix I to II.	Japan	Oppose.[2]
Order Carnivora:			
Ursus arctos (Brown bear)	Transfer of all Asian and European populations from Appendix II to I.	Bulgaria and Jordan	Under review.[3]
Ursus arctos (Brown bear)	Transfer of all Asian and European populations from Appendix II to I.	Finland	Under review.[3]
Panthera onca (Jaguar)	Establishment of annual export quotas for hunting trophies of zero in 1997, 1998, and 1999 and of 50 thereafter.	Venezuela	Oppose.[4]
Order Proboscidea:			
Loxodonta africana (African elephant)	Transfer of the Botswanan population from Appendix I to II, with certain annotations.[5]	Botswana, Namibia, and Zimbabwe.	Under review.[6 7 8]
Loxodonta africana (African elephant)	Transfer of the Namibian population from Appendix I to II, with certain annotations.[9]	Botswana, Namibia, and Zimbabwe.	Under review.[6 8 10]
Loxodonta africana (African elephant)	Transfer of the Zimbabwean population from Appendix I to II, with certain annotations.[11]	Botswana, Namibia, and Zimbabwe.	Under review.[6 8 12]
Order Perissodactyla:			
Ceratotherium simum simum (Southern white rhinoceros).	Amendment to annotation 503 in the CITES Appendices to allow trade in parts and derivatives but with a zero export quota.	South Africa	Oppose.[13]
Order Artiodactyla:			
Pecari tajacu (Collared peccary)	Deletion from Appendix II (Mexican population).	Mexico	Oppose.[14]
Vicugna vicugna (Vicuña)	Annotated transfer of certain populations to Appendix II[15].	Argentina	Under review.[16]
Vicugna vicugna (Vicuña)	Annotated transfer of certain populations to Appendix II[17].	Bolivia	Support.[1 18]
Vicugna vicugna (Vicuña)	Amendment to annotation 504 in the CITES Appendices to replace the words ''VICUÑANDES-CHILE'' and ''VICUÑANDES-PERU'' with the words ''VICUÑA-COUNTRY OF ORIGIN''.	Peru	Support.[19]
Vicugna vicugna (Vicuña)	Amendment to annotation 504 (in the CITES Appendices list) to allow also the countries that are members of the Vicuña Convention to utilize the term VICUÑA-PAIS DE ORIGEN-ARTESANIA, along with the authorized trademark, on luxury handicrafts and knitted articles made of wool sheared from live vicuñas from Appendix II populations.	Peru	Support.[19]
Elaphurus davidianus (Père David's deer).	Inclusion in Appendix II	Argentina and China	Support.[1]
Bison bison athabascae (Wood bison)	Transfer from Appendix I to II in accordance with precautionary measure B.2.b of Resolution Conf. 9.24, Annex 4.	Canada	Under review.[20]

Species	Proposed amendment	Proponent	Tentative U.S. position
Bos javanicus (Banteng)	Inclusion in Appendix I	Thailand	Support.[1 21]
Bubalus arnee (Water buffalo)	Include in Appendix I	Thailand	Support.[1]
Ovis ammon nigrimontana (Kara Tau argali).	Transfer from Appendix II to I	Germany	Support.[1]
Birds			
Order Galliformes			
Pauxi pauxi (Northern helmeted curassow).	Inclusion in Appendix II	Netherlands	Oppose.[22]
Pauxi unicornis (Horned curassow)	Inclusion in Appendix II	Netherlands	Oppose.[22]
Order Gruiformes			
Turnix melanogaster (Black-breasted button-quail).	Deletion from Appendix II	Australia	Oppose.[23]
Pedionomus torquatus (Plains wanderer).	Deletion from Appendix II	Australia	Support.[1]
Gallirallus australis hectori (Eastern weka rail).	Deletion from Appendix II	New Zealand	Support.[1]
Order Psittaciformes			
Amazona agilis (Black-billed parrot)	Transfer from Appendix II to I	Germany	Support.[1]
Amazona viridigenalis (Red-crowned parrot).	Transfer from Appendix II to I	Germany	Support.[1]
Cacatua sulphurea (Lesser sulphur-crested cockatoo).	Transfer from Appendix II to I	Germany	Support.[1]
Eunymphicus cornutus uvaeensis (Ouvea horned parakeet).	Transfer from Appendix II to I	Germany	Oppose.[24]
Vini kuhlii (Kuhl's lorikeet)	Transfer from Appendix II to I	Germany	Support.[1]
Vini peruviana (Tahitian lorikeet)	Transfer from Appendix II to I	Germany	Support.[1]
Vini ultramarina (Ultramarine lorikeet)	Transfer from Appendix II to I	Germany	Support.[1]
Order Coraciiformes:			
Aceros waldeni (Writhed-billed hornbill)	Transfer from Appendix II to I	Germany	Support.[1]
Order Passeriformes:			
Leiothrix argentauris (Silver-eared mesia).	Inclusion in Appendix II	Netherlands	Support.[1]
Leiothrix lutea (Red-billed leiothrix)	Inclusion in Appendix II	Netherlands	Support.[1]
Liocichla omeiensis (Omei Shan liocichla).	Inclusion in Appendix II	Netherlands	Support.[1]
Tangara fastuosa (Seven-colored tanager).	Inclusion in Appendix II	Germany and the Netherlands.	Support.[1]
Amandava formosa (Green avadavat)	Inclusion in Appendix II	Netherlands	Support.[1]
Padda oryzivora (Java sparrow)	Inclusion in Appendix II	Netherlands	Support.[1]
Gracula religiosa (Hill mynah)	Include in Appendix II	Netherlands and the Phillipines.	Support.[1]
Reptiles			
Order Testudinata:			
Callagur borneoensis (Painted terrapin).	Inclusion in Appendix II	Germany	Support.[1]
Eretmochelys imbricata (Hawksbill sea turtle).	Transfer of the Cuban population from Appendix I to II with certain annotations[25].	Cuba	Oppose.[14]
Order Crocodylia:			
Caiman latirostris (Broad-snouted caiman).	Transfer of the Argentine population from Appendix I to II, pursuant to resolution on ranching.	Argentina	Under review.[26]
Crocodylus niloticus (Nile crocodile)	Maintenance of the Malagasy population in Appendix II, pursuant to resolution on ranching.	Madagascar	Under review.[26]
Crocodylus niloticus (Nile crocodile)	Establishment of an annual export quota of 1000 skins and 100 hunting trophies from wild animals for the years 1998–2000.	Tanzania	Under review.[26]
Crocodylus niloticus (Nile crocodile)	Maintenance of the Ugandan population in Appendix II, pursuant to resolution on ranching.	Uganda	Under review.[26]
Order Sauria:			
Varanus bengalensis (Indian monitor)	Transfer of the population of Bangladesh from Appendix I to II subject to annual export quotas of 150,000 skins in 1997 and 225,000 in 1998 and 1999.	Bangladesh	Oppose.[14]

Species	Proposed amendment	Proponent	Tentative U.S. position
Varanus flavescens (Yellow monitor) ...	Transfer of the population of Bangladesh from Appendix I to II subject to annual export quotas of 100,000 skins in 1997, 1998, and 1999.	Bangladesh	Oppose.[14]
Amphibians			
Order Anura:			
Mantella bernhardi (Golden mantella) ..	Inclusion in Appendix II	Netherlands	Support.[1]
Mantella cowani (Golden mantella)	Inclusion in Appendix II	Netherlands	Support.[1]
Mantella haraldmeieri (Golden mantella).	Inclusion in Appendix II	Netherlands	Support.[1]
Mantella viridis (Golden mantella)	Inclusion in Appendix II	Netherlands	Support.[1]
Mollusks			
Class Gastropoda:			
Paryphanta spp. (New Zealand amber snails).	Deletion from Appendix II	Switzerland	Support.[1]
Other Animal Proposals			
Any Appendix II species annotated to limit the trade to certain types of specimens.	Amendment to the relevant annotations of Appendix II species annotated to limit the trade to certain types of specimens, to include the following wording: ''All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly''.	Switzerland	Support.[27]
Plants—General			
Araliaceae: Panax quinquefolius (American ginseng).	Amend the Appendix II listing of this species (cf. current annotation #3), to include only the following parts: ''Roots and specimens recognizable as being parts of roots''.	Switzerland	Support.[28 29]
Cactaceae spp. (Cacti): Mexican cacti	Amend the Appendix II listing for this family (cf. current annotation #4), to include seeds of cacti from Mexico, except those seeds obtained from artificial propagation in Production Units.	Mexico	Support.[1 6 30]
Leguminosae (Fabaceae): Pericopsis elata (Afrormosia), and Meliaceae: Swietenia mahagoni (Caribbean mahogany).	Amend the Appendix II listing of these two species (cf. current annotation #5), to include only the following parts: ''Logs, sawn wood, and veneer sheets''.	Switzerland	Support.[31]
Proteaceae:			
Orothamnus zeyheri (Marsh-rose)	Transfer from Appendix I to Appendix II, in accordance with precautionary measure B.2.b) of Resol. Conf. 9.24, Annex 4.	South Africa	Support.[1]
Protea odorata (Ground-rose or Swartland sugarbush).	Transfer from Appendix I to Appendix II, in accordance with precautionary measure B.2.b) of Resol. Conf. 9.24, Annex 4.	South Africa	Oppose.[14 23 32]
Scrophulariaceae: Picrorhiza kurrooa (Kutki).	Include in Appendix II, along with only the following parts [33]: ''Roots [i.e.,rhizomes/rootstocks] and readily recognizable parts thereof''.	India	Support.[1 29]
Theaceae: Camellia chrysantha, which is Camellia petelotii in part (Golden-flowered camellia).	Delete from Appendix II.	China	Support.[1]
Valerianaceae: Nardostachys grandiflora (=Nardostachys jatamansi misapplied) (Himalayan nard or spikenard).	Include in Appendix II, along with only the following parts [33]: ''Roots [i.e.,rhizomes/rootstocks] and readily recognizable parts thereof''.	India	Support.[1 29]
Plants—Artificial Propagation			
Families other than Orchidaceae (Orchids)	Amend the listings of most plant families now in Appendix II (current annotations #1, #2, #4, and #8), to also exclude the following part: ''Cut flowers of artificially propagated plants''.	Switzerland	Oppose [14 34]

Species	Proposed amendment	Proponent	Tentative U.S. position
Cactaceae spp. (Cacti): (1) Hybrid Easter cactus; (2) Christmas cactus, or Crab cactus; (3) Red cap cactus, Oriental moon cactus; and (4) Bunny ears cactus..	Amend the Appendix II listing for this family (cf. current annotation #4), to exclude artificially propagated specimens of the following hybrids and/or cultivars: (1) Hatiora graeseri (= H. gaertneri H. rosea); (2) Schlumbergera (= Zygocactus) hybrids and cultivars [sic][35] (S. truncata cultivars, and its hybrids with S. opuntioides [= S. exotica], S. orssichiana, and S. russelliana [= S. buckleyi]); (3) Gymnocalycium mihanovichii cultivars (those lacking chlorophyll, grafted[36]); and (4) Opuntia microdasys.	Denmark	Under review.[37]
Euphorbiaceae: Succulent Euphorbia spp. (Succulent euphorbs): Three-ribbed milk tree.	Amend the Appendix II listing of succulent Euphorbia spp., with an annotation to exclude artificially propagated specimens of Euphorbia trigona cultivars.[38].	Denmark	Under review.[37]
Primulaceae: Cyclamen spp. (Cyclamens): Florist's cyclamen.	Amend the Appendix II listing of Cyclamen spp., with an annotation to exclude artificially propagated specimens of the hybrids and cultivars of Cyclamen persicum, except when traded as dormant tubers.	Denmark	Under review.[37]

[1] The listing, uplisting, downlisting, or delisting of this taxon (or parts in the case of some plants) appears to be consistent with the relevant biological, trade, and precautionary criteria of Resolution Conf. 9.24.

[2] The United States continues to support the 1978 request from the International Whaling Commission (IWC) to take all possible measures to support the IWC ban on commercial whaling for certain species and stocks of whales and therefore opposes the transfer of this species from Appendix I to Appendix II.

[3] The proposal from Bulgaria and Jordan defers to the details presented in the proposal from Finland. Although it is clear that the European populations of this species not presently included in Appendix I meet the criteria for Appendix I, the United States is not presently convinced by the proposal or other information that the remaining populations proposed for transfer to Appendix I qualify. Russian populations are subject to a managed sport harvest that appears to be in itself sustainable, but these populations in particular are prone to illegal take for medicinal products. The proposal remains under review, while the United States seeks additional information on the magnitude of the threat of illegal trade in Russian and eastern Asian populations to determine if the proposal is warranted in its entirety.

[4] The proposal acknowledges that the jaguar population proposed for phased-in trophy-hunting may be the most threatened population in the country. The United States opposes this proposal without (a) a more convincing case that trophy hunting will not add to existing pressure on the jaguar population and (b) a management plan involving comprehensive population monitoring in the affected area.

[5] Annotated to allow: (a) The direct export of registered stocks of wholeraw tusks of Botswana origin to one trading partner (Japan) subject to annual quotas of 12.68 t. in 1998 and 1999; (b) international trade in hunting trophies; and (c) international trade in live animals to appropriate and acceptable destinations.

[6] The proposal presents biological information that supports the proposed action.

[7] The Panel of Experts report on this proposal noted deficiencies in the record-keeping system for the ivory stockpile and showed there is no clear plan for use of ivory revenues to benefit elephant conservation. It also noted the existence of some movement of ivory through the country. The United States has concerns about these reported deficiencies and about the adequacy of trade controls in the importing country.

[8] The United States is consulting other African elephant range states to determine whether adoption of this proposal by the Parties would cause conservation concerns in other portions of the species' range.

[9] Annotated to allow: (a) The direct export of registered stocks of whole raw tusks of Namibian origin owned by the government of Namibia to one trading partner (Japan) that will not re-export, subject to annual quotas that will not exceed 6900 kg. between September 1997 and August 1998 and between September 1998 and August 1999; (b) international trade in live animals to appropriate and acceptable destinations for non-commercial purposes; and (c) international trade in hunting trophies for non-commercial purposes.

[10] Although noting there is probably some movement of ivory through the country, the Panel of Experts reported satisfactory to excellent internal management controls in Namibia and an excellent legal structure for establishing a conservation fund with ivory stock sale revenues. The Panel concluded that the proposal would likely benefit elephant conservation in Namibia. The United States has concerns about the adequacy of trade controls in the importing country.

[11] Annotated to allow: (a) The direct export of registered stocks of whole raw tusks to one trading partner (Japan) subject to annual quotas of 10 t. in 1998 and 1999; b) international trade in hunting trophies; c) international trade in live animals to appropriate and acceptable destinations; d) international trade in non-commercial shipments of leather articles and ivory carvings; and e) export of hides.

[12] The Panel of Experts noted deficiencies in trade enforcement controls in Zimbabwe, including failure to prevent illegal exports of large commercial shipments of worked ivory, and showed there is no clear plan for use of ivory revenues to benefit elephant conservation. It also noted the existence of significant movement of ivory through the country. The United States has concerns about these reported deficiencies and about the adequacy of trade controls in the importing country.

[13] While acknowledging the excellent record of the government of South Africa in restoring populations of this species, the United States is concerned about potential detrimental effects of re-opening a legal international trade in rhinoceros horn. The United States has invested considerable effort into encouraging use of alternatives to rhinoceros horn derivatives in traditional Asian medicines.

[14] The proposal does not present sufficient biological information to justify the listing, uplisting, downlisting, or delisting as proposed, based on the criteria in Resolution Conf. 9.24.

[15] Transfer of the population of the Province of Jujuy and of the semicaptive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan, Argentina, from Appendix I to II, with an annotation to allow only the international trade in wool sheared from live vicuñas, and in cloth and manufactured items made thereof, under the mark, ''VICUÑA–ARGENTINA.''

[16] Although the population may no longer meet the biological criteria for Appendix I, more detailed information on population inventory methods for wild herds and on management and transparency of the conservation fund are desirable in light of the precautionary measures of Annex 4 of Resolution Conf. 9.24. The proposal remains under review while the United States seeks clarification.

[17] Transfer of the populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla, and Lipez-Chicas, Bolivia, from Appendix I to II, with an annotation to allow only the international trade in cloth and manufactured items made thereof, under the mark, ''VICUÑ–BOLIVIA.''

[18] The proposal presents excellent population data and a well conceived approach to development of management plans and follow-through monitoring of the effectiveness of vicuña management in different socio-economic regimes.

[19] The United States sees no difficulties with such a change in the labeling of approved products.

[20] Although the United States believes that trade in wood bison presently in captivity would have no negative impact on the wild population, the species, based on information in the proposal, still appears to meet the criteria for retention in Appendix I. The proposal remains under review, while the United States consults with Canada to obtain clarification on the species' status.

[21] The United States supports the exclusion from this proposal of introduced populations remote from the natural range, e.g., the introduced population of Australia.

[22] The species does not appear to be subject to international trade.

[23] Although trade is not recorded, the population is so small that retention in the Appendices would seem advisable as a precautionary measure in the event illegal trade should ever occur.

[24] Because the subspecies are extremely similar and occur in the same jurisdiction, the proposed split-listing would be practically unenforceable and would be inconsistent with Annex 3 of Resolution Conf. 9.24.

[25] Annotated to allow: (a) trade in current registered stocks of shell with one trading partner (Japan) that will not re-export; and b) export in one shipment per year, to the same partner, of shell marked in compliance with Resolution Conf. 5.16, which allows definitive identification of origin, from a traditional harvest (maximum 500 individuals per year) or from an experimental ranching program (anticipated: 50 individuals in the first year; 100 in the second year; and 300 in the third year).

[26] The transfer of certain populations of crocodilians from Appendix I to II is possible pursuant to Resolution Conf. 3.15, 5.16, and 8.22 (ranching) and 9.24 (export quota). The United States is seeking information on whether (1) annual reports will be filed regularly with the CITES Secretariat by the proponent; (2) there is an adequate basis for monitoring the status of wild populations; (3) management plans provide for the return of animals to the wild in numbers as appropriate; and (4) there is an implementable limit on the harvest of wild juveniles and adults.

[27] The United States believes the recommended language would clarify annotated downlistings, such as that of the South African population of the white rhinoceros, and eliminates the possibility of misinterpretation or abuse of the downlisting provisions. The United States looks forward to a detailed discussion of annotated downlistings from legal and technical perspectives at COP10.

[28] The current listing includes ''Roots and readily recognizable parts thereof''. The proposed revision is considered to be a minor change, which would clarify and keep the intent of the 1985 proposal (at COP5) to include whole roots and the larger parts thereof, and to exclude minor pieces and processed products. Some importing Parties have found that the current annotation can be interpreted too broadly.

[29] The United States will recommend standardization of the inclusion of the parts for Panax quinquefolius (American ginseng), Picrorhiza kurrooa (Kutki), and Nardostachys grandiflora (Himalayan nard), with the annotation ''Roots, rhizomes or rootstocks, and specimens recognizable as being parts thereof''. This would keep the intent of the proposal of Switzerland for Panax quinquefolius, and the intent of the proposals of India for the other two species, while accommodating those two species' different morphology of having rhizomes or rootstocks.

[30] This proposal is considered necessary to assist enforcement of Mexican law that regulates the export of seeds collected in the wild from cacti in Mexico. The Government of Mexico, at the November 1996 meeting of the CITES Plants Committee, presented information on recent violations of Mexican law and over-collection of cactus seeds of various taxa for export to various Party countries. The United States is discussing with Mexico how they intend to administer the differentiation of seeds collected in the wild from seeds produced by artificial propagation in their Production Units (i.e., nurseries). We understand that this proposal only covers the populations of cacti in Mexico; it does not cover populations of Mexican cacti native beyond Mexico, or specimens of Mexican cacti artificially propagated elsewhere than in Mexico.

[31] These two current listings include ''Saw-logs, sawn wood, and veneers''. The proposed revision is considered to be a minor change, which would correspond to the categories and definitions of HS codes 44.03 (logs), 44.06 and 44.07 (sawn wood), and 44.08 (veneer sheets) in the Harmonized System of the World Customs Organization. The change was recommended by the CITES Timber Working Group.

[32] There are so few individuals and populations of this species known in the wild, and so few artificially propagated individuals available in cultivation, that continued inclusion of the species in Appendix I is considered to be a needed precaution.

[33] The proposal for this species discusses its rhizomes or rootstocks rather than botanical roots.

[34] The proposal apparently seeks to establish a new standard exclusion for Appendix II taxa, but does not provide information to show that there presently is an unnecessary regulatory burden on a cut-flower trade in the listed Appendix II taxa (or actual complications in any trading of their hybrids with Appendix I taxa). Furthermore, the proposal did not address the taxa of Nepal in Appendix III, which also have their listings standardized with the current annotation #1. The conservation of species in the wild is considered to be better served with the present standard listing for Appendix II (and Appendix III), to which exceptions could be made if warranted in future proposals for particular taxa (as was done for the Orchidaceae or orchids).

[35] This proposal is considered to not include all taxa (or hybrids and cultivars) of Schlumbergera, but just those listed in detail in the proposal and in this FEDERAL REGISTER notice.

[36] The proposal stated that the artificially propagated grafting stocks are mostly specimens of Hylocereus species and Harrisia ''Jusbertii'', but these taxa (and any other cactus taxa that might be used as grafting stock) were not directly presented for similar exclusion.

[37] Although the stipulated taxa are artificially propagated extensively, the risk either to other taxa in the wild or to pertinent natural taxa needs further consideration. The burden for enforcement may be complicated rather than relieved by excluding these artificially propagated specimens. Nevertheless, minimizing or reducing regulation of artificially propagated specimens, when there is no risk to taxa in the wild, is a worthy goal.

[38] This proposal is considered not to include Euphorbia hermentiana, which we understand is not a synonym of Euphorbia trigona.

Future Actions

Prior to COP10, the Service will announce in the **Federal Register** its negotiating positions for COP10 on proposed amendments to the Appendices by foreign countries. In that notice the Service will solicit comments or recommendations on whether the United States should consider taking a reservation on any of the proposed amendments to the Appendices that are adopted by the Parties. Unless the United States enters a reservation by September 18, 1997, any amendments adopted by the Parties will become effective on that date. The Service will publish a notice of proposed rulemaking that would implement such amendments. In addition to considering proposed amendments to the Appendices at COP10, the Parties may also consider certain recommendations by the Nomenclature Committee that seek to clarify the current listing status of certain species.

A public meeting will be held on Friday, April 25, 1997 from 10:00—1:00 at the Department of the Interior: Room 7000, 18th and C Street, NW, Washington, DC. Please note that this room is accessible to the handicapped. This meeting will provide the public an opportunity to comment on U.S. positions leading up to COP10. In addition to foreign species proposals, the Service will be prepared to discuss U.S. positions on the Agenda for COP10, resolutions submitted by other countries, and any other item of interest to the public in relation to CITES COP10.

This notice was prepared by Drs. Marshall Howe and Bruce MacBryde, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: April 11, 1997.

Jay L. Gerst,

Director.

[FR Doc. 97–9924 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 74
Thursday, April 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request; FCS 380–1, Food Stamp Quality Control Review Schedule

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the FCS 380–1, Food Stamp Quality Control Review Schedule.

DATES: Written comments must be submitted on or before June 16, 1997.

ADDRESSES: Send comments and requests for copies of this information collection to: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: John Knaus, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Quality Control Review Schedule.

OMB Number: 0584–0299.

Form Number: FCS–380–1.

Expiration Date: 05/31/99.

Type of Request: Revision of a currently approved collection.

Abstract: The FCS–380–1 is currently an integrated review schedule that was jointly developed by the Health Care Financing Administration (HCFA), Administration for Children and Families (ACF), and the Food and Consumer Service (FCS). It was designed to collect both quality control (QC) data and case characteristics as well as serving as the comprehensive data entry form for all QC reviews in the Aid to Families with Dependent Children (AFDC), Food Stamp (FS) and Medicaid programs. With the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193), the AFDC program is being replaced by the Temporary Assistance to Needy Families (TANF) program. Under TANF, ACF will no longer be collecting QC data and will cease participating in the integrated QC system as of Fiscal Year 1998. HCFA ceased participation in the integrated QC system in mid 1996. Because of these changes, the current FCS–380–1 is being revised to only collect food stamp data.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 57,236.

Estimated Time per Response: 1.05 Hours.

Estimated Total Annual Burden: 61,499.

Dated: March 27, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–9928 Filed 4–16–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Amendment to Notice of FY 1997 Emerging Markets Program and Solicitation of Proposals

AGENCY: Foreign Agricultural Service, USDA.

SUMMARY: On March 25, 1997, the Foreign Agricultural Service (FAS) issued a notice in the **Federal Register** inviting proposals to promote the export of, and improve the market access for, U.S. agricultural products to emerging markets in fiscal year 1997 under the Emerging Markets Program, 62 FR 14113 (March 25, 1997). The notice provided that the deadline for submission of proposals was April 30, 1997. This notice amends the prior notice to extend the application period to May 30, 1997.

FOR FURTHER INFORMATION CONTACT: Additional information, including Program guidelines, may be obtained from and applications submitted to: Emerging Markets Office, Foreign Agricultural Service, Room 6506 South Building, U.S. Department of Agriculture, Washington, DC 20250–1032, Fax: (202) 690–4369.

Signed at Washington, DC on April 11, 1997.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 97–9926 Filed 4–16–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Consultations on World Food Summit Follow-Up

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a public meeting regarding U.S. follow-up actions to the World Food Summit will take place on May 21, 1997. The purpose of the forum is to solicit public input to a U.S. Action Plan on Food Security to be developed as follow-up to the World Food Summit.

DATES: The meeting will be held Wednesday, May 21, 1997 from 9:00 to 4:00 in the Jefferson Auditorium in the South Building at the U.S. Department of Agriculture in Washington, DC.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Inquiries may be directed to the Office of the National Food Security Coordinator, Foreign Agricultural Service, Room 3008 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW., Washington, DC 20250, telephone (202) 690–0776 or fax (202) 720–6103. Additional information is available on the FAS Homepage (http://www.fas.usda.gov/ffas/) or by calling (202) 690–0776.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 97–9927 Filed 4–16–97; 8:45 am]

BILLING CODE 3410–10–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: April 23–24, 1997.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed: April 23–24. Open: April 24, 11:30 a.m.

MATTERS TO BE CONSIDERED:

Closed Meeting

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Status and Disposition of Zapruder Film
4. Other Business

Open Meeting: April 24, 11:30 a.m.

1. Review and Accept Transcript of Open Meeting
2. Status and Disposition of Zapruder Film
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 97–10044 Filed 4–14–97; 4:45 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92–463 as amended by P.L. 94–409), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations. The meeting will convene on May 1–2, 1997 at the Bureau of the Census, Francis Amasa Walker Conference Center, Federal Building 3, Suitland, Maryland, 20233.

The committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, and the Population Association of America and the Chairman of the Board of the American Marketing Association. The committee advises the Director, Bureau of the Census, on the full range of Census Bureau programs and activities in relation to its areas of expertise.

The agenda for the meeting on May 1, which will begin at 9:30 a.m. and end at 5:00 p.m., is as follows:

- Introductory Remarks by the Director, Bureau of the Census.
- Census Bureau Responses to Committee Recommendations.
- How Do We Convert the 1992 Economic Census to a North American Industry Classification System (NAICS) Basis?
- How Should the Census Bureau Communicate Plans for 2000 Census Products?
- What Improvements Can Be Made to the New American Community Survey Introduction and Benchmarking Plans?
- How Will Measuring the Information Sector Impact the Census Bureau's Programs?
- What Should the Census Bureau Charge for on the Internet and What Market Segments Should We Target?
- What Opportunities for Cooperative Research and Development Agreements (CRADA's) Should the Census Bureau Pursue?
- What Are the Major Issues for Implementing the Survey of Program Dynamics (SPD)?
- What Have We Learned From the Medical Expenditure Panel Survey-Insurance Component Pilot?
- Assessment of Integrated Response and Product Marketing Plan for the 1997 Economic Census.
- Should We Add Noise to Data (Economic, Demographic, or Census) as a Disclosure Limitation Option?
- Assessment of the Marketing Services Office's Educational Program.
- Final Review of New Product Development Guidelines.

The agenda for the meeting on May 2, which will begin at 9:00 a.m. and end at 12:15 p.m., is as follows:

- How Should We Proceed to Develop Generalized Software for Survey Processing Operations Such as Editing, Imputation, Estimation, etc.?
- Discussion of Concept Differences Between the American Community Survey and Census 2000.
- Market Research at the Census Bureau—Are We on the Right Track?
- Center for Economic Studies Featuring the Census Bureau's New Chief Economist, John Haltiwanger.
- What Are the Main Issues Facing the Federal Economic Statistics System?
- Develop Recommendations and Special Interest Activities.
- Closing Session.

The meeting is open to the public, and a brief period is set aside during the closing session on May 2 for comments and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 3039, Federal Building 3, Washington, DC 20233, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Persons wishing additional information or minutes for this meeting, or who wish to submit written statements, may contact the Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: April 14, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–10086 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–97]

Foreign-Trade Zone 22, Chicago, Illinois; Proposed Foreign-Trade Subzone; Mobil Oil Corporation (Oil Refinery Complex), Will County, Illinois

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special-purpose subzone status for the oil refinery complex of Mobil Oil Corporation, located in Will County, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 7, 1997.

The refinery complex (1,294 acres, 550 employees) consists of 2 sites in

Will County, Illinois: Site 1 (1,200 acres)—refinery complex located at I–55 and Arsenal Road, on the Des Plaines River, 8 miles south of Joliet, some 50 miles southwest of Chicago; Site 2 (94 acres)—Mokena storage facility (780,000 barrel capacity) located at 183rd St and Wolf Road, some 25 miles southwest of Chicago. The refinery (210,000 BPD) is used to produce fuels and petrochemical feedstocks. Fuel products include include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, propylene, butane, butadiene, benzene, toluene, xylene, petroleum coke, carbon black oil and sulfur. Some 3.6 percent of the crude oil (90 percent of inputs), and some motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. The duty rates on inputs range from 5.25¢ barrel to 10.5¢ barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 16, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 1, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 55 West Monroe Street, Suite 2440, Chicago, Illinois 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: April 9, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–9970 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 882]

Grant of Authority; Establishment of a Foreign-Trade Zone, Sioux Falls, South Dakota Area

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:

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 Governor's Office of Economic Development, State of South Dakota (the Grantee), has made application to the Board (FTZ Docket 11–96, 61 FR 6973, 2/23/96), requesting the establishment of a foreign-trade zone at sites in Sioux Falls, South Dakota, within the Sioux Falls Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the 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. 220, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 8th day of April 1997.

Foreign-Trade Zones Board

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–9969 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Notice of Antidumping Duty Order: Brake Rotors from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Michelle A. Frederick, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–1766, or (202) 482–0186, respectively.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel

plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), the Department made a final determination that brake rotors from the People's Republic of China (PRC) are being sold at less than fair value (62 FR 9160, February 28, 1997). The Department subsequently amended its final determination to correct clerical errors made in the final determination (62 FR 15655, April 2, 1997). On April 9, 1997, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that the brake rotors industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC.[1]

In accordance with section 736(a)(1) of the Act, we will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of brake rotors from the PRC, except for imports of brake rotors from the PRC made by the following exporter/producer combinations, which are excluded from the order by virtue of having received zero or *de minimis* rates in the antidumping duty investigation:

Exporter(s)	Producer(s)
China National Automotive Industry Import & Export Corporation (CAIEC) or Shandong Laizhou CAPCO Industry (Laizhou CAPCO).	Laizhou CAPCO.
Shenyang Honbase Machinery Co., Ltd. (Shenyang) or Lai Zhou Luyuan Automobile Fittings Co., Ltd. (Laizhou).	Shenyang or Laizhou.
China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd. (Xinjiang).	Zibo Botai Manufacturing Co., Ltd. (Zibo).

Accordingly, all bonds may be released and entries of these exporters may be liquidated without regard to antidumping duties. However, if any of the above-referenced exporters sells subject merchandise which is not manufactured by the producer(s) noted above with respect to those exporters, then those entries will be subject to the ''China-wide'' rate.

For all other exporters, including non-exporter producers listed above should they later export directly, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''China-wide'' rate applies to all exporters of brake rotors not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin percentage
CAIEC and Laizhou CAPCO/Laizhou CAPCO	0.00 (Excluded)
Shenyang and Laizhou/Shenyang or Laizhou	0.00 (Excluded)
Xinjiang/Zibo	0.00 (Excluded)
Yantai Import & Export Corporation	3.56
Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation, and MMB International, Inc	16.07
Hebei Metals and Minerals Import & Export Corporation	8.51*
Jilin Provincial Machinery & Equipment Import & Export Corp.	8.51*
Shandong Jiuyang Enterprise Corporation	8.51*
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	8.51*
Qingdao Metals, Minerals & Machinery Import & Export Corp.	8.51*
Shanxi Machinery and Equipment Import & Export Corporation	8.51*
Xianghe Zichen Casting Corporation	8.51*
Yenhere Corporation	8.51*
China-Wide Rate	43.32

* Rate is based on the weighted-average of calculated rates that are not zero or based on facts available.

On April 9, 1997, the ITC notified the Department of its negative determination regarding critical circumstances. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(e)(2) with respect to entries of subject merchandise entered or withdrawn from warehouse, for consumption prior to October 10, 1996, which is the date of publication of the preliminary determination.

This notice constitutes the antidumping duty order with respect to brake rotors from the PRC. The Department is excluding from the application of the order products from the PRC that are manufactured and sold to the United States by the PRC exporter/manufacturer combinations noted above; however, the *ad valorem* weighted-average dumping margin applicable to brake rotors manufactured

[1] In the companion brake drums investigation, the ITC notified the Department of its final determination that the brake drums industry in the United States is not materially injured nor threatened with material injury by reason of imports of brake drums from the PRC.

by any other PRC manufacturers and exported by any of these companies is 43.32 percent (the PRC-wide rate).

Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: April 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9963 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–609]

Color Picture Tubes From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On March 3, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 9413) the notice of initiation of administrative review of the antidumping duty order on color picture tubes from Japan, for the period of January 1, 1996 through December 31, 1996. This review has now been terminated as a result of the withdrawal of the request for administrative review by the interested parties that requested the review.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1997, we received a timely request from the petitioners, (the International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, the AFL-CIO; and the Industrial Union Department, AFL-CIO) to conduct an administrative review of sales by Mitsubishi Electronics Industries Inc. (Mitsubishi) subject to the antidumping duty order on color picture tubes from Japan. No other interested party requested an administrative review of this order. On March 3, 1997, we published in the **Federal Register** (62 FR 9413) the notice of initiation of administrative review for the period January 1, 1996 through December 31, 1996.

Termination of Review

On March 31, 1997, we received a timely request for withdrawal of the request for administrative review from the petitioners. Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review.

Because petitioners' request for withdrawal was submitted within the 90-day time limit and there were no requests for review from other interested parties, we are terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. We will issue appraisement instructions directly to the U.S. Customs Service.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: April 9, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group I.

[FR Doc. 97–9966 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 7, 1997, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMs) from the Republic of Korea (62 FR 964). Subsequent to the publication of these final results, the petitioner, Micron Technology, Inc. (Micron) filed suit with the Court of International Trade (CIT) with respect to the Department's methodology used in calculating the dumping margin of one respondent, LG Semicon Co., Ltd. (LGS). No suit was filed by any parties to this proceeding with respect to the dumping calculations pertaining to the other respondent in this review, Hyundai Electronics Industries, Co., Ltd. (Hyundai). We have corrected two ministerial errors with respect to sales of subject merchandise by Hyundai. The errors were present in our final results of review. The review covers the period May 1, 1994, through April 30, 1995. We are publishing this amendment to the final results of review in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement Office 4, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

The review covers two manufacturers/exporters of DRAMs from the Republic of Korea (Korea): Hyundai and LGS, and the period May 1, 1994 through April 30, 1995. The Department published the preliminary results of review on July 9, 1996 (61 FR 36029), and the final results of review on January 7, 1997 (62 FR 964).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

The period of review (POR) covers from May 1, 1994 through April 30, 1995 for all respondents.

Ministerial Errors in Final Results of Review

After reviewing allegations of ministerial errors submitted by Hyundai, the Department determined that it should correct two clerical errors pertaining to Hyundai. The Department corrected the following clerical errors in the final results pertaining to Hyundai:

In the margin calculations in the final results of review, we did not correctly revise our final calculations to correct for double counted interest expense in our preliminary calculation of CEP profit. To correct this double counting of interest expense, we intended to deduct U.S. credit expense from total U.S. expenses, but instead inadvertently added U.S. credit expense to Hyundai's U.S. direct selling expenses. We also inadvertently deducted Korean inventory carrying costs from U.S. price. We corrected the final calculations by deducting U.S. credit expense and not Korean inventory carrying costs from U.S. price (see memorandum *Dynamic Random Access Memory Semiconductors (DRAMs) from the Republic of Korea (A–580–812); Second Administrative Review—Clerical Errors in the Final Results of Review*).

Amended Final Results of Review

Upon correction of the ministerial errors listed above, the Department has determined that the following margin exists for the periods indicated:

Manufacturer/exporter	Percent margin
May 1, 1994 through April 30, 1995:	
Hyundai Electronics Industries	0.09

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hyundai will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85%, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. *See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9972 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review; certain hot-rolled lead and bismuth carbon steel products from the United Kingdom.

SUMMARY: On December 10, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. The review covers one manufacturer/exporter and the period March 1, 1995 through February 29, 1996.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, and the correction of certain clerical errors, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 17, 1997.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1996, the Department published in the **Federal Register** (61 FR 65022) the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (58 FR 15324, March 22, 1993). The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers one manufacturer/exporter of certain hot-rolled lead and bismuth steel products, British Steel Engineering Steels limited (BSES), formerly United Engineering Steels Limited (UES), and the period March 1, 1995 through February 29, 1996.

Duty Absorption

As part of this review, we are considering, in accordance with section 751(a)(4) of the Act, whether BSES absorbed antidumping duties. See the preliminary results of this review (61 FR 65022, December 10, 1996). For these final results of review, we find that antidumping duties have been absorbed by BSES. For a further discussion of this issue, see comments 1 and 2 below.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments and rebuttal comments from the petitioner, Inland Steel Bar Co., and BSES.

Comment 1: BSES contends that the Department lacks the authority to conduct a duty absorption inquiry in this, the third administrative review of this case, because the Act only permits such inquiries to be made in the second and fourth administrative reviews after the order is published.

Petitioner maintains that the Department was correct in conducting this duty absorption inquiry. Petitioner contends that BSES ignores the fact that, because this order was in effect on January 1, 1995, it is a transition order under the Act. Petitioner argues that the issue date for transition orders, as prescribed by the Act for the interpretation of sunset-related deadlines, is not the date of the original **Federal Register** publication, but rather the effective date of the World Trade Organization (WTO) agreement, January 1, 1995. As support for its argument, petitioner cites the URAA, Statement of Administrative Action (SAA) in H.R. Doc. No. 316, 103d Cong., 2nd Sess. (1994) at 882.

Petitioner also contends that section 351.213(j) of the Department's proposed antidumping regulations follows this timing interpretation and provides that for transition orders, if requested, the Department will make an absorption inquiry for administrative reviews initiated in 1996. According to petitioner, the preamble to the proposed antidumping regulations states explicitly that, for transition orders, ''reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year.''

Department's Position: We disagree with BSES that the Department lacks the authority to conduct a duty absorption inquiry in this review. Because the order for the subject merchandise was in existence as of the date the WTO agreement entered into force with respect to the United States, it is deemed to be a transition order. See section 751(c)(6)(C) of the Act. See also the SAA at 882. With respect to transition orders, section 351.213(j)(2) of the Department's proposed antidumping regulations explains that the Department will conduct a duty

absorption inquiry, if requested, beginning in the second year of review of such orders. See 61 FR 7307, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations states that, for transition orders, ''reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year.'' 61 FR at 7317. (Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. Because this review was initiated in 1996, the Department's duty absorption is deemed to be undertaken in the second year of review.)

Comment 2: BSES maintains that, if the Department declines to terminate the absorption inquiry, it must find that BSES has not absorbed antidumping duties. BSES further maintains that the existence of dumping margins does not necessarily mean that duty absorption has occurred. If this were the case, then the Department's obligation to conduct an absorption review would be meaningless, and there would be no need for a separate inquiry by the Department and the International Trade Commission (ITC).

BSES further maintains that the question of liability for antidumping duties is fundamentally different from the question of absorption in that the absorption inquiry involves at least two very distinct concepts that differentiate it from the ordinary dumping analysis. First, the absorption inquiry is intended to provide information to the ITC for consideration in a future sunset review. See sections 751(a)(4) and 752(a)(1)(D) of the Act. Secondly, BSES maintains that the Department should recognize that the small dumping margins that BSES has not yet succeeded in eliminating are not evidence of absorption.

BSES contends that, in determining whether a respondent's pricing policies demonstrate an intent to pass on or absorb duties, the Department may and should consider a respondent's sales prices in the aggregate and thus should offset the sale-specific dumping margins found in the review by the negative margins found in the review. BSES notes that the Department's preliminary review results found that BSES had a very low dumping margin and argues that the Department should recognize that BSES's pattern of pricing shows that it has conscientiously raised its prices and reduced its margin and thus has not absorbed antidumping duties. BSES recognizes the Department's traditional methodology of setting negative dumping margins at zero in the calculation of the weighted-average dumping margin, but argues that there is no policy reason to ignore negative margins in duty absorption inquiries, and that there certainly is no such requirement in the statute or regulations.

Petitioner maintains that, during the debates over the URAA, the domestic industry pointed out that the full remedial impact of dumping duties was not always reflected in the marketplace. Petitioner argues that, although 19 CFR 353.26 (1994) prohibited an exporter from reimbursing an importer of record for antidumping duties, nothing prohibited a respondent from acting as an importer of record, and thereby absorbing underpayment of duties. As a result, Congress amended the statute to direct the Department to identify these instances of duty absorption because they could be relevant in the Commission's sunset review determination on the likelihood of continuing or recurring material injury if an antidumping order is revoked.

Department's Position: We disagree with BSES. An investigation as to whether there is duty absorption does not simply involve reading the margin of the final results. As the Department noted in the preliminary results of this review, the determination that duty absorption exists is also based on the lack of any information on the record that the first unrelated customer will be responsible for paying the duty that is ultimately assessed. Absent such an irrevocable agreement between the affiliated U.S. respondent and the first unrelated customer, there is no basis for the Department to conclude that the duty attributable to the margin is not being absorbed by the respondent.

This is an instance where the existence of a margin raises an initial presumption that the respondent is, in fact, absorbing the duty. As such, the burden of producing evidence to the contrary shifts to the respondent. See *Creswell Trading Co., Inc.* v. *United States,* 15 F.3d 1054 (Fed. Cir. 1994). Here, the respondent has failed to place evidence on the record in support of its position that it is not absorbing the duties. Further, while the fact that respondent's margin has fallen indicates that the level of dumping has decreased, it does not indicate the absence of duty absorption in this review period, as there is still a positive margin.

We disagree with BSES that negative and positive margins should be aggregated. The Department treats so-called ''negative'' margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. See Final Determination of Sales at Less Than Fair Value; Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan, 58 FR 30149 (May 26, 1993). It would be inconsistent on one hand to calculate margins using positive margin sales, which is the Department's practice, and then argue, in effect, that there are no margins because credit should be given for nonmargin sales. Thus, those sales which are used to determine whether there are margins should also be used to determine whether there is duty absorption.

Whether or not respondents ''intended'' to absorb duties is also irrelevant to the Department's inquiry. The Act does not provide a basis for the Department to render judgements on the intentions of respondents, but instead to make an empirical finding as to whether absorption is occurring.

Comment 3: Petitioner claims that some grades of scrap purchased by BSES from its affiliated parties were not at arm's-length transaction prices. If the scrap price from BSES's affiliated supplier is less than the scrap price from its unaffiliated supplier, petitioner claims, it is not an arm's-length transaction. To account for such grades that were not at arm's-length prices, petitioner maintains that the Department should increase BSES's total cost of production by the difference between the price paid to affiliated parties and the price paid to unaffiliated parties. Petitioner contends that the overall average for all grades of scrap does not recognize that individual grades of scrap may not have been purchased from affiliated parties in an arm's-length transaction. As support for its argument, petitioner cites 19 U.S.C.A. 1677b(f)(2) (1996 Supp.); also, Final Results of Antidumping Duty Administrative Review; Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea, 61 FR 20216, 20221 (May 6, 1996); Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan, 56 FR 65228, 65237 (December 16, 1991); and Final Determination of Sales at Less Than Fair Value; Certain Granite Products From Italy, 53 FR 27187, 27193 (July 19, 1988).

BSES contends that scrap is not a uniform commodity with a single, stable, established price. The market is

volatile, with prices varying from period to period and from supplier to supplier. BSES claims that each month it and its suppliers assess the market and negotiate the price for each grade of scrap to be purchased in the coming month. The relationship does not affect the negotiated price. BSES further claims that both affiliated and unaffiliated suppliers sell to BSES in a tight cluster of prices that hover closely to theoretical market price, which sometimes is slightly higher than the average and sometimes slightly lower, but always dictated by the going market price. BSES notes that, out of 21 grades supplied by both affiliated and unaffiliated suppliers, affiliated suppliers' average prices were higher for 12 of these grades and unaffiliated suppliers higher for 9 grades. BSES maintains that the affiliated scrap prices for many of the grades are understated, since its most important affiliated suppliers do not include freight to BSES's location in their prices while the unaffiliated suppliers sell on a delivered basis. BSES notes that, where scrap sales were made on an ex-factory basis, BSES included its freight expense in the material cost used in the reporting of the cost of production and constructed value (CV). BSES claims that petitioner has distorted its scrap data, to conclude that the data show affiliated prices to be generally lower than unaffiliated prices.

Department's Position: We agree with BSES that scrap purchases from affiliated suppliers were made at arm's-length prices, and that therefore no adjustment to scrap prices is warranted. As BSES notes, the overall weighted-average price for all grades of scrap during the fiscal year is somewhat higher from affiliated suppliers than from unaffiliated suppliers. See memorandum to the file from Leon McNeill, April 9, 1997.

Comment 4: Petitioner argues that, for the upcoming administrative review, the Department should require respondent to allocate each individual rebate over only those sales benefitting from the rebate rather than over all sales.

BSES contends that no changes should be made to the Department's analysis in either this review or future reviews.

Department's Position: Since this comment refers to an upcoming administrative review of this order, it is not relevant to this review. Therefore, for these final results, the Department has not taken any action on this issue.

Comment 5: BSES argues that the Department failed to make a circumstance-of-sale (COS) adjustment for home market imputed credit expenses for CV comparisons. BSES notes that, in the preliminary results, the Department added imputed U.S. credit expenses to the foreign unit prices in dollars (FUPDOL). However, it failed to make a corresponding adjustment for home market credit expenses by subtracting such expenses from the CV. BSES suggests that the Department make this correction by calculating separately a weighted-average imputed home market credit expense in addition to the total actual direct selling expenses, and then deducting the weighted average home market credit expenses from CV. BSES maintains that the Department's normal value calculation methodology recognizes that home market price includes all cost and expenses, including imputed credit expense, since the Department makes a COS adjustment for this expense in price-to-price comparisons. Similarly, a COS adjustment is also required for CV, since imputed credit expenses are included in CV. BSES cites section 773(e) of the Act, which directs the Department to calculate CV as the sum of actual expenses incurred in the manufacture of the product sold in the United States, plus the actual selling expenses from the home market sales file, plus general and administrative expenses (including net interest expense), plus the actual profit realized on home market sales. BSES argues that since the Department added imputed U.S. credit to the FUPDOL, to ensure a fair comparison it must correspondingly deduct home market credit from CV. BSES contends that the Department's Office of Accounting has endorsed the methodology and it is also reflected in the following cases: Final Results of Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067 (December 31, 1996) and Final Determination of Sales at Less Than Fair Value; Large Newspaper Printing Presses from Japan (LNPPs from Japan), 61 FR 38139, 38147–48 (July 23, 1996).

Petitioner argues that since the Department did not include home market imputed credit in CV, it is not appropriate to deduct a home market credit expense from CV. Petitioner notes that although the Department has reached the opposite conclusion in several recent cases, including LNPPs from Japan, as cited by BSES, it should apply the pre-URAA policy of adjusting CV for imputed credit expenses.

Department's Position: We agree with BSES that a COS adjustment should be made for home market imputed credit expenses in CV comparisons. Under the URAA, for both COP and CV, the statute provides that selling, general and administrative expenses be based on actual amounts incurred by the exporter for production and sale of the foreign like product. Consistent with section 773(a)(6) of the Act, adjustments to normal value are appropriate where CV is the basis of normal value. The Department uses imputed credit expenses to measure the effect of a specific respondent's selling practices in the United States and the comparison market. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Administrative Reviews, 62 FR 2119–20 (January 15, 1997). Because export price is the basis for United States price in this review, the adjustment entails adding U.S. imputed credit to the CV, and subtracting home market imputed credit from the CV. The U.S. imputed credit was added for the preliminary results; for these final results, we have also subtracted the home market imputed credit. See section 773(a)(6)(c)(iii) of the Act.

Comment 6: BSES contends that the Department inadvertently deducted the home market quantity adjustment twice at lines 149 and 321 of the preliminary margin program.

Department's Position: We agree with BSES and have revised our computer programming language accordingly for these final results of review.

Comment 7: BSES argues that the Department erroneously applied a conversion factor to U.S. credit insurance. BSES claims that, since U.S. credit insurance is denominated in U.S. dollars, applying the conversion factor is incorrect.

Department's Position: We agree with BSES and have revised our computer programming language accordingly for these final results of review.

Comment 8: BSES maintains that the Department erred in converting U.S. packing from pounds sterling to U.S. dollars twice in calculating the FUPDOL for both price-to-price and CV comparisons.

Department's Position: We agree with BSES and have revised our computer programming language accordingly for these final results.

Comment 9: BSES claims that the Department misspelled the commission offset variable in the preliminary margin program. As a result, the commission offset was not applied to the FUPDOL for price-to-price comparisons where the U.S. commissions are greater than or equal to the home market indirect selling expenses.

Department's Position: We agree with BSES, and have revised our computer

programming language accordingly for these final results.

Comment 10: Petitioner argues that the Department inadvertently used the field MONTHU to establish the year for a concordance entry.

Department's Position: We agree with petitioner. Accordingly, for these final results, we have revised our computer programming language to make the appropriate clerical error correction.

Correction of Clerical Error

For the preliminary results, we failed to include direct selling expenses, indirect selling expenses, and U.S. packing expenses in the amount by which the profit ratio was multiplied in calculating CV profit. For these final results, we have included these expenses in the calculation of CV profit.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
British Steel Engineering Steels Limited (BSES)(formerly United Engineering Steels Limited)	3/1/95–2/29/96	4.56

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. Because there is a concurrent review of the countervailing duty order on the subject merchandise, final assessments for BSES will reflect the final results of the countervailing duty administrative review in accordance with 19 CFR 353.41(d)(iv). The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation (58 FR 6207, January 27, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9971 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Oil Country Tubular Goods From Argentina; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 17, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** (61 FR 48882) a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from Argentina. This review covered the period June 29, 1995 through July 31, 1996 (for OCTG other than drill pipe) and August 11, 1995 through July 31, 1996 (for drill pipe). This review has now been rescinded as a result of the absence of entries into the United States of subject merchandise during the period of review.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Alain Letort or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4243 or (202) 482–0649, respectively, or fax (202) 482–1388.

SUPPLEMENTARY INFORMATION: On August 30, 1996, petitioners requested an administrative review of Siderca S.A.I.C., an Argentine producer and exporter of OCTG, and Siderca Corporation, a U.S. importer and reseller of such merchandise (collectively, ''Siderca''), with respect to the antidumping duty order published in the **Federal Register** on August 11, 1995 (60 FR 41055). We initiated this review on September 17, 1996 (61 FR 48882).

On October 4, 1996, Siderca filed a letter with the Department certifying that it did not export, directly or indirectly, subject merchandise that was entered for consumption into the United States during the period of review (''POR''). Siderca also certified that its U.S. affiliate, Siderca Corporation, did not import for U.S. consumption any of the subject merchandise during the POR.

On October 25, 1996, petitioners claimed that publicly available import data contradicted Siderca's claims. Petitioners contended these data showed that Siderca was the shipper of a substantial quantity of OCTG (drill pipe and green tubing) during the period August through December, 1995, and that Siderca was listed as the consignee of each entry. Petitioners noted that none of these entries appeared in official U.S. import statistics. Petitioners also claimed those statistics showed that a very small quantity of seamless casing entered the United States from Argentina in December 1995, and requested that Siderca be asked to explain the exact nature, timing, and details of this shipment.

On October 30, 1996, we sent a no-shipment inquiry regarding Siderca to the U.S. Customs Service (''Customs''). Customs did not indicate that there were records of any consumption entries of OCTG by Siderca during the POR. On November 13, 1996, Siderca asserted in a letter to the Department that none of the six entries of drill pipe and green tubing referenced by petitioners was a consumption entry; rather, Siderca claimed, two of these entries were temporary importation in-bond (''TIB'') entries and four were entries into a foreign-trade zone (''FTZ''). Siderca argued that none of these entries could serve as the basis for an administrative review since they were not imported into the United States for consumption. Siderca also stated that it had no knowledge of, or involvement with, the very small shipment of seamless casing that allegedly entered the United States in December 1995. Siderca surmised that this shipment involved parties other than itself. There is no evidence on the record that would lead us to question this claim by Siderca.

On April 8, 1997, we received official confirmation from Customs that two of the entries of drill pipe and green tubing in question were TIB entries and that the remaining four were FTZ entries. Customs also confirmed that none of these six entries entered the customs territory of the United States during the POR for consumption.

Because the only firm for which a review was requested made no entries into the customs territory of the United States during the POR, we are rescinding this review in accordance with the Department's practice. *See Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking*, 61 FR 7308, 7317, 7365 (February 27, 1996) (section 351.213(d)(3)). The cash deposit rate for this firm will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675 (1995)), and section 353.22 of the Department's regulations (19 CFR § 353.22 (1996)).

Dated: April 10, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III, Import Administration.

[FR Doc. 97–9967 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A489–807]

Antidumpting Duty Order: Certain Steel Concrete Reinforcing Bars From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Cameron Werker, or Fabian Rivelis, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1776, (202) 482–3874, or (202) 482–3853; respectively.

Scope of Order

The merchandise covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), the Department made its final determination that rebar from Turkey is being sold at less than fair value (62 FR 9737, March 4, 1997). On April 10, 1997, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that a regional industry in the United States is materially injured by reason of imports of the subject merchandise from Turkey.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all entries of rebar from Turkey. These antidumping duties will be assessed on all unliquidated entries of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, the date on which the Department published its preliminary determination in the **Federal Register** (61 FR 53203). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of rebar not specifically listed below.

The ad valorem weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
Colakoglu Metalurji A.S. or Colakoglu Dis Ticaret (Colakoglu)	9.84
Ekinciler Demir Celik or Ekinciler Dis Ticaret (Ekinciler)	18.68
Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)	18.54
Izmir Demir Celik Sanayi A.S. (IDC)	41.80
Izmir Metalurji Fabrikasi Turk A.S. (Metas)	30.16
All Others	16.06

In the final determination, the Department found that critical circumstances exist with respect to exports of rebar from Turkey by all exporters except Colakoglu. However, on April 10, 1997, the ITC notified the Department of its negative determination regarding critical circumstances. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund

any cash deposit required under section 733(e)(2) of the Act with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to October 10, 1996.

This notice constitutes the antidumping duty order with respect to rebar from Turkey. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: April 11, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9968 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Tennessee, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–142. *Applicant:* University of Tennessee, Knoxville, Knoxville, TN 37996–1200. *Instrument:* Energy Analyzer and Power Supply, Model SES–200. *Manufacturer:* Scienta Instrument AB, Sweden. *Intended Use:* See notice at 62 FR 5619, February 6, 1997. *Reasons:* The foreign instrument provides an energy resolution of 5 meV (Xe gas phase) using a Gammadata VUV-source and nine predefined pass energies of 2, 5, 10, 20, 40, 75, 150, 300 and 500 eV. *Advice received from:* A domestic manufacturer of electron analyzers, March 27, 1997.

Docket Number: 96–143. *Applicant:* University of Alabama, Tuscaloosa, AL 35487–0209. *Instrument:* Auger XPS Spectrometer. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended Use:* See notice at 62 FR 5620, February 6, 1997. *Reasons:* The foreign instrument provides: (1) A combination of magnetic and electrostatic lenses providing a peak sensitivity of 500 000 cps at 10–9 A beam current, (2) charge neutralization and (3) digital control of transfer optics, analyzer, and other instrument functions. *Advice received from:* A U.S. Department of Energy laboratory, March 19, 1997.

Docket Number: 96–145. *Applicant:* Georgia Institute of Technology, Atlanta, GA 30322–0834. *Instrument:* Ion-Assisted Deposition System, Model APS 1104. *Manufacturer:* Leybold AG, Germany. *Intended Use:* See notice at 62 FR 6215, February 11, 1997. *Reasons:* The foreign instrument provides: (1) A proprietary plasma source for ion-assisted deposition, (2) uniform deposition over an area as large as one meter in diameter and (3) ability to operate with lower substrate temperatures than conventional electron beam deposition systems. *Advice received from:* Brookhaven National Laboratory, March 14, 1997.

A domestic manufacturer of electron analyzers, a U.S. Department of Energy laboratory and Brookhaven National Laboratory advise that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–9964 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Washington University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–136. *Applicant:* Washington University, St. Louis, MO 63130–4899. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 62 FR 5619, February 6, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Automated preparation and isotopic analysis of carbonate, CO_2 and O_2 microsamples, (2) an ion collection system with 460 mm deflection radius and (3) mass range of 1–150 at 10 kV. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–9965 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada; Final Results of the Third (1994) Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On October 7, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada for the period January 1, 1994 through December 31, 1994 (see *Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of Countervailing Duty Administrative Reviews (Preliminary Results),* 61 FR 52435. We have completed these reviews and determine the net subsidy to be 4.48 percent *ad valorem* for Norsk Hydro Canada, Inc. (NHCI) and all other producers/exporters except Timminco Limited, which has been excluded from these orders. We will instruct the U.S.

Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Steven Harris, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; tel. (202) 482–4087 and (202) 482–2239, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), these reviews cover only those producers or exporters of the subject merchandise for which reviews were specifically requested. Accordingly, these reviews cover only NHCI, a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period.

On October 7, 1996, the Department published in the **Federal Register** the *Preliminary Results* of its administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada (61 FR 52435). We invited interested parties to comment on the *Preliminary Results.* On November 6 and 13, 1997, case briefs and rebuttals were submitted by NHCI, the Government of Québec (GOQ), and the Magnesium Corporation of America (petitioner). At the request of respondents, the Department held a public hearing on December 4, 1996.

These reviews cover the period January 1, 1994 through December 31, 1994. The reviews involve one company (NHCI) and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, and Transportation Research and Development Assistance Program.

Applicable Statute

Unless otherwise indicated, all citations to the statute are in reference to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scopes of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included in the scope of the orders. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from Canada* (57 FR 6094, February 20, 1992).

Analysis of Programs

Based upon our analysis of our questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Exemption from Payment of Water Bills

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	0.65

B. Article 7 Grants from the Québec Industrial Development Corporation

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	3.83

II. Programs Found Not to be Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- St. Lawrence River Environment Technology Development Program.
- Program for Export Market Development.
- Export Development Corporation.
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec.
- Opportunities to Stimulate Technology Programs.
- Development Assistance Program.
- Industrial Feasibility Study Assistance Program.
- Export Promotion Assistance Program.
- Creation of Scientific Jobs in Industries.
- Business Investment Assistance Program.
- Business Financing Program.
- Research and Innovation Activities Program.
- Export Assistance Program.
- Energy Technologies Development Program.
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the *Preliminary Results.*

Analysis of Comments

Comment 1: Countervailability of the Exemption from Payment of Water Bills

Respondents argue that NHCI's contract with its supplier of water, La Societé du Parc Industriel et Portuaire de Bécancour (''Industrial Park''), was inextricably linked with the credit it received from the GOQ to offset its water bills. If the water credit had not been received, respondents state that a different billing arrangement would

have been made. Therefore, in determining the amount of the benefit conferred by the credit, the Department should look to what NHCI would have paid absent the water credit and the contract compared to what it paid with the credit and the contract. To calculate what NHCI would have paid absent the credit and the contract, respondents argue that the closest approximation is the amount NHCI would have paid under its present contract based on actual water consumption rather than forecasted consumption.

Petitioner states that in these reviews and previous ones the Department has thoroughly analyzed the relevant issues with respect to NHCI's contract with the Industrial Park and has correctly calculated the countervailable benefit in the *Preliminary Results.*

DOC Response

We disagree with respondents that we are required to hypothesize what NHCI would have paid for its water in the absence of the credit and the contract it entered into to measure the benefit conferred by the credit. The position put forward by NHCI is analogous to a situation where a company received a low-interest loan from a government and argues to the Department that because of the low interest rate, it borrowed more than it otherwise would have. Therefore, the company would contend, to calculate the benefit conferred by the low-interest loan, the Department should compare the actual amount of interest paid on the low-interest loan with the amount of interest the company would have paid on a smaller loan at a higher benchmark interest rate. In this loan situation, we would not enter into a hypothetical calculation of what amount the company would have borrowed absent the low-interest loan. Instead, consistent with section 771(5)(A)(II)(c) of the Act, we would simply countervail the difference in the two interest rates without regard to what effect the interest rate has on the other terms of the loan, *i.e.*, the amount borrowed.

In these reviews, the terms of the contract between NHCI and the Industrial Park unambiguously state that NHCI is required to pay an amount based, in part, on forecasted consumption. To the extent the GOQ's provision of the credit relieved NHCI from paying its water bills, a countervailable benefit existed without regard to whether NHCI would have received different terms under an alternative arrangement. Therefore, we determine that the benefit is the full amount of the credit.

Comment 2: Article 7 Assistance under the SDI Act

Respondents argue that the Department improperly applied its grant methodology to the Article 7 assistance provided to NHCI. According to respondents, because NHCI knew it would receive interest rebates from SDI prior to taking out loans, the Department should calculate the benefit using its loan methodology and reduce the interest rate charged by the amount of the interest rebated. Respondents state that this would be consistent with the Department's methodology, citing a number of cases (e.g., *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom (UK Steel),* 58 FR 37393, 37397 (July 9, 1993)).

Respondents further contend that the *Preliminary Results* were based on significant errors of fact regarding the interest rebates received by NHCI. First, respondents argue that the relationship between the interest rebates and the underlying loans was not indirect. Second, the interest rebates received by NHCI reduced NHCI's costs of borrowing for the construction of its plant, not its costs of purchasing environmental equipment.

With respect to the first point, respondents argue that the Department was incorrect in its assertion that the Article 7 assistance was more closely linked to the acquisition of certain assets than the accumulation of interest costs. Moreover, respondents maintain that the SDI assistance was not intended solely for the purchase of environmental protection equipment, but was also intended to facilitate the construction of NHCI's facility in Québec. The fact that the Article 7 assistance was intended to achieve more than one objective does not distinguish the Article 7 assistance from other interest rebate programs which the Department has treated under its loan methodology, according to respondents.

With respect to the second point, respondents argue that since the Department wrongly assumed that the Article 7 assistance was provided solely for the purchase of environmental equipment, the Department was able to conclude that the interest rebates exceeded the interest that would be in connection with the purchase of the environmental equipment. Hence, the Department concluded that the Article 7 assistance should not be treated as an interest rebate. However, because the Article 7 assistance was intended to reduce the cost of financing for the project as a whole, the assistance was not excessive in the sense described by the Department.

Petitioner agrees with the Department's treatment of the Article 7 benefits received by NHCI and emphasizes that in these reviews and in prior reviews the Department has addressed the germane issues regarding the Article 7 benefits.

DOC Position

The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as an interest rebate, then under the methodology adopted by the Department in the 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology *(Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, (Belgium Steel)* 58 FR 37273, 37276, July 9, 1993). However, if treated as a grant, the benefits would be allocated over a period corresponding to the life of the company's assets.

In their brief, respondents argue that the interest rebate methodology reflects the fact that companies face a choice between debt and equity financing. If a company knows that the government is willing to rebate interest charges before the company takes out a loan, the government is encouraging the company to borrow rather than sell equity. Hence, respondents conclude, the benefit should be measured with reference to the duration of the borrowing for which the rebate is provided.

We disagree that the Department's interest rebate methodology was intended to reflect the choice between equity and loan financing. In the 1993 steel cases, (See, e.g., *Belgium Steel*), we examined a particular type of subsidy, interest rebates, and determined which of our valuation methodologies was most appropriate. The possible choices were between the grant and loan methodologies. Where the company had knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at 5 percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a 10 percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel

cases was never intended to dictate that the Department should apply the loan methodology in every situation in which a government makes contributions toward a company's interest obligations. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government told a company that it would make all interest payments on all construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, i.e., partial interest rebates paid over a period of years on particular long-term loans.

As we did in the 1993 steel cases, the Department in these reviews is seeking the most appropriate methodology for the Article 7 assistance. We erred in our *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada,* 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of Article 7 assistance was contingent, *inter alia,* on NHCI making interest payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of the Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the *General Issues Appendix* (GIA) appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37063, 37226, July 9, 1993), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

Comment 3: Reexamination of Specificity of the Article 7 Assistance

In the event the Department continues to treat the Article 7 assistance as a non-recurring grant, respondents state that the Department is obliged to make a finding that the Article 7 assistance conferred a subsidy to NHCI during the POR. The Department may not, as it has here, rely on a factual finding of disproportionality during a different time period and different amounts of assistance. Respondents state that a finding of *de facto* specificity requires a case-by-case analysis, citing *PPG Industries, Inc.* v. *United States* (928 F.2d 1568, 1577 (Fed.Cir. 1991)), *Geneva Steel* v. *United States* (914 F.Supp. 563, 598 (CIT 1996)), and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil* (58 FR 37295, 37303 (July 9, 1993)) to support their reasoning. Respondents also cite the sixth administrative review of *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (*Live Swine*) (59 FR 12243 (March 16, 1994)) as an example where the Department reexamined the countervailability of benefits found to be *de facto* specific in prior reviews.

Respondents maintain that given the Department's responsibility to make a finding of specificity and countervailability based on the information relevant to the POR, the Department should consider any new assistance provided by SDI since the end of the original period of investigation. To this end, the GOQ provided information on the Article 7 assistance extended up to, and including, the POR in a submission dated April 4, 1996. The GOQ also provided information on assistance provided under Article 9 of the SDI Act in that same submission. According to the GOQ, assistance under Article 9 should be included in the Article 7 specificity analysis because Article 9 was the predecessor of Article 7 and the provisions of Article 9 functioned basically the same as those of Article 7.

Respondents then present a methodology they believe should be employed whereby the Department would compare the portion of NHCI's original grant allocated to the POR, based on the Department's standard allocation methodology, and the portions of benefits allocated to the POR for all assistance bestowed to all other enterprises receiving SDI assistance under Articles 7 and 9 to determine whether NHCI received a disproportionate share of benefits.

Petitioner concurs with the Department's decisions on this issue in these reviews and in prior segments of the proceedings.

DOC Position

It is the Department's policy not to revisit specificity determinations absent the presentation of new facts or evidence (see, e.g., *Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order,* 59 FR 58814, November 15, 1994). In these reviews, no new facts or evidence have

been presented which would lead us to question that determination. We address respondents' arguments in favor of making a POR-specific determination and the relevance of the information submitted for consideration below.

POR-Specific Determinations Re: *De Facto* Specificity

Respondents refer to the various reviews of the countervailing duty order on live swine from Canada as demonstrating that the Department has, as a matter of course, revisited its *de facto* specificity determinations from one segment of a proceeding to another. While distinct *de facto* specificity determinations were made with respect to the Tripartite program in the fourth, fifth and sixth reviews of the order on live swine from Canada, these were not done as a matter of course. The Department reexamined specificity in these reviews of live swine only as a result of an adverse decision by the Binational Panel. Because the Binational Panel overturned the Department's finding of specificity regarding the Tripartite program in the fourth review of live swine for lack of evidence (and eventually rejected its analysis regarding specificity in the fifth review but upheld its decision), the Department continued to collect information in the sixth review, which was running concurrently with the Binational proceedings. In explaining its actions in the sixth review, the Department recognized that it does not routinely revisit specificity determinations, as respondents would have us believe, in stating the following:

> Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada.

(See *Live Swine*.) As can be seen from the foregoing, the facts surrounding the live swine reviews do not correspond to the situation presented here. In particular, the issue of specificity had not been conclusively settled in the live swine reviews and was in the process of litigation, and different information was available; unlike this case in which a definitive specificity determination had already been established.

As for respondents' arguments that *de facto* specificity determinations should be done on a case-by-case basis, we agree. However, we disagree with respondents as to what ''case-by-case'' means. In each of the citations respondents refer to, ''case'' referred not to a separate segment of the same proceeding (e.g., the first review of an order distinct from the second review), but to a separate investigation or review of different products (e.g., an investigation of carbon black from Mexico as opposed to an investigation of steel products from Brazil). It is this latter definition of ''case'' we find to be the proper basis for examination of *de facto* specificity determinations. Since a separate *de facto* specificity determination was made in the investigations of pure and alloy magnesium, we find that the analysis was properly conducted.

In proposing that the Department base a POR-specific *de facto* specificity finding on the portions of non-recurring grants allocated to the POR, the respondents appear to be confusing the initial specificity determination based on the action of the granting authority at the time of bestowal with the allocation of the benefit over time. These are two separate processes. The portions of grants allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal.

Relevance Of Submitted Information

As stated in the preceding section, the proper time period for a specificity determination is the time of bestowal. Therefore, information submitted by the GOQ on assistance provided subsequent to the time of bestowal of the assistance granted to NHCI under Article 7 of the SDI Act is not relevant to the specificity determination. The remaining information presented by the GOQ on the Article 7 assistance granted prior to and including the time of bestowal of NHCI's Article 7 benefits is nearly identical to that utilized by the Department in its original specificity determination. Differences between the updated information on Article 7 provided by the GOQ and information used in the original specificity determination are sufficiently small so as not to compromise the original specificity determination.

As for the GOQ's argument that assistance under Article 9 should also be included in the specificity analysis, we note that the GOQ neither alleged that Articles 7 and 9 are integrally linked nor provided information which would allow us to make a determination on integral linkage. Information on the record in these proceedings with respect to Article 9 consists only of the following statement by the GOQ in its original response to the questionnaire:

> Article 7 replaced Article 9 of the SDI Act in 1986. Article 9 operated almost identically to Article 7. Article 9 assistance, like Article 7, required authorization by the Gouvernement du Québec.

In order for the Department to treat two programs as one for purposes of its specificity analysis, it must be demonstrated that the two programs are integrally linked. When examining the issue of integral linkage, it has been the Department's practice to examine, among other things, the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation and the manner of funding the program (*see Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring From Canada* 62 FR 5201, 5210 (February 4, 1997)). As can be seen from the foregoing, the GOQ has failed to provide any evidence supporting its implicit claim that Articles 7 and 9 should be treated as one program. Since Articles 7 and 9 are separate programs, information submitted on Article 9 assistance does not call into question the original specificity determination regarding Article 7.

Based on all of the arguments above, we find that the GOQ has not provided new information which would cause us to revisit our original specificity determination. As a result, the bases of the original specificity determination and the conclusions of that determination are still valid. We, therefore, maintain that assistance provided to NHCI under Article 7 of the SDI Act is specific and, therefore, countervailable.

Comment 4: Appropriate Denominator

Respondents state that in the *Preliminary Results* the Department deviated from its standard practice in determining the denominator for companies with multinational production facilities that fail to rebut the presumption that subsidies are domestically tied. In particular, respondents argue that it is the Department's policy to tie such subsidies to domestic operations, by allocating benefits to sales by the domestic company regardless of country of manufacture, as opposed to tying to domestic production, as was done in the *Preliminary Results*. Respondents additionally state that the Department both failed to explain its basis for presuming that the subsidies were tied to Canadian production and to respond to NHCI's arguments in favor of allocating the subsidies over sales by NHCI of subject merchandise regardless of country of manufacture. In so doing,

respondents claim the Department denied NHCI due process by preventing it from rebutting the presumption and from responding to the rationale the Department used to support its decision to tie the subsidies to domestic production. In support of their assertion that the subsidies NHCI received are tied to its domestic operations, respondents state that any funds received benefited all employment-related activities in Canada (*e.g.*, sales of all products) and that these activities are related to both domestic and foreign production. Respondents elaborate further that the denominator policy used by the Department in this case is a deviation from the fungibility of money principle.

Respondents also cite *British Steel plc* v. *United States (British Steel)* (479 F. Supp. 1254, 1371) in which the Court reversed and remanded the Department's determinations because it found that the Department should have given plaintiffs due notice of its decision to apply the rebuttable presumption that the subsidies at issue were tied to domestic production in order to allow plaintiffs the opportunity to rebut the Department's presumption.

Petitioner agrees with the Department's decisions and analyses of this issue in these reviews and in prior segments of these proceedings.

DOC Response:

Respondents cite *British Steel* in an attempt to imply that the Department must inform parties early during the course of each proceeding of its intent to use the rebuttable presumption that subsidies to companies with foreign manufacturing operations are tied to domestic production. However, the facts involved in British Steel are readily distinguishable. Therefore, the holding in that case does not apply to the present situation.

In *British Steel*, the Court was examining the Department's policy of using the rebuttable presumption articulated in the GIA. In particular, the Court took issue with the introduction of the new policy in the final-determination stage of the investigation, because the timing prevented parties from both commenting on the methodology and from presenting evidence rebutting the presumption. It is important to note that the Department's remand determination, as affirmed by the Court, upheld the appropriateness of using the rebuttable presumption. The Department has continued to use the rebuttal presumption and this policy has become accepted Department practice. Unlike *British Steel*, we are not dealing with the introduction of a new policy late into the course of a proceeding in this case. Therefore, the Department was not required to forewarn respondents of the use of the rebuttable presumption.

We also note that the use of a denominator based only on domestically produced merchandise did not come as a surprise to respondents. To begin, in the original investigations of these cases (which pre-dated the rebuttable presumption) the Department used a denominator based only on sales of domestically produced merchandise (*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada*, 57 FR 30946 (July 13, 1992)). Since the investigations in these cases, there has been a changed circumstances review (57 FR 54047 (November 16, 1992)) and a Binational Panel proceeding. In all of the proceedings, the denominators have included only domestically produced merchandise and in no case have respondents objected to those denominators. In addition, the questionnaire for these reviews requested information on sales denominators based on domestically produced merchandise. NHCI provided the requested sales denominator information along with denominators based on total sales by NHCI and arguments why those based on total sales should be used. Moreover, sales of domestically produced merchandise were used as the denominator in the *Preliminary Results.* As can be seen from the foregoing, respondents were aware as to the possible use of a denominator based on domestically produced merchandise and did indeed have an opportunity to attempt to rebut the presumption.

Respondents also argue that the Department must explain the basis of its presumption. However, the idea behind the use of a rebuttable presumption is that the fact presumed—in this case that subsidies bestowed on companies with foreign manufacturing operations are tied to domestic production—becomes the default position and does not have to be explained in each case. As the Department stated in the GIA, ''Thus, under the Department's refined ''tied'' analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production'' (GIA at 37231). It follows that the Department will find that subsidies are tied to domestic production in the absence of evidence to the contrary.

As for respondents' complaint that the Department failed to address its arguments that the subsidies received by NHCI benefited all of the company's operations, not just its manufacturing activities, we note that in the GIA it states, ''A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production . . .'' The phrase, ''tending to show'' means that the party attempting to rebut the presumption must provide enough evidence to convince a reasonable fact-finder of the non-existence of the presumed fact—that subsidies are tied to the recipient firm's domestic production (Results of Redetermination Pursuant to Court Remand on General Issue of Sales Denominator: *British Steel plc* v. *United States*, Consol. Ct. No. 93–09–00550-CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) at 17). The mere absence of evidence limiting the government's intended scope of the benefit to domestic production is not sufficient. In this case, respondents' arguments have not risen to the level of evidence that would convince us that the GOQ intended that the subsidies it bestowed on NHCI were to benefit more than just domestic production. Therefore, respondents have failed to rebut the presumption that the subsidies received by NHCI were tied to domestic production.

The Department's methodology for determining what to include in the denominator when a company has foreign manufacturing operations is explained in the GIA: ''If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise'' [emphasis added] (GIA at 37231). This quotation makes it clear that sales of foreign-produced merchandise by a respondent company would not be included in the denominator. Even if we were to consider tying the subsidies at issue to domestic operations, using respondents' suggestion of a sales denominator based on total NHCI sales would be improper since such a figure would include sales of foreign-produced merchandise by NHCI and, therefore, value-added from operations in other countries. Based on the foregoing arguments, we have continued to allocate subsidies received by NHCI to the company's merchandise produced in Canada.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1994 through December 31, 1994, we determine the net subsidy for

NHCI to be 4.48 percent *ad valorem*. This rate adjusts the rate of 4.01 percent found in the *Preliminary Results* to a f.o.b. basis (*see* the GIA at 37237). We will instruct the U.S. Customs Service to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of subject merchandise from reviewed companies, except from Timminco Limited (which was excluded from the order in the original investigations), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company, except from Timminco Limited (which was excluded from the order in the original investigations). Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See Pure and Alloy Magnesium from Canada: Final Results of the First (1992) Countervailing Duty Administrative Reviews* (62 FR 13857 (March 24, 1997)). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 1994, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration (Acting).

[FR Doc. 97–9962 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040997B]

RIN 0648–XX28

New Bedford Harbor Trustee Council, Draft Restoration Plan and Environmental Impact Statement (RP/EIS)

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

ACTION: Notice of availability of draft restoration plan and environmental impact statement (RP/EIS).

SUMMARY: NMFS, acting as Administrative Trustee, announces the availability of the New Bedford Harbor Trustee Council's (Council) draft RP/EIS for the restoration of natural resources that have been injured by releases of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor Environment. Written comments are requested on the draft RP/EIS.

DATES: Written comments are requested by June 2, 1997.

ADDRESSES: Written comments on the draft RP/EIS, requests for inclusion on the draft RP/EIS mailing list, and requests for copies of any documents associated with the draft RP/EIS should be directed to: New Bedford Harbor Trustee Council, c/o NMFS, F/NEO2, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 508–281–9136.

SUPPLEMENTARY INFORMATION: A Notice of Availability will be mailed to all agencies, organizations, and individuals who participated in the scoping process or were identified during the RP/EIS process. Copies of the RP/EIS have been sent to all participants who have already requested copies.

A. Background

New Bedford Harbor is located in southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. Adjacent to the harbor are the communities of Acushnet, Dartmouth, Fairhaven, and New Bedford. New Bedford Harbor is contaminated with high levels of hazardous substances, including PCBs, and is therefore on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List, as well as being identified as a priority Superfund site by the Commonwealth of Massachusetts. Hazardous materials containing PCBs were discharged directly into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system into the same bodies of water. The sources of these discharges were electronics manufacturers who were major users of PCBs from the time that their operations commenced in the late 1940s until 1977, when EPA banned the use and manufacture of PCBs.

B. Cooperating Agencies

There are three natural resource trustees on the Council representing the Department of Commerce, the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated trustee responsibility to NOAA, with NMFS having responsibility for restoration. The Secretary of the Interior has delegated trustee responsibility to the U.S. Fish and Wildlife Service. The Governor of Massachusetts has delegated trustee responsibility to the Executive Office of Environmental Affairs.

C. Funding

The source of funding for the Council's actions is a $21 million restoration fund, established as a result of settlements between the Federal government, the Commonwealth of Massachusetts, and the companies responsible for releasing PCBs into New Bedford Harbor. A separate account funds the Harbor cleanup. By law and under the terms of the settlement agreements, the Council must finalize a restoration plan for the New Bedford Harbor Environment before funding restoration projects, although necessary plans and studies may be funded before completion of the plan.

D. Development of the Draft RP/EIS

The Trustees determined that an EIS was the most appropriate means to ensure public participation in the development of restoration alternatives, and to analyze the environmental impact of those alternatives. A Notice of Intent to prepare the RP/EIS was published in the **Federal Register** (60 FR 10835, February 28, 1995) and initial scoping meetings were held in February and March 1995. Restoration priorities were determined from the list of resources identified as having a high probability of injury within the New Bedford Harbor environment and which would be likely candidates for restoration. The restoration priorities are: (1)Marshes or wetlands; (2)recreation areas; (3)water column; (4) habitats; (5)living resources; and (6)endangered species.

E. Request for Ideas

A request for restoration ideas was published in the **Federal Register** (60 FR 52164–52169, October 5, 1995). As a result, 56 restoration ideas were received from citizens, non-profit organizations, municipalities, academic institutions, state and Federal agencies, and private businesses. The ideas received are the alternatives analyzed in the RP/EIS. The ideas were reviewed by the Council's community and technical advisory committees and legal counsel. The Committees provided recommendations on which ideas should be preferred alternatives to the Council. The public was invited to comment and a public hearing was held on April 30, 1996. The Council then selected 12 preferred alternatives after considering the public comment and its committees' recommendation.

F. Alternatives Analyzed in the Draft RP/EIS

The Council is proposing a combination of near-term, future and emergency actions, and plans and studies, as appropriate, that together would form the basis of an estuary-wide plan to restore the affected environment. This plan evaluates general restoration alternatives as well as specific restoration actions, and establishes a process for the evaluation, selection, and implementation of future restoration actions.

G. Preferred Alternatives

From among the 56 ideas, the Council selected 12 preferred alternatives for near-term implementation. These ideas, by restoration priority, are as follows:

Marshes or Wetlands

- Hydrologic restoration of Padanaram Salt Marsh, Dartmouth
- Hydrologic restoration of Nonquitt Marsh, Dartmouth

Recreation Areas

- Recreation and habitat improvements to Fort Taber Park, New Bedford
- Riverside/Belleville Avenue Marine Recreational Park, New Bedford

Water Column

- Hurricane Barrier Box Culvert, New Bedford/Fairhaven

Habitats

- Eelgrass habitat restoration, New Bedford Harbor and Clarks Cove
- Land acquisition, Sconticut Neck, Fairhaven

Living Resources

- Restoration and management of the New Bedford area shellfishery
- Restoration of the Acushnet River herring run

Endangered Species

- Buzzards Bay tern restoration and habitat stabilization

Plans and Studies

- Wetlands restoration planning and implementation
- New Bedford/Fairhaven Harbor Master Plan (aspects related to natural resources)

On finalization of this plan, the Council will begin implementation of selected near-term alternatives.

H. Coordination with Ongoing Cleanup Actions

Since the Harbor cleanup is ongoing, restoration actions must be coordinated with that process to maximize environmental benefits while ensuring that neither process negates or interferes with the other. As cleanup of the Harbor proceeds, more restoration options will become practicable. The Council proposes an event-based process of idea solicitation and selection to choose future restoration actions, periodically selecting restoration actions that are practicable, effective, and appropriate in the context of the ongoing cleanup. Full public involvement in Council decisionmaking will be maintained in all aspects of the process.

Authority: 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: April 10, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 97–9922 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041197A]

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 (Council) will convene public meetings.

DATES: The meetings will be held on May 12–15, 1997.

ADDRESSES: These meetings will be held at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, LA; telephone: (504) 525–9444.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

May 14

8:30 a.m.—Convene.

8:45 a.m. - 12:00 noon—Receive public testimony on Mackerel Total Allocable Catch and Reef Fish Amendment 15, published on April 11, 1997, 62 FR 17776.

1:30 p.m. - 3:00 p.m.—Continue public testimony on Reef Fish Amendment 15.

3:00 p.m. - 5:30 p.m.—Receive a report of the Reef Fish Management Committee.

May 15

8:30 a.m. - 11:15 a.m.—Receive a report of the Mackerel Management Committee.

11:15 a.m. - 11:30 a.m.—Receive a report of the Shrimp Management Committee.

11:30 a.m. - 11:45 a.m.—Receive a report of the Data Collection Committee.

11:45 a.m. - 12:00 a.m.—Receive a report of the Law Enforcement Committee.

12:00 noon - 12:15 p.m.—Receive a report on the South Atlantic Fishery Management Council Liaison.

12:15 p.m. - 12:30 p.m.—Receive a report of the International Commission for the Conservation of Atlantic Tunas Advisory Committee.

12:30 p.m. - 1:00 p.m.—Receive Enforcement Reports.

1:00 p.m. - 1:15 p.m.— Receive Director's Reports.

1:15 p.m. - 1:30 p.m.—Other business to be discussed.

Committees

May 12

1:00 p.m. - 2:30 p.m.—Convene the Data Collection Committee to review the procedures that will be used by NMFS in monitoring recreational red snapper landings and closing that fishery when the quota is taken.

2:30 p.m. - 4:00 p.m.—Convene the Shrimp Management Committee to review restoration scenarios for the red snapper stock provided that several additional types of bycatch reduction devices are allowed in shrimp trawls and the prognosis for the upcoming brown shrimp season in Louisiana.

4:00 p.m. - 5:00 p.m.—Convene the Law Enforcement Committee to review the NOAA Penalty Schedule Meeting Discussion and the Law Enforcement Advisory Panel (AP) comments.

May 13

8:00 a.m. - 12:00 p.m.—Convene the Reef Fish Management Committee (Committee) to review recommendations on Draft Amendment 15 by the public from hearings and letters, the Red Snapper AP, the Reef Fish AP, the Law Enforcement AP, the Scientific and Statistical Committee (SSC) and by NMFS. Following its review, the Committee will develop its recommendations to the Council. The Committee will also review a stock assessment panel report on vermilion snapper and public comments on a scoping document for amberjacks.

1:00 p.m. - 5:30 p.m.—Convene the Mackerel Management Committee to review the Stock Assessment Panel report, the Socioeconomic Panel report, and the recommendations of the Mackerel AP and SSC before developing its recommendations to the Council. It will also review a preliminary options paper for the next amendment to the fishery management plan for the mackerel fishery and reporting of landings.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 5, 1997.

Dated: April 11, 1997.

Gary C. Matlock,

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

[FR Doc. 97–9923 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041497B]

Endangered Species; Permits

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

ACTION: Issuance of modification 1 to permit 991 (P599).

SUMMARY: Notice is hereby given that NMFS has issued a modification to a permit that authorizes takes of an Endangered Species Act-listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the California Department of Water Resources in Sacramento, CA (CDWR).

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

SUPPLEMENTARY INFORMATION: The modification to a permit was issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on December 30, 1996 (61 FR 68721) that an application had been filed by CDWR (P599) for modification 1 to permit 991. Modification 1 to permit 991 was issued to CDWR on March 24, 1997. Permit 991 authorizes CDWR takes of juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research. For modification 1 to permit 991, CDWR is authorized an annual take of juvenile, ESA-listed fish associated with a fisheries study of the Yolo Bypass, a floodplain adjacent to the Sacramento River where large numbers of salmon are trapped when high flows recede. Study results will be used to provide recommendations for ecosystem restoration options, to identify actions to minimize adverse effects to juvenile salmon, and to make habitat restoration efforts as harmless to fish as possible. Modification 1 is valid for the duration of the permit. Permit 991 expires on June 30, 1999.

Issuance of the permit modification, as required by the ESA, was based on a finding that such action: (1) Was requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: April 14, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–9960 Filed 4–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040297B]

Marine Mammals; Permit No. 838 (P535)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 838 submitted by Dr. Stephen Insley, Smithsonian Institution, National Zoological Park, Dept. Zoological Research, Washington, DC 20008, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/568–7221).

SUPPLEMENTARY INFORMATION: On February 27, 1997, notice was published in the **Federal Register** (62 FR 8929) that an amendment of permit no. 838, issued May 17, 1993 (58 FR 29810), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: April 10, 1997.

Ann Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–9959 Filed 4–17–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

April 11, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In exchange of notes, the Governments of the United States and Malaysia agreed to amend the existing visa arrangement for textile products, produced or manufactured in Malaysia and exported on and after May 1, 1997. The amended arrangement consolidates existing and new provisions of the export visa arrangement, including provisions for the Electronic Visa Information System (ELVIS). In addition to the ELVIS requirements, shipments will continue to be accompanied by an original visa stamped on the front of the original commercial invoice issued by the Government of Malaysia. Goods which currently require an exempt certificate shall not require an ELVIS transmission, but will continue to require the exempt certificate.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing visa requirements for textile products produced or manufactured in Malaysia and exported on and after May 1, 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 52 FR 32158, published on August 26, 1987.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 11, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 20, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Malaysia for which the Government of Malaysia has not issued an appropriate export visa or exempt certification.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Export Visa Arrangement, effected by exchange of notes between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1997, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 831–859, including part categories and merged categories (see Annex A), produced or manufactured in Malaysia and exported on and after May 1, 1997 for which the Government of Malaysia has not issued an appropriate export visa, exempt certification or Electronic Visa Information System (ELVIS) transmission fully described below. Shipments covering merchandise in Categories 800–810 and 863–899 do not require a visa. Should additional categories, part categories or merged categories become subject to import quota the entire category(s), part category(s) or merged category(s) shall be included in the coverage of this arrangement.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Malaysia is ''MY''), and a six digit numerical serial number identifying the shipment; e.g., 7MY123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official of the Government of Malaysia.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated, shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 340–510 DOZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as ''Category 347,'' but not as ''Category 348'').

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the

shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Malaysian Government or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of Malaysia and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If a shipment from Malaysia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

ELVIS Requirements:

A. Each ELVIS message will include the following information:

I. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Malaysia is ''MY''), and a six digit numerical serial number identifying the shipment; e.g., 7MY123456.

II. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

III. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents.

IV. The quantity of the shipment in the correct units of quantity.

V. The manufacturer ID code.

B. Entry of a shipment shall not be permitted:

I. if an ELVIS transmission has not been received for the shipment from the country of origin;

II. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category or part category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number

III. if the ELVIS transmission for the shipment does not match the information supplied by the importer or the Customs Broker acting as an agent on behalf of the importer, with regard to any of the following:

a. visa number
b. category or part category
c. unit of measure

IV. if the quantity being entered is greater than the quantity transmitted.

V. if the visa number has previously been used, except in the case of a split shipment, or cancelled, except when an entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the country of origin is required before a shipment that has been denied entry for one of the circumstances mentioned in paragraph B.I–V will be released. Visa waivers will only be considered for legitimate classification purposes, or for paragraph B.I–V if the shipment qualifies as a one-time special purpose shipment that is not part of an ongoing commercial enterprise.

D. A new, correct ELVIS transmission from the country of origin is required for entries made using a visa waiver under the procedures as previously described.

E. Shipments will not be released for forty-eight hours in the event of a system failure. If system failure exceeds forty-eight hours, for the remaining period of the system failure the U.S. Customs Service will release shipments on the basis of the paper visaed document.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Malaysia has been allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided or a new ELVIS message is transmitted.

Exempt certification requirements:

Shipments of certified hand printed batik, defined as fabric to which the design has been applied by hand in units of the Malaysian cottage industry, shall be exempt from the quota levels if they are certified prior to leaving Malaysia, by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original exempt certification shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

Textiles and textile articles provided for in the exempt certification system are exempt from the levels of restraint, and visa and ELVIS requirements if they are properly certified, prior to the shipment leaving Malaysia.

Each certification stamp shall include the following information:

1. Date of issuance
2. Signature of issuing official
3. The basis for the exemption, which shall be noted as:

a. hand printed batik
b. the name of the particular traditional folklore handicraft product (Malaysian item) as cited in a list to be agreed upon by the Government of the United States and Malaysia.

Should a shipment be exported from Malaysia with an incorrect exempt certification (i.e., the date of issuance, signature or basis for exemption is missing, incorrect or illegible or has been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted until a replacement certification is issued.

Should a shipment be exported from Malaysia without an exempt certification being issued prior to the date of exportation or if the merchandise does not qualify for the exemption, then an exempt certification will not be accepted and entry shall not be permitted. In such a case, a visa or a visa waiver must be obtained, and an ELVIS transmission sent, prior to release of any portion of the shipment. If quotas are in force, the shipment will be charged to the apropriate quota level.

Other Provisions.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa, exempt certification, or ELVIS transmission for entry and shall not be charged to agreement levels, if applicable.

Any shipment which is not accompanied by a valid and correct visa with an ELVIS transmission or exempt certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States unless the Government of Malaysia authorizes the entry and any charges to the agreement levels.

The visa and certification stamps remain unchanged.

The actions taken concerning the Government of Malaysia with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A

Part Categories	
438–W	Women's and girls' knit shirts and blouses: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.
438–O	Men's and boys' knit shirts: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.
647–K	Men's and boys trousers, breeches and shorts: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

Annex A—Continued

648–K	Women's and girls' trousers, breeches and shorts: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

Merged Categories and Subcategories

300/301
331/631
333/334/335/835 (Subcategories 335, 835)
336/636
338/339
340/640
341/641 (Subcategory 341)
342/642/842
347/348
350/650
351/651
445/446
613/614/615/617
634/635
638/639
645/646
647/648

[FR Doc. 97–9886 Filed 4–16–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079]

Proposed Collection; Comment Request Entitled Corporate Aircraft Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0079).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Corporate Aircraft Costs. This OMB clearance expires on June 30, 1997.

DATES: *Comment Due Date:* June 16, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0079 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Office of Federal Acquisition Policy, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: *Recordkeepers, 3,000*; *hours per recordkeeper, 6*; and *total recordkeeping burden hours, 18,000.*

Obtaining Copies of Proposals

Requester may obtain a copy the of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: April 10, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–9982 Filed 4–16–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Proposed Collection; Comment Request Entitled Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractors' Purchasing Systems Reviews. This OMB clearance expires on June 30, 1997.

DATES: *Comment Due Date:* June 16, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0132 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Total annual public reporting burden for this collection of information is estimated to average *26,860* hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents, 1,580; responses per respondent, 1*; total *annual responses, 1,580; preparation hours per response, 17*; and *total response burden hours, 26,860.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: April 14, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–9983 Filed 4–16–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Form: Health Insurance Claim Form, HCFA Form 1450, OMB Number 0720– [to be determined].

Type of Request: New collection.

Number of Respondents: 7,835.

Responses per Respondent: 268 (average).

Annual Responses: 2,100,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 525,000.

Needs and Uses: This collection of information is necessary for a medical institution to claim benefits under the CHAMPUS. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and its contractors to determine the amount of benefits to be paid to institutional providers.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 11, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–9871 Filed 4–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, West Point, New York.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(20) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 9 May 1997.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

Start Time of Meeting: Approximately 8 a.m.

Proposed Agenda: Annual Review of the Academic, Military and Physical Programs at USMA. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John J. Luther, United States Military Academy, West Point, NY 10996–5000, (914) 938–3700.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–9900 Filed 4–16–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 16, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 11, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Even Start Performance Reporting Information System.

Frequency: Annually.

Affected Public: Individuals and households; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 85,608

Burden Hours: 219,121

Abstract: The Even Start Performance Reporting System involves the refinement and maintenance of a data collection system, collection and analysis of descriptive and outcome data from all Even Start grantees, training of local Even Start project directors in data collection and technical assistance to them, and preparation of annual reports.

[FR Doc. 97–9877 Filed 4–16–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 19, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: April 11, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Safe and Drug-Free Schools and Communities Act: State Data for Program Performance Indicators.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 112

Burden Hours: 3,920

Abstract: Section 4117 of the Safe and Drug-Free Schools and Communities Act (SDFSCA) requires state chief executive officers, and state educational agencies (SEAs), to submit to the Secretary on a triennial basis a report on the implementation and outcomes of state, local and Governor's SDFSCA programs. ED must report to the President and Congress on a biennial basis regarding the national impact of SDFSCA-assisted programs. The two instruments, one for SEAs and one for Governor's programs, will be used by states to submit the required data to ED.

[FR Doc. 97–9878 Filed 4–16–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Nationally Recognized Accrediting Agencies and State Approval Agencies

AGENCY: Department of Education.

ACTION: List of nationally recognized accrediting agencies and State approval agencies.

SUMMARY: The U.S. Secretary of Education is required by statute to publish a list of nationally recognized accrediting agencies and State approval agencies (1) Whose accreditation or approval is a required element in enabling accredited or approved institutions, programs, or both to establish eligibility to participate in Federal programs and (2) whom the Secretary has determined to be reliable authorities regarding the quality of education or training provided by the institutions or programs these agencies accredit or approve. This document contains the current list of nationally recognized agencies and supersedes any previously published lists of these types of agencies.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915, ROB 3, Washington, DC 20202–7592. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: As required by statute,[1] the Secretary issues the following list of nationally recognized accrediting agencies and State approval agencies that the Secretary has determined to be reliable authorities concerning the quality of education or training provided by the institutions, programs, or both that these agencies accredit or approve. The criteria the Secretary uses in determining whether a particular agency should be listed as a nationally recognized accrediting agency are contained in 34 CFR part 602, while the criteria for State approval agencies are contained in 34 CFR part 603. The dates specified in parentheses for each agency are the date of initial listing as a nationally recognized agency, the date of the Secretary's most recent grant of recognition to the agency, and the date of the agency's next scheduled review for continued recognition. The geographical scope of recognition of each accrediting agency is the United States, unless stated otherwise.

I. Regional Institutional Accrediting Agencies

Middle States Association of Colleges and Schools, Commission on Higher Education (1952/1996/2001). Scope of recognition: the accreditation and preaccreditation (''Candidate'' status) of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, the U.S. Virgin Islands, the Republic of Panama and a limited number of freestanding American-style institutions abroad that are chartered or licensed by an appropriate agency within the Middle States region.

Middle States Association of Colleges and Schools, Commission on Secondary Schools (1988/1996/1998). Scope of recognition: the accreditation and preaccreditation of public vocational/technical schools offering non-degree, postsecondary education in the Middle States region (Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the Virgin Islands).

New England Association of Schools and Colleges (1952/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

North Central Association of Colleges and Schools, Commission on Institutions of Higher Education (1952/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming.

North Central Association of Colleges and Schools, Commission on Schools (1974/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of schools offering non-degree, postsecondary education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming.

Northwest Association of Schools and Colleges, Commission on Colleges (1952/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of institutions of higher education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

Southern Association of Colleges and Schools, Commission on Colleges (1952/1995/1999). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana. Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (1952/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of community and junior colleges in California, Hawaii, American Samoa, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Western Association of Schools and Colleges, Accrediting Commission for Schools (1974/1995/1999). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, American Samoa, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (1952/1995/1998). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of senior colleges and universities in California, Hawaii, American Samoa, Guam, the Republic of Palau, the

[1] 20 U.S.C. 1094(c)(4), 1141(a), 1145(c)(3), 1401(a)(11)(E), 2471(25)(D), 4351(3), 25 U.S.C. 1813; 38 U.S.C. 3675 (a); 42 U.S.C. 298b(6).

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

II. National Institutional and Specialized Accrediting Agencies

Accreditation Board for Engineering and Technology, Inc. (1952/1992/1997). Scope of recognition: the accreditation of basic (baccalaureate) and advanced (master's) level programs in engineering, associate and baccalaureate degree programs in engineering technology, and engineering-related programs at the baccalaureate and advanced degree level.

Accrediting Association of Bible Colleges, Commission on Accreditation (1952/1996/2000) Scope of recognition: the accreditation and preaccreditation (''Candidate'' status) of Bible colleges and institutes offering undergraduate programs.

Accrediting Bureau of Health Education Schools (1982/1995/1998). Scope of recognition: the accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree.

Accrediting Commission of Career Schools and Colleges of Technology (1967/1995/1999). Scope of recognition: the accreditation of private, postsecondary, non-degree-granting institutions and degree-granting institutions, including those granting associate and baccalaureate degrees, that are predominantly organized to educate students for occupational, trade and technical careers.

Accrediting Commission on Education for Health Services Administration (1970/1995/2000). Scope of recognition: the accreditation of graduate programs in health services administration.

Accrediting Council for Continuing Education and Training, Accrediting Commission (1978/1994/1997). Scope of recognition: the accreditation of institutions of higher education that offer non-collegiate continuing education programs and higher education programs of non-collegiate continuing education.

Accrediting Council for Independent Colleges and Schools (1956/1995/1999). Scope of recognition: the accreditation of private postsecondary institutions offering business and business-related programs and the accreditation and preaccreditation (''Recognized Candidacy'') of junior and senior colleges of business (including senior colleges with master's degree programs), as well as independent, freestanding institutions offering only graduate business and business-related programs at the master's degree level.

Accrediting Council on Education in Journalism and Mass Communications (1952/1991/1996). Scope of recognition: the accreditation of units within institutions offering professional undergraduate and graduate (master's) degree programs in journalism and mass communications.

American Academy for Liberal Education (1995/1997). Scope of recognition: the accreditation and preaccreditation (''Candidacy for Accreditation'') of institutions of higher education and programs within institutions of higher education that offer liberal arts degrees at the baccalaureate level or a documented equivalency.

American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education (1978/1995/2000). Scope of recognition: the accreditation of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels.

American Association of Nurse Anesthetists, Council on Accreditation of Nurse Anesthesia Educational Programs (1955/1996/2000). Scope of recognition: the accreditation of institutions and programs of nurse anesthesia at the certificate, master's, or doctoral degree levels.

American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (1952/1992/1997). Scope of recognition: the accreditation of professional schools of law.

American Board of Funeral Service Education, Committee on Accreditation (1972/1992/1997). Scope of recognition: the accreditation of institutions and programs awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science.

American College of Nurse-Midwives, Division of Accreditation (1982/1995/2000). Scope of recognition: the accreditation and preaccreditation of basic certificate and graduate nurse-midwifery education programs for registered nurses, as well as the accreditation and preaccreditation of pre-certification nurse-midwifery education programs.

American Council on Pharmaceutical Education (1952/1995/2000). Scope of recognition: the accreditation and preaccreditation (''Precandidate'' and ''Candidate'' statuses) of professional degree programs in pharmacy leading to the degrees of Baccalaureate in Pharmacy and Doctor of Pharmacy.

American Dental Association, Commission on Dental Accreditation (1952/1995/2000). Scope of recognition: the accreditation of predoctoral dental education programs (programs leading to the DDS of DMD degree); dental auxiliary education programs (dental assisting, dental hygiene and dental laboratory technology); and advanced dental educational programs (general practices residency, advanced general dentistry, and the specialties of dental public health, endodontics, oral pathology, orthodontics, oral and maxillofacial surgery, pedodontics, periodontics, and prosthodontics).

The American Dietetic Association, Commission on Accreditation/Approval for Dietetic Education (1974/1996/2000). Scope of recognition: the accreditation of Coordinated Programs in Dietetics at both the undergraduate and graduate level, postbaccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level.

American Occupational Therapy Association, Accreditation Council for Occupational Therapy Education (1952/1995/2000). Scope of recognition: the accreditation of entry-level professional occupational therapy educational programs awarding baccalaureate degrees, post-baccalaureate certificates, professional master's degrees, and combined baccalaureate/master's degrees, and also for the accreditation of occupational therapy assistant programs leading to an associate degree or certificate.

American Optometric Association, Council on Optometric Education (1952/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Reasonable Assurance Preliminary Approval'' {for professional degree programs} and ''Candidacy Pending'' {for optometric residency programs in facilities of Veterans' Administration}) of professional optometric degree programs, optometric residency programs, and optometric technician programs.

American Osteopathic Association, Bureau of Professional Education (1952/1995/2000). Scope of recognition: the accreditation and preaccreditation (''Provisional Accreditation'') of freestanding institutions of osteopathic medicine and programs leading to the degree of Doctor of Osteopathy or Doctor of Osteopathic Medicine.

American Physical Therapy Association, Commission on Accreditation in Education (1977/1996/2001). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'' status) of programs for the preparation ofphysical

therapists and physical therapist assistants.

American Podiatric Medical Association, Council on Podiatric Medical Education (1952/1995/2000). Scope of recognition: the accreditation and preaccreditation (''Candidate Status'') of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine.

American Psychological Association, Committee on Accreditation (1970/1992/1997). Scope of recognition: the accreditation of doctoral programs in clinical, counseling, school and combined professional-scientific psychology, and predoctoral internship programs in professional psychology.

American Speech-Language Hearing Association (1967/1991/1997). Scope of recognition: the accreditation of Master's degree programs in speech-language pathology and audiology.

American Veterinary Medical Association, Council on Education (1952/1992/1997). Scope of recognition: the accreditation and preaccreditation of colleges of veterinary medicine offering programs leading to a professional degree (D.V.M. or D.M.V.) in veterinary medicine.

Association for Clinical Pastoral Education, Inc., Accreditation Commission (1969/1991/1997). Scope of recognition: the accreditation and preaccreditation (''Candidacy for Accredited Membership'') of basic, advanced, and supervisory clinical pastoral education programs.

Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (1974/1992/1997). Scope of recognition: the accreditation and preaccreditation (''Correspondent'' and ''Candidate'') of advanced rabbinical and Talmudic schools.

Association of Theological Schools in the United States and Canada, Commission on Accrediting (1952/1995/1998). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accredited Membership'') of freestanding schools, as well as schools affiliated with larger institutions, that offer graduate professional education for ministry and graduate study of theology.

Commission on Accreditation of Allied Health Education Programs (1952/1996/1998). Scope of recognition: the accreditation and preaccreditation (''Candidacy'' status) of educational programs for the allied health occupations of cytotechnologist, diagnostic medical sonographer, electroneurodiagnostic technologist, emergency medical technician-paramedic, perfusionist, physician assistant, and surgical technologist.

Commission on Opticianry Accreditation (1985/1992/1997). Scope of recognition: the accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the ophthalmic laboratory technician.

The Council on Chiropractic Education, Commission on Accreditation (1974/1992/1997). Scope of recognition: the accreditation of programs and freestanding institutions that award the Doctor of Chiropractic degree.

Council on Naturopathic Medical Education (1987/1995/1999). Scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of institutions and graduate programs in Naturopathy that lead to the degree of Doctor of Naturopathy (N.D.) or Doctor of Naturopathic Medicine (N.M.D.).

Council on Education for Public Health (1974/1992/1997). Scope of recognition: the accreditation and preaccreditation of graduate schools of public health and graduate programs offered outside schools of public health in community health education and in community health/preventive medicine.

Council on Occupational Education (1969/1995/1997). Scope of recognition: The accreditation and preaccreditation of non-degree granting postsecondary occupational/vocational institutions and also the accreditation and preaccreditation of those postsecondary occupational/vocational education institutions currently accredited by the Council that either have state authorization to grant the applied associate degree in specific vocational/occupational fields or that receive such authorization during the Council's current recognition period.

Distance Education and Training Council, Accrediting Commission (1959/1996/2000). Scope of recognition: the accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through the distance learning method.

Foundation for Interior Design Education Research, Committee on Accreditation (1976/1992/1997). Scope of recognition: the accreditation of two-year preprofessional assistant level programs (certificate and associate degree), first professional degree level programs (master's and baccalaureate degree and three-year certificate) and post-professional master's degree programs in interior design.

Joint Review Committee on Educational Programs in Nuclear Medicine Technology (1974/1995/1999). Scope of recognition: the accreditation of higher education programs for the nuclear medicine technologist.

Joint Review Committee on Education in Radiologic Technology (1957/1995/1999). Scope of recognition: the accreditation of educational programs for radiographers and radiation therapists.

Liaison Committee on Medical Education of the Council on Medical Education of the American Medical Association and the American Medical Colleges (1952/1991/1996). Scope of recognition: the accreditation and preaccreditation (''Reasonable Assurance'' and ''Provisional Accreditation'') of programs leading to the M.D. degree.

Montessori Accreditation Council for Teacher Education, Commission on Accreditation (1995/1997). Scope of recognition: the accreditation of Montessori teacher education programs and institutions evaluated by the following review committees: the American Montessori Society, the International Association of Progressive Montessorians, the Independent Montessori Consortia (1, 2, and 3), the Montessori Institute of America, and the National Center for Montessori Education.

National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (1988/1995/2000). Scope of recognition: The accreditation of first-professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine.

National Accrediting Agency for Clinical Laboratory Sciences (1974/1996/1999). Scope of recognition: the accreditation of programs in Clinical Laboratory Science/Medical Technology, Clinical Laboratory Technician/Medical Laboratory Technician-Associate Degree, Clinical Laboratory Technician/Medical Laboratory Technician-Certificate, Histologic Technician/Histotechnologist, and Pathologists' Assistant.

National Accrediting Commission of Cosmetology Arts and Sciences (1970/1995/1996). Scope of recognition: the accreditation of postsecondary schools and departments of cosmetology arts and sciences.

National Association of Nurse Practitioners in Reproductive Health, Council on Accreditation (1996/1998). Scope of recognition: the accreditation of women's health nurse practitioner programs.

National Association of Schools of Art and Design, Commission on Accreditation (1966/1992/1997). Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in art, design, or art/design-related disciplines.

National Association of Schools of Dance, Commission on Accreditation (1983/1991/1997). Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines.

National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, and Commission on Community/Junior College Accreditation (1952/1992/1997). Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions.

National Association of Schools of Theatre, Commission on Accreditation (1982/1991/1997). Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines.

National Council for Accreditation of Teacher Education (1952/1995/1999). Scope of recognition: the accreditation of professional education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

National Environmental Health Science and Protection Accreditation Council (1995/1996/1998). Scope of recognition: the accreditation and preaccreditation of baccalaureate programs in environmental health science and protection.

National League for Nursing, Inc., National League for Nursing Accrediting Commission (1952/1996/1997). Scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.

New York State Board of Regents (1952/1995/1999). Scope of recognition: the accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education in the state of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education in the state of New York.

Transnational Association of Christian Colleges and Schools, Accrediting Commission (1991/1996/1999). Scope of recognition: the accreditation and preaccreditation (''Candidate'' status) of postsecondary institutions that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees.

III. State Approval Agencies for Public Postsecondary Vocational Education

Arkansas State Board of Vocational Education (1975/1994/1998).

Kansas State Board of Education (1975/1994/1998).

Board of Trustees of the Minnesota State Colleges and Universities (1974/1995/1999).

Missouri State Board of Education (1974/1995/1999).

New York State Board of Regents (1974/1995/1998).

Oklahoma State Board of Vocational Technical Education (1976/1996/2000). Scope of recognition: the approval of all non-collegiate public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education.

Oklahoma State Regents for Higher Education (1976/1994/1998). Scope of recognition: the approval of public postsecondary education in the state of Oklahoma for which credit earned is applied toward a degree, diploma, or other postsecondary academic or collegiate award given at State institutions comprising the Oklahoma State System of Higher Education.

Puerto Rico Human Resources and Occupational Development Council (1983/1996/2000).

Utah State Board for Vocational Education (1976/1994/1998).

IV. State Approval Agencies for Nurse Education

Colorado Board of Nursing (1990/1995/1999).

Iowa Board of Nursing (1969/1994/1998).

Maryland Board of Nursing (1985/1994/1998).

Missouri State Board of Nursing (1970/1995/1999).

Montana Board of Nursing (1969/1996/2000).

New Hampshire Board of Nursing (1969/1995/1999).

New York State Board of Regents, Nursing Education Unit (1969/1995/1998).

Program Authority: 20 U.S.C. 1094(c)(4), 1141(a), 1145(c)(3), 1401(a)(11)(E), 2471(25)(D), 4351(3), 25 U.S.C. 1813; 38 U.S.C. 3675(a); 42 U.S.C. 298b(6).

Dated: April 7, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–9916 Filed 4–16–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangements

AGENCY: Department of Energy.

ACTION: Subsequent arrangements.

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Atomic Energy between the Government of the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation between the Government of the United States of America and the Government of the Federative Republic of Brazil concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/BR(EU)–9, for the transfer from France to Brazil of 26,000 grams of uranium containing 5,187 grams of the isotope uranium-235 (19.95 percent enrichment) for use in fuel element production.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on April 11, 1997.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–9938 Filed 4–16–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(CA)–12, for the transfer of one unirradiated uranium carbide fuel element composed of 740.4 grams of enriched uranium, containing 9.7 grams of the isotope U–235 (1.31 percent enrichment), from AECL in Canada to COGEMA in France, for use as research material to establish a uranium recovery process for this type of fuel.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 11, 1997.

For the Department of Energy.

Cherie Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–9939 Filed 4–16–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, April 22, 1997: 6:30 p.m.—9:30 p.m., 8:00 p.m. to 8:15 p.m. (public comment session).

ADDRESS: Northern New Mexico Community College, 1002 North Oñate Street, Española, New Mexico 87532.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Oñate Street, Española, NM 87352, (800)753–8970, or (505)753–8970, or (505)262–1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, April 22, 1997

6:30 p.m.	Call to Order and Welcome
7:00 p.m.	Public Comment
8:00 p.m.	Old Business
8:15 p.m.	New Business
9:30 p.m.	Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois at (800) 753–8970. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on April 14, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–9940 Filed 4–16–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Meeting National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Friday, May 16, 1997, 9:00 AM.

Place: Old Town Holiday Inn Select, 480 King Street, Alexandria, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5) Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

TENTATIVE AGENDA

—Call to order and opening remarks by Clifford Miercort, Chairman of the National Coal Council.
—Approve agenda.
—Remarks by the Honorable Federico Peña Secretary of Energy (invited).
—Report of the Coal Policy Committee.
—Administrative reports.
—Election of 1997–98 officers.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation:

The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 14, 1997.

Rachel M. Samuel,

Acting Deputy Committee, Management Advisory Officer.

[FR Doc. 97–9941 Filed 4–16–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–313–000]

Columbia Gas Transmission Corporation; Notice of Petition for Declaratory Order and Request for Certificate of Public Convenience and Necessity

April 11, 1997.

Take notice that on April 3, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–313–000 a petition pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for a declaratory order requesting that an existing facility, located in Indiana County, Pennsylvania, be refunctionalized from gathering to transmission. Further, Columbia, pursuant to Section 7(c) of the NGA, requests authorization that this facility refunctionalized to transmission be certificated as a jurisdictional transmission facility, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Columbia states that as a result of a detailed facility review completed in association with preparation of its spin-off application filed in Docket No. CP97–127–000, Columbia determined that its Line 12206, an existing facility which is presently functionalized as gathering, serves a transmission function. Columbia states that Line 12206, consisting of approximately 6,041 feet of 8-inch-diameter pipeline, is located between facilities to be sold to Somerset Exploration Corporation and Columbia's transmission facilities.

Columbia states that it noted in its application filed in Docket No. CP97–127–000, that it would spin-off certain of its gathering facilities to various purchasers by public auction, and that it would be filing the instant petition to refunctionalize gathering facilities to transmission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 2, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–9896 Filed 4–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–326–000]

El Paso Natural Gas Company; Notice of Application

April 11, 1997.

Take notice that on April 4, 1997, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application with the Federal Energy Regulatory Commission (Commission), in Docket No. CP97–326–000, under Section 7(b) of the Natural Gas Act (NGA) and Section 157.5, et seq., of the Commission's Regulations, for permission and approval to abandon in place a minor segment of mainline pipeline located in Eddy County, New Mexico, and the related natural gas service from its interstate transmission pipeline system, all as more fully described in the application on file with the Commission and open to public inspection.

El Paso states that it has determined that a short segment of the Jal-El Paso ''A'' Line, approximately 1,290 feet in length, is no longer required in the operation of its interstate transmission system. El Paso further states that this segment abuts the length of pipeline abandoned by sale to Leapartners, L. P. El Paso asserts that by keeping this segment of pipeline in service, El Paso would retain a redundant facility and continue to incur unnecessary operating and maintenance expenses.

Any person desiring to be heard or make protest with reference to said application should, on or before May 2, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commissions Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commissions 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 the requested abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–9897 Filed 4–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS97–9–000]

Platte Pipe Line Company; Notice of Technical Conference

April 11, 1997.

On March 20, 1997, the Commission issued an order [1] in the captioned docket requiring, among other things, that a technical conference be convened to investigate the reasonableness of Platte's proposed tariff change to Item No. 8–A, Nomination dates and payment obligations, which reflects the added terms of payment obligations related to the volumes delivered vis-a-vis the volumes nominated.

The conference will begin at 9:00 a.m., on Friday, April 18, 1997, at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., in a room to be designated at that time.

Any questions concerning the conference should be directed to Richard A White, OGC, (202) 208–0491 or John L. McCelland, OPR, (202) 208–1064.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–9898 Filed 4–16–97; 8:45 am]

BILLING CODE 6717–01–M

[1] 78 FERC ¶ 61, (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–758–001]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 11, 1997.

Take notice that on April 9, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP96–758–001 an application, pursuant to Section 7(c) of the Natural Gas Act, requesting authority to amend its certificate issued March 26, 1997, in Docket No. CP96–758–000 so as to reduce the project scale and pipe diameter and to revise its initial rates, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it seeks to modify its Southeast Louisiana Gathering System, as approved in the March 26, 1997, order. Transco explains that the order authorized it to construct and operate the following facilities in two phases:

Phase I

- A platform in Ship Shoal Block 14, including associated piping modifications in Ship Shoal Blocks 14 and 28, offshore Louisiana, to connect the platform facilities to the west leg of the SELGS in Ship Shoal Block 28.
- Approximately 50.71 miles of 30-inch pipeline extending from the new platform in Ship Shoal Block 14 to a tie-in with the east leg of the SELGS in Ship Shoal Block 214.

Phase II

- A junction platform in South Timbalier Block 301.
- Approximately 26.87 miles of 30-inch pipeline extending from an interconnection with the Phase I facilities and Transco's Ship Shoal Block 214 junction platform to the new South Timbalier Block 301 junction platform.

Transco proposed in-service dates for the Phase I and Phase II facilities of November 1, 1997 and November 1, 1998, respectively. Transco estimated that the cost of the overall project would be $129,054,498. Transco states that the Phase I facilities were designed to create firm transportation capacity of 380,113 Mcf per day and 659, 732 Mcf per day after Phase II. The order also authorized Transco proposals to charge incremental rates for service through the proposed expansion.

Transco states that it proposes to amend the March 26, 1996, authorization to reduce the size of the proposed 30-inch pipeline to 24-inch diameter pipeline and also to delete Phase II of the expansion. Transco states that these are the only revisions proposed to the certificated facilities.

Transco states that the revised cost of the project is $76,360,516 and that the changes in the project scope will reduce the firm capacity of the project to 331,819 dekatherms per day. Transco states that the proposed in-service date for the project will remain November 1, 1997. The locations and routes of the proposed facilities will also remain unchanged.

Transco states that based on the revised cost of the facilities, the rate design and cost of service factors approved by the Commission in the March 26, 1997, order and revised billing determinants under the project of 331,819 dekatherms per day times a 70 percent load factor, it requests approval of a revised initial monthly reservation rate of $5.6223 per dekatherm. Transco states that a 70 percent load factor assumption complies with the Commission's policy with regard to minimum volumes to be used for designing rates for facilities located offshore Louisiana.

Transco states that in addition to the incremental monthly reservation charge for firm transportation service, it requests approval of a usage rate of $0.1848 per dekatherm for interruptible transportation service to be rendered through the proposed facilities. This rate is based on the 100 percent load factor equivalent of the revised monthly reservation rate and will be charged only to those shippers specifically requesting interruptible transportation through the proposed facilities. Interruptible service will be provided under Rate Schedule IT and be subject to its terms and conditions. Transco states that approval of the incremental usage rate is critical to the economic viability of the project and whether or not Transco decides to go forward with the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 18, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9894 Filed 4–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–307–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

April 11, 1997.

Take notice that on March 26, 1997, Transcontinental Gas Pipe Line Company (Transco), 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP97–307–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to expand an existing delivery point to South Carolina Pipeline Corporation (SCPC) and to remove pipeline at the Grover Meter Station, located in Cleveland County, North Carolina, under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7(c) 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.

Transco proposes to expand the Grove Meter Station, an existing delivery point to SCPC, by (1) Installing a 16-inch main line tap and approximately 800 feet of new 16-inch pipe to the Grove Meter Station and retiring 800 feet of 10-inch pipe, (2) retiring, replacing, and expanding the Grove Meter Station piping, odorization system, and other appurtenances, and (3) constructing 1,791 feet of 16-inch pipeline loop from the Grove Meter Station outlet to a tie-in with SCPC's pipeline at the North Carolina/South Carolina state border, all located in Cleveland County, North Carolina, to be referred to as the Grove Meter Station Expansion.

Transco states it currently delivers up to 70,000 Dth per day to SCPC at the Grove Meter Station. As a result of the expansion proposed herein, Transco declares the capacity of the Grove Meter Station will be increased to 200,000 Dth per day. Transco asserts it has sufficient delivery flexibility to accomplish such additional deliveries without detriment or disadvantage to its other customers.

Transco states the estimated cost to construct the Grove Meter Expansion to be $1,056,736, with SCPC reimbursing Transco for all costs associated with the project.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–9895 Filed 4–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–261–000 and ER97–1082–000]

Pennsylvania-New Jersey-Maryland Interconnection; Notice of Meeting

April 11, 1997.

Take notice that on Thursday, April 17, 1997, individual Commissioners and/or Commission staff will participate in an open meeting with the Pennsylvania Public Utility Commission (Pennsylvania Commission) related to the Pennsylvania-New Jersey-Maryland Interconnection (PJM) filings at issue in these proceedings. At this meeting, it is anticipated that Commissioners of other interested state commissions may attend. At this meeting, John Coughlin and/or other electees of the PJM Board of Directors will be provided an opportunity to state their concerns with respect to the terms of their directorships.

The meeting will be held at the Pennsylvania Commission, North Office Building, Executive Chambers, First Floor, Commonwealth and North Streets, Harrisburg, Pennsylvania. The meeting will commence at 2:00 p.m.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9920 Filed 4–16–97; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2188]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 14, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed May 2, 1997. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253)

Number of Petitions Filed: 1

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–9985 Filed 4–16–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, April 23, 1997 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 24, 1997 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1997–04: Robert L. Shuster on behalf of Eckert Seamans Cherin & Mellott, L.L.C., Federal Election Commission, Sunshine Act Notices for Meetings of April 23 and 24, 1997.

Thursday, April 24, 1997 at 10:00 a.m.

Best Efforts Final Rules and Explanation and Justification (11 C.F.R. § 104.7 (b)(1) and (b)(3).

Independent and Coordinated Expenditures by Party Committees—Notice of Proposed Rulemaking (11 C.F.R. § 100.7, § 100.23, § 104.4, § 109.1, § 110.1, § 110.2, § 110.7, and § 110.11).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–10088 Filed 4–15–97; 11:40 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1163–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1163-DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: April 7, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997:

The counties of Adair and Metcalfe for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–9935 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1170–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–1170-DR), dated March 21, 1997, and related determinations.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 1, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–9931 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1164–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio, (FEMA–1164–DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997:

Morgan County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–9936 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1164–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1164–DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 31, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David A. Skarosi as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: April 3, 1997.

James L. Witt,

Director.

[FR Doc. 97–9937 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1167–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1167–DR), dated March 7, 1997, and related determinations.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 7, 1997:

The counties of Benton, Clay, Decatur, Hardeman, Hardin, Henderson, Henry, Humphreys, and Jackson for Public Assistance and Hazard Mitigation.

The counties of Gibson, Lake, and Tipton for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Hazard Mitigation and Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–9930 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1171–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1171–DR), dated April 2, 1997, and related determinations.

EFFECTIVE DATE: April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and tornadoes on March 28–29, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Further, you are authorized to provide reimbursement for debris removal and emergency protective measures under the Public Assistance program. Other types of assistance under the Public Assistance program may be added at a later date, as you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

The counties of Bradley, Hamilton, Polk, Sequatchie, and Smith for Individual Assistance, Hazard Mitigation, and Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–9932 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1172–DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1172–DR), dated April 2, 1997, and related determinations.

EFFECTIVE DATE: April 2, 1997

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from heavy rains, snow melt, flooding, land and mud slides on March 18–28, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Nellie Ann Mills of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have

been affected adversely by this declared major disaster:

The counties of Grays Harbor, King and Mason for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–9933 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 1997:

The counties of Adams, Benton, Chelan, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Klickitat, Lewis, Lincoln, Okanogan, Pacific, San Juan, Stevens, Walla Walla, and Whitman for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–9934 Filed 4–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Thomas Rily Ford, Paul Emil Nelson, and Henry Thomas Southway, all of Alamosa, Colorado; to each acquire an additional 3.0 percent, for a total of 26.6 percent each, of the voting shares of Alamosa Bancorporation Ltd., Alamosa, Colorado, and thereby indirectly acquire Alamosa National Bank, Alamosa, Colorado.

Board of Governors of the Federal Reserve System, April 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9890 Filed 4–16–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Country Bancorporation, Crawfordsville, Iowa; to acquire up to 100 percent of the voting shares of Hiawatha Bank and Trust Company, Hiawatha, Iowa.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105-1579:

1. Tehama Bancorp, Red Bluff, California; to become a bank holding company by acquiring 100 percent of the voting shares of Tehema Bank, Red Bluff, California.

Board of Governors of the Federal Reserve System, April 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9891 Filed 4–16–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects: Comparative Analysis of Caregiving Patterns for Disabled Elders with Long-Term Insurance—New—The Assistant Secretary for Planning and Evaluation (ASPE) is participating in a survey which will compare the usage of formal and informal caregiving services between the disabled elderly with long-term care insurance policies and the disabled elderly in the general population. *Respondents:* Individuals or households—Burden Information for the Home Care Instrument—*Number of respondents:* 700; *Average time per response:* 1.5 hours; *Burden for Home Care Instrument:* 1,050 hours—Burden Information for the Nursing Home Instrument—*Number of respondents:* 350; *Average time per response:* 1.5 hours; *Burden for Nursing Home Instrument:* 525 hours—Burden Information for the Informal Caregiver Telephone Survey: *Number of respondents:* 700; *Average time per response:* 20 minutes; Burden for Informal Caregiver Telephone Survey: 233 hours—Burden Information for the Policy Holder Screening Instrument—*Number of respondents:* 1500; *Average time per response:* 7 minutes; *Burden for Policy Holder Screening Instrument:* 175 hours—*Total Burden:* 1983. hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–9883 Filed 4–16–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0086]

Food Labeling: Draft Guidance on Diet Plans

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing draft guidance to the marketers of food plans that are represented as a total diet and that have been formulated so that the dietary intake of various nutrients by those who participate in the plan is controlled. The agency hopes that this guidance, if finalized, will help to minimize any problems that may develop should firms proceed to market with these plans.

DATES: Written comments by July 1, 1997.

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

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: FDA is aware that there is interest in the food industry in offering a food plan in which most of the food in the diet is purchased through the plan. The foods sold in these plans would be formulated so that the total diet of those who comply with the plan provides controlled levels of such nutrients as fat, saturated fat, cholesterol, and sodium.

FDA applauds innovative efforts to help consumers maintain healthy dietary practices. The agency notes that one of the main purposes of the Nutrition Labeling and Education Act (the 1990 amendments) was to encourage such practices, and, thus, such plans can be seen, at least conceptually, as consistent with that statute. The agency also recognizes that diets can be structured to be useful in the management of certain chronic conditions. The agency has no desire to do anything that would discourage efforts to achieve these innovative goals.

While these plans have the potential to be useful, they also have the potential to create a number of significant concerns under the Federal Food, Drug, and Cosmetic Act (the act). The purveyors of such programs will need to take care to ensure that, in presenting these programs to the American consumer, they do not run afoul of any of the provisions of the act. Given this need for care, FDA has concluded that it would be useful to companies that either have decided, or who may decide, to offer such programs, and that it would help to prevent regulatory problems, if the agency outlined the statutory concerns that it can foresee could be created by these programs. The agency is also setting out its thoughts on these concerns. The agency would welcome comments on these preliminary views from interested persons. The major concerns that FDA has at least preliminarily identified follow.

A. Health Claims

Under section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) and 21 CFR 101.14(a)(1), a health claim is:

> * * * any claim made on the label or in labeling of a food, including a dietary supplement, that expressly or by implication, including ''third party'' references, written statements (e.g., a brand name including a term such as ''heart''), symbols (e.g., a heart symbol), or vignettes, characterizes the relationship of any substance to a disease or health-related condition. Implied health claims include those statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition.

Thus, for a claim to be a health claim, one of the essential elements is that it be, expressly or by implication, about a particular substance and not about the total diet. The agency points out that, in adopting the health claim final rule, it said that:

> * * * phrases on labeling such as ''eat a variety of foods to _____,'' ''eat a variety of fresh fruits and vegetables to _____,'' or ''follow the food pyramid to _____,'' without any reference, either express or implied, to a substance that might be in the foods, would not satisfy this element. The latter types of claims would not be subject to regulation as health claims.

(58 FR 2478 at 2480, January 6, 1993). The agency thus recognizes that claims about the effects of a diet plan, depending on how the claim is made, would arguably not be subject to regulation as a health claim.

FDA advises that it will carefully scrutinize any claims that are made for a diet plan to determine whether they are health claims. For example, a claim that the diet has been designed to provide high levels of vitamin A to reduce the risk of cancer would be a health claim because the statement links the two basic components of a health claim, a food substance and a disease or health-related condition. Any claims that are made that are health claims must be made in accordance with FDA's authorizing regulations, or they will misbrand the products under section 403(r)(1)(B) of the act.

B. Nutrient Content Claims

A claim that expressly or by implication characterizes the level of a nutrient in a food is a nutrient content

claim (21 CFR 101.13(b)). Such claims must be made in accordance with FDA's regulations defining the claim (section 403(r)(1)(A) of the act). FDA cautions that care must be taken in how claims are made about diet plans to ensure that the foods in the plan are not represented as having lower, or higher, nutrient levels than they actually contain. For example, a claim that a plan has been formulated to provide low fat foods, as compared to a claim that the plan has been formulated to provide a diet that is low in fat, would imply that the foods in the plan are low fat. Thus, every food in the plan would have to meet the definition for ''low fat'' in 21 CFR 101.62(b)(2) to avoid being misbranded.

C. Foods for Special Dietary Use

Foods that purport or are represented as to be used to supply a special dietary need that exists by reason of a physical, physiological, pathological, or other condition are foods for special dietary use under section 411(c)(3)(A) of the act (21 U.S.C. 350(c)(3)(A)). There is a substantial possibility that a diet plan may be represented in a way that subjects the foods in the plan to regulation as foods for special dietary use. For example, a claim that the diet plan provides a modified diet, formulated for those who must restrict their sodium intake, would present the foods in the plan as foods for special dietary use. Under section 403(j) of the act, FDA has authority to require, on the label of such foods, information concerning their dietary properties that it finds necessary to fully inform purchasers about their value for special dietary use.

FDA advises that, if these diet plans appear on the market, FDA will carefully scrutinize the labeling and advertising for such plans to see whether it is necessary for the agency to invoke its authority under section 403(j) of the act.

D. False or Misleading Claims

Under section 403(a)(1) of the act, food is deemed to be misbranded if its labeling is false or misleading in any particular. FDA would expect that any firm that markets a diet plan will have evidence about the effects of following the plan, and that that evidence would establish that any claims that are made about that plan and the food that makes up the plan are truthful and not misleading. FDA also would expect that the firm will share that evidence with FDA. For example, if there is a claim that a plan has been clinically proven to have a certain effect, FDA will expect that at least one properly designed clinical study has been done with the particular diet plan, that the results of the study or studies fully support the claims that are made, and that the results of the studies will be shared with FDA.

E. Drug Claims

FDA is concerned that claims made about a diet plan could evidence an intent that the plan is to be used as a drug. Under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)), articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals are deemed to be drugs. Thus, for example, a claim that a diet plan is a ''therapeutic diet'' could subject the plan to regulation under the provisions of the act that apply to drugs and, in particular, new drugs. FDA therefore cautions that manufacturers who decide to market diet plans with claims that subject the plans to regulation as drugs must be prepared to satisfy the applicable statutory requirements.

F. Meat and Poultry Products

FDA advises that diet plans that include meat or poultry products are also subject to regulation by the Food Safety and Inspection Service of the U.S. Department of Agriculture, under the Meat Inspection Act and the Poultry Products Inspection Act.

G. Conclusion

In conclusion, FDA advises that this document's discussion of the regulatory requirements that apply to diet plans is not intended to discourage such plans. It is intended to ensure that manufacturers who decide to go forward with such plans do so with an understanding of the act and FDA's regulations. The agency hopes that, by laying out its concerns and expectations, it will help to minimize the problems that will develop should firms proceed to market with these plans and thus to maximize the likelihood that consumers will fully appreciate the benefits that they offer.

This draft guidance represents the agency's current thinking on food plans that are marketed as a total diet. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before July 1, 1997 submit to the Dockets Management Branch (address above) written comments on this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–9876 Filed 4–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96E–0152]

Determination of Regulatory Review Period for Purposes of Patent Extension; OXILAN™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OXILAN™ 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 human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human 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 a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product OXILAN™ (loxilan). OXILAN™ is indicated for cerebral arteriography, coronary arteriography and left ventriculography, visceral angiography, aortography, and peripheral arteriography. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for OXILAN™ (U.S. Patent No. 4,954,348) from Cook Imaging Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 28, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of OXILAN™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for OXILAN™ is 2,757 days. Of this time, 1,644 days occurred during the testing phase of the regulatory review period, while 1,113 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: June 5, 1988. The applicant claims April 29, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 5, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: December 4, 1992. FDA has verified the applicant's claim that the new drug application (NDA) for OXILAN™ (NDA 20–316) was initially submitted on December 4, 1992.

3. *The date the application was approved*: December 21, 1995. FDA has verified the applicant's claim that NDA 20–316 was approved on December 21, 1995.

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 737 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 16, 1997, 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 October 14, 1997, 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: April 4, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–9917 Filed 4–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[ORD–098–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: No new proposals for Medicaid demonstration projects were submitted to the Department of Health and Human Services during the month of February 1997 under the authority of section 1115 of the Social Security Act. There were no proposals approved, disapproved, or withdrawn during that time period. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, office of Research and Demonstrations, ealth Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the *Federal Register* (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the

authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of February 1997

A. Comprehensive Health Reform Programs

1. New, Pending, Approved, Disapproved, and Withdrawn Proposals

We did not receive any new proposals or approve or disapprove any proposals during the month of February nor were any proposals withdrawn during that month. Therefore, pending proposals for the month of January 1997 published in the **Federal Register** of March 31, 1997, 62 FR 15187, remain unchanged.

B. Other Section 1115 Demonstration Proposals

1. New, Pending, Approved, Disapproved, and Withdrawn Proposals

We did not receive any new proposals or approve or disapprove any Other Section 1115 Demonstration Proposals during the month of February nor were any proposals withdrawn during that month.

Pending proposals for the month of January 1997 found in the **Federal Register** of March 31, 1997, 62 FR 15187 remain unchanged, except for the addition of the Minnesota Long Term Care Facility Waiver (a new proposal that was received in January).

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: March 21, 1997.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 97–9918 Filed 4–16–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1997:

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: June 18–20, 1997, 9:00 a.m.

Place: Conference Room ''J'', Parklawn Building, 5600 Fishers Lane, 3rd Floor, Rockville, Maryland 20857. Open on Wednesday, June 18, 1997, 9:00 a.m.–10:00 a.m. Closed for remainder of meeting.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Science, Education and Analysis, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 18 at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Director, Office of Policy and Information Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–2190.

Agenda Items are subject to change as priorities dictate.

Dated: April 11, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–9875 Filed 4–16–97; 8:45 am]

BILLING CODE 4160–15 P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4207–C–02]

NOFA for Rental Assistance for Persons With Disabilities in Support of Designated Housing Allocation Plans and Establishment of Preferences for Certain Section 8 Developments; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA); correction.

SUMMARY: On April 10, 1997, at 62 FR 17672, the Department published a Notice of Funding Availability (NOFA) part of which concerned Rental Assistance for Persons With Disabilities in Support of Preferences for Certain Section 8 Developments. The limit on rental assistance requested, as contained in that NOFA, inadvertently omitted the maximum number of units for which an HA could apply. The following correction adds a 200 unit limitation.

In the notice document 97–9334, beginning on page 17672 in the issue of Thursday, April 10, 1997, make the following correction:

On page 17674 in the second and third columns the paragraph headed ''(3) Limit on Rental Assistance Requested'' should be changed to read:

(3) Limit on Rental Assistance Requested. An HA may apply only for the number of units needed to house those non-elderly disabled families who are on the waiting list of an owner of a Section 8 project-based development, identified in paragraph B.(1) above where the owner elected to provide preferences to elderly families and to house other non-elderly disabled families residing in the community who would qualify for one- or zero-bedroom units, but for not more than 200 units.

Dated: April 11, 1997.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 97–9873 Filed 4–16–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora—Tenth Regular Meeting; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information, Notice of meeting.

SUMMARY: This notice sets forth summaries of the proposed United States negotiating positions on agenda items and resolutions for the tenth regular meeting of the Conference of the Parties (COP10) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Comments or other relevant information have been solicited and a public meeting was held (October 3, 1996) regarding the submission of resolutions and species proposals for COP10 by the United States. This notice announces the proposed United States negotiating positions on all agenda items and resolutions submitted by other countries, and solicits comments or other relevant information from the public regarding these proposed positions. This notice also announces a public meeting to be held April 25, 1997, from 10:00 am–1:00 pm to receive public comments on these issues, as well as on issues pertaining to species proposals submitted by other countries.

DATES: Information and comments received through May 9, 1997 will be considered in formulating the final U.S. negotiating positions.

ADDRESSES: Comments should be sent to the Acting Director, U.S. Fish and Wildlife Service, c/o Kenneth Stansell, Chief, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Kenneth Stansell or Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service: telephone 703/358–2093; fax 703/358–2280; E-mail: r9oma__cites@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Public Meeting

The public meeting will be held on Friday, April 25, 1997, from 10:00 am–1:00 pm. The meeting will be held at the Department of the Interior: Room 7000, 18th and C Street, NW, Washington, DC. Please note that the room is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority as soon as possible. This meeting will provide the public an opportunity to comment on U.S. positions leading up to COP10. The Service will discuss U.S. positions on the Agenda for COP10, as well as resolutions and species listing proposals by other countries, and any other item of interest to the public in relation to CITES COP10.

Electronic Access

Comments may also be sent via E-mail to: r9oma__cites@mail.fws.gov.

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to monitor and regulate international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently 135 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the lists of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention. The tenth regular meeting of the Conferences of the Parties to CITES (COP10) will be held in Harare, Zimbabwe, June 9–20, 1997.

A series of **Federal Register** notices, a public meeting already held, and the public meeting scheduled April 25, 1997 provide the public with an opportunity to participate in the development of U.S. positions for COP10. A **Federal Register** notice concerning possible U.S. submissions of species amendments and resolutions for consideration at COP10 (with a request for public comments) was published on March 1, 1996 (61 FR 8019). A **Federal Register** notice announcing a public meeting to discuss an international study of the effectiveness of CITES was published on June 14, 1996 (61 FR 30255). A **Federal Register** notice requesting information on the Service's consideration of amendments to the Appendices was published on August 28, 1996 (61 FR 44324). A **Federal Register** notice concerning the provisional agenda of COP10 as well as proposed resolutions and agenda items being considered was also published on August 28, 1996 (61 FR 44332). A public meeting held October 3, 1996 solicited comments on proposed U.S. submissions of species amendments, resolutions, and agenda items for consideration at COP10. A public meeting will be held on April 25, 1997 to discuss U.S. positions on species amendments and resolutions submitted by other CITES Parties, and agenda items leading up to COP10.

Proposed Negotiating Positions

In this notice, the Service summarizes the proposed U.S. positions on agenda items and resolutions for COP10 (other than proposals to amend the Appendices, which are presented in this edition of the **Federal Register** as a separate notice) which have been submitted by other countries and the CITES Secretariat. A separate **Federal Register** notice will be published shortly announcing proposed U.S. positions on species listing proposals submitted by other countries. A **Federal Register** notice was published on March 27, 1997 (62 FR 14689) outlining rationales for resolutions and discussion documents submitted by the United States. Those issues will not be discussed here. Interested members of the public should refer to those notices for discussion of relevant issues. Numerals next to each agenda item or resolution correspond to the numbers used in the provisional agenda [COP10 Doc. 10.1 (Rev.)] received from the CITES Secretariat. However, documents for a number of the agenda items and resolutions have not yet been received from the Secretariat: they will be available on request from the Office of Management Authority after they have been received from the Secretariat.

Some documents may not be received until the meeting of the COP itself. A list of documents received by the Service to date is available on request from the Service's Office of Management Authority (see **ADDRESSES**, above).

In the discussion that follows, the description of each proposed resolution is followed by a brief rationale explaining the basis of the U.S. position. The Service will endeavor to publish a **Federal Register** notice in early June 1997 that details final negotiating positions on all issues (resolutions, species amendments, and other agenda items) pertaining to COP10, with the understanding that new information that becomes available during discussions at COP10 can often lead to modifications of these positions. The U.S. delegation will fully disclose any and all position changes and the rationale(s) explaining them through daily public briefings at COP10.

Agenda (Provisional) [Doc. 10.1 (Rev.)]

I. Opening Ceremony by the Authorities of Zimbabwe

No document will be prepared by the Secretariat on this item. It is traditional that the host country conduct an opening ceremony at a CITES COP.

II. Welcoming Addresses

No document will be prepared by the Secretariat on this item. It is traditional that the host country make welcoming remarks at the opening of a CITES COP.

III. Adoption of the Rules of Procedure (this item consists of two subitems)

1. Voting before credentials have been accepted [Doc. 10.4]

No document has yet been received from the Secretariat on this issue. The United States believes that delegations to international treaty conferences should be able to obtain credentials from their government prior to attending the meeting, and as such should not be entitled to vote until their credentials are approved. However, some flexibility is acceptable in certain circumstances. The United States does not believe that delegates whose credentials are pending should be denied access to meetings or the ability to speak, but decisions on such issues should go through the Credentials Committee at the COP.

2. Adoption of the Rules of Procedure [Doc. 10.3]

A provisional version of the Rules of Procedure, which describe the manner in which a COP is conducted, are distributed prior to all CITES COPs by the Secretariat. The United States proposes to support the provisional version of the Rules of Procedure as received from the Secretariat. The United States is not aware of any changes from previously adopted Rules of Procedure that will be proposed. The United States notes that the Rules of Procedure were modified at COP9 to allow for a simplified procedure for approving secret ballots. The United States notes that the changes were handled smoothly, and does not believe that this provision should be altered. However, at COP9 many country delegates had problems with the procedure by which the Secretariat issued secret ballots. The United States will work through the Bureau at the COP to simplify this process (which would not involve any modification of the Rules of Procedure), in order to be prepared for any secret ballot vote(s).

IV. Election of Chairman and Vice-Chairman of the Meeting and of Chairman of Committees I and II and of the Budget Committee

No document will be prepared for this item by the Secretariat. The United States will support the election of a Conference Chair from Zimbabwe, and a highly qualified Vice-Chair of the Conference and Committee Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (Japan) will serve as temporary Chair of the COP until a permanent Conference Chair is elected. It is traditional for the host country to provide the Conference Chair. The Conference Chair will serve as Presiding Officer of the Conference and also of the Conference Bureau, the executive body which manages the business of the Conference: other members of the Conference Bureau include the Committee Chairs (discussed below), the members of the Standing Committee, and the Secretary General.

The major technical work of the CITES is done in the two contemporaneous Committees, and thus Committee Chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference having requisite technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES Parties.

V. Adoption of the Agenda and Working Programme [Doc. 10.1 (Rev.); Doc. 10.2; Doc. 10.2.1; Doc. 10.2.2]

Provisional versions of the Agenda and the Working Programme for COP10 have been received from the Secretariat. The United States supports the provisional version of both documents as received from the Secretariat, but continues to review whether some issues currently allocated to Committee I (scientific issues) should be moved to Committee II (management and other technical issues), due to subject matter, workload and time.

VI. Establishment of the Credentials Committee

No document will be prepared by the CITES Secretariat on this agenda item. The United States will support the establishment of the Credentials Committee.

The establishment of the Credentials Committee is a pro forma matter. The Credentials Committee approves the credentials of delegates to the COP by confirming that they are official representatives of their governments, thereby affording them the right to vote in Committee and Plenary sessions. The United States was a member of the Credentials Committee at COP9.

VII. Report of the Credentials Committee

No document will be prepared by the Secretariat on this agenda item. The United States supports adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. The United States will encourage timely production of Credentials Committee reports at the COP.

Adoption of the report is generally a pro forma exercise. Representatives whose credentials are not in order should be afforded observer status as provided for under Article XI of the Convention. If there is evidence that credentials are forthcoming but have been delayed, representatives can be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate. Exclusion of Party representatives whose credentials are not in order could undermine essential cooperation among Parties. Greater vigilance is necessary however in cases of close votes, or decisions to be made by secret ballot.

VIII. Admission of Observers [Doc. 10.5]

Support admission to the meeting of all technically qualified non-governmental organizations and oppose unreasonable limitations on their full participation at COP10.

Non-governmental organizations representing a broad range of viewpoints and perspectives play a vital and important role in CITES activities and have much to offer to the debates and negotiations at a COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at COPs, as is standard CITES practice. The United States also supports flexibility and openness in approval of documents produced by non-governmental organizations, and the dissemination of these documents to delegates; such information sharing is vital to decision-making and scientific and technical understanding at a CITES meeting.

IX. Matters Related to the Standing Committee (This Item Consists of Three Subitems)

1. Report of the Chairman [Doc. 10.6]

No document has yet been received. The United States fully supports the presentation of a report by the Chairman of the Standing Committee (Japan) regarding the execution of the Committee's responsibilities and its activities that accurately reflects the discussions and decisions of the

Committee. A position on that report is pending receipt of the document.

2. Regional Representation [Doc. 10.7]

No document has yet been received. At COP9 membership in the Standing Committee was increased for those CITES regions with a large number of Parties. Current membership on the Standing Committee is as follows: Chair (Japan), two representatives for Asia (Japan and Thailand), three representatives for Africa (Namibia, Senegal, and Sudan), two representatives for Europe (Russian Federation and United Kingdom), one representative for North America (Mexico), one representative for Oceania (Papua New Guinea), two representatives for Central, South America, and the Caribbean (Argentina and Trinidad and Tobago), Depositary Government (Switzerland), Previous Host Country (United States), and Next Host Country (Zimbabwe).

There have been further discussions in the Standing Committee since COP9 on the division of responsibilities among regional representatives. Discussions focused on the question of which subregions and topical areas each Regional representative would speak on and officially represent. The issue of clarifying the responsibilities of the Regional representatives has also been discussed at meetings of the Animals and Plants Committees. The United States proposes to support a division of responsibilities as decided independently by each Region.

3. Election of New Regional and Alternate Regional Members

The United States encourages membership which will continue the active role of the Standing Committee. The Regional Representative for North America from COP9 until the present has been Mexico. Discussions will take place at the beginning of COP10 among the three North American CITES Parties (United States, Mexico, and Canada) on which country should be the regional representative between COP10 and COP11.

X. Reports of the Secretariat (This Item Consists of Three Subitems)

The United States considers the issues which the documents cover essential and important matters. However, no documents have yet been received. Positions on these matters are pending receipt of documents.

1. Secretariat Report [Doc. 10.8]

2. Strategic Plan [Doc. 10.9]

The United States notes that the strategic plan of the Secretariat adopted at COP9 was a beginning, but was in need of much improvement. In order to improve the effectiveness of strategic planning for CITES, the United States supports the recommendation of the ''Study of the Effectiveness of the Convention'' (see item , XIII.1., below) that the Secretariat should develop a strategic plan to guide its work. As stated in the Study of the Effectiveness of the Convention, produced by Environmental Resources Management (ERM), the ''...plan should include programme and policy requirements with a priority set of actions to be undertaken by the Parties, Standing Committee and Secretariat.'' The United States believes that a strategic plan must be developed in consultation with the Standing Committee and the Parties, and as such anything submitted by the Secretariat for consideration at COP10 will need close scrutiny by the Parties. The United States has no objection in principle to the Secretariat seeking or contracting with outside organizations or persons for assistance in drafting this plan, but any action by the Secretariat, including candidates and the final selection should be openly and completely discussed in the Standing Committee, and final approval of any outside entities to perform work in this regard should rest with the Standing Committee in consultation with the Secretariat.

3. Working Plan [Doc. 10.10]

The United States looks forward to a detailed analysis of the working plan of the Secretariat. The Secretariat must be guided by the Conference of the Parties in its work plan for the period between COP10 and COP11, and as such it is up to the COP to review the draft working plan and decide on the work and structure of the Secretariat that it deems most appropriate, in line with the priorities of the Parties. The United States believes that discussion of the working plan and strategic plan must be in concert with discussions in the Budget Committee, and in full recognition of any budgetary implications.

XI. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties (This Item Consists of Four Subitems)

No document has yet been received. The United States advocates fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties. The United States plans to be an active participant in discussions in the Budget Committee at COP10.

1. Financial Report for 1994, 1995 and 1996 [Doc. 10.11]

No document has yet been received. Issues associated with the financial report of the Secretariat will be fully discussed at COP10 and the United States will closely scrutinize and analyze the relevant documents.

2. Anticipated Expenditures for 1997 [Doc. 10.12]

No document has yet been received. Issues associated with anticipated 1997 expenditures of the Secretariat will be fully discussed at COP10 and the United States will closely scrutinize and analyze the relevant documents.

3. Budget for 1998–2000 and Medium-term Plan for 1998–2002 [Doc. 10.13]

No document has yet been received. The United States will closely scrutinize and analyze the document(s) when received. The United States believes that it is important to coordinate Budget Committee discussions with discussions in Committees I and II that may have budgetary implications. For example, when a resolution with budgetary implications is approved by Committee I or II (and then sent to Plenary for adoption), it should be conveyed to the Budget Committee in time for it to be factored into the budget. There have been cases at previous meetings of the COP where the Budget is already approved, and the Committees are making decisions that may have financial implications. The United States will work through the Bureau at the COP to deal with this issue.

4. External Funding [Doc. 10.14]

External funding refers to the financial support by Party governments and non-governmental organizations for projects that have been approved as priorities for CITES by the Standing Committee under a previously established procedure. This procedure is designed to avoid any conflicts of interest or even the appearance of a conflict when approving projects and channeling funds between the provider and recipient. These externally funded projects are outside of the CITES Trust Fund. It has been decided by the Standing Committee that under no circumstances are the UNEP overhead costs to be assessed on these projects.

The United States, through the Department of the Interior, and the Department of State, continues to contribute external funding to Standing Committee-approved projects including delegate travel to the COP, support for committee meetings, CITES enforcement and implementation training, and

biological studies of significantly traded species.

XII. Committee Reports and Recommendations (This Item Consists of Four Subitems)

1. Animals Committee

(a) Report of the Chairman [Doc. 10.15]

No document has yet been received. The United States fully supports the presentation of a report by the Chairman of the Animals Committee regarding the execution of the Committee's responsibilities and its activities that accurately reflect the discussions and decisions of the Committee. A position on that report is pending receipt of the document.

(b) Regional Representation [Doc. 10.17]

The United States supports the active role of the Animals Committee in scientific and management issues pertaining to animal species listed in the CITES Appendices. We encourage membership which will continue the active role of the Animals Committee, and selection of a Chair with a strong commitment to a proactive Animals Committee committed to conservation. The United States has always participated actively in the work of the Animals Committee, and will continue to be an active participant in all Committee functions.

At COP9 membership on the Animals Committee was increased for those regions with a larger number of Parties. Current membership includes: Africa (two representatives), Asia (two representatives), Europe (one representative), North America (one representative), Oceania (one representative), Central, South America, and the Caribbean (two representatives). The Regional representatives are selected by their respective regional caucuses at the COP. The Chair and Vice-Chair will be selected by the new Animals Committee, during a meeting to be held at the close of COP10.

During recent discussions in the Animals Committee the issue of increased representation for the European Region was discussed, since the Region now has 31 countries and was not given additional representation at COP9. Consequently, at COP10, there may be a recommendation to increase the number of representatives for the European Region to two. The United States proposes to support an increase of one additional representative for the European Region.

The United States has submitted a resolution ''Establishment of Committees'' (Doc. 10.27) for the purpose of amending Res. Conf. 9.1, Annexes 2 and 3. This resolution discusses the designation of members of the Animals and Plants Committees. It recommends that membership should be for Parties only, and cannot be awarded to individuals. The United States strongly believes that Party countries, not individuals, are members of CITES, and therefore proposed this change to be consistent with standard international practices, and to avoid potential, perceived, or real conflicts of interest.

(c) Election of New Regional and Alternate Regional Members

Currently, Dr. Charles Dauphine of Canada is the North American regional representative on the Animals Committee. The United States anticipates adoption of our proposed resolution that will change the regional representative to a country rather than an individual (as discussed above). At COP10, the United States, Canada, and Mexico will meet to decide which country should be the regional Animals Committee representative between COP10 and COP11. At that time, the country will nominate an individual to serve as contact point. If that individual cannot continue serving for any reason, the country selected will nominate another individual.

The other CITES geographic regions will also meet and decide on their Animals Committee representatives. Those decisions are made by the individual regions. The United States position will be to encourage regions to nominate countries that are committed to full participation in the work of the committees.

2. Plants Committee

(a) Report of the Chairman [Doc. 10.16]

No document has yet been received. The United States welcomes the presentation of a report by the Chair of the Plants Committee regarding the execution of the Committee's responsibilities and its activities, that accurately reflects the discussions and decisions of the Committee. A position on that report is pending receipt of the document.

(b) Regional Representation [Doc. 10.7]

At COP9, as with the Animals Committee, membership on the Plants Committee was increased for those regions with a larger number of Parties. Current membership includes: Africa (two representatives), Asia (two representatives), Europe (one representative), North America (one representative), Oceania (one representative), and Central, South America, and the Caribbean (two representatives). The Regional representatives are selected by their respective Regional caucuses at COP10, and a Chair and Vice-Chair will be selected by the new Plants Committee, during a meeting to be held at the close of COP10.

(c) Election of New Regional and Alternate Members

Currently, Dr. Bruce MacBryde of the Service's Office of Scientific Authority is the North American Regional representative to the Plants Committee. The United States anticipates adoption of our proposed resolution that will change the regional representative to a country rather than an individual (as discussed above under Animals Committee). At COP10, the United States, Canada, and Mexico will meet to decide which country should be the regional Plants Committee representative between COP10 and COP11. At that time, the selected country will nominate an individual to serve as its contact point. If that individual cannot continue serving for any reason, the country selected will nominate another individual.

The other CITES geographic regions will also meet and decide on their Plants Committee representatives. Those decisions are made by the individual regions. The United States position will be to encourage regions to nominate countries that are committed to full participation in the work of the committees.

3. Identification Manual Committee [Doc. 10.17]

No document has yet been received. The United States will continue to support the continuing development of animal and plant identification manuals for use by port and border enforcement authorities, in providing a standard of reference for the identification of CITES species, within available resources and priorities. The United States particularly applauds the United Kingdom's efforts in developing the general CITES guide to plants in trade. The United States plans to assess all alternatives presented by the Secretariat for updating animal sections of the Identification Manual, and encourages and will consider all comments from other Parties as to the value of the Identification Manual. The United States also believes that the posting of the Identification Manual on the Internet to facilitate access by all CITES Parties should be explored and discussed, considering all the costs and benefits of so doing.

The United States believes that enforcement officers of the Parties must be equipped with guides which are

accurate, realistic, and helpful in the identification of the many CITES species and products found in trade throughout the world. Toward this end, the United States supported the efforts of the Canadian government in producing a series of extremely useful and highly professional identification manuals for CITES species in international trade.

4. Nomenclature Committee

No document has yet been received. The United States will examine any documents received from the Secretariat on this agenda item, and formulate any further necessary position(s) at that time.

(a) Report of the Chairman [Doc. 10.18]

b) Recommendations of the Committee [Doc. 10.19]

XIII. Evolution of the Convention (This Item Consists of Two Subitems)

1. How to Improve the Effectiveness of the Convention

(a) Comments from the Parties and Organizations on the Study [Doc. 10.20]

At the Ninth Meeting of the Conference of the Parties to CITES in Fort Lauderdale, Florida, November 1994 (COP9), the Conference of the Parties decided to assign the CITES Standing Committee the task of conducting a review of the effectiveness of the provisions and implementation of the Convention, and to report its findings to the next meeting of the Conference of the Parties. The terms of reference are found in COP9 document number Com. 9.10 which is a draft decision of the COP, later directed to the Standing Committee as a final decision of the COP.

The CITES Standing Committee appointed a team to undertake the review including an independent consultant and two individuals chosen by the Committee for the information gathering portion of the project. On December 21, 1994, the CITES Secretariat published Notification to the Parties No. 831, which contained a call for proposals from prospective consultants to conduct the study on the effectiveness and implementation of the Convention. The firm of Environmental Resources Management (ERM), based in London, United Kingdom, was ultimately selected for the task. That selection was made by a Monitoring Committee of CITES Parties, including several representatives to the CITES Standing Committee. The Monitoring Committee, which was selected by the Standing Committee, was made up of representatives of the following governments: Argentina, Canada, Japan, Namibia, New Zealand, and the United Kingdom. The study itself and the report that was produced were reviewed by the same Monitoring Committee, and the report was presented to the December 1996 meeting of the CITES Standing Committee. The CITES Standing Committee selected Jaques Berney (retired Deputy Secretary General of CITES) and Marshall Jones (Assistant Director for International Affairs, U.S. Fish and Wildlife Service) or Dr. Susan Lieberman (Chief, CITES Operations Branch, Office of Management Authority, U.S. Fish and Wildlife Service), as the technical advisors on the project.

The initial phase of this review was designed to collate information including but not necessarily limited to the following: the stated and implied objectives of the Convention and their continued relevance to the conservation of wild fauna and flora; the degree of effectiveness of conservation for representative species listed in the three Appendices of CITES and the extent of this degree of conservation that can be attributed to the implementation of the Convention; the relationship of the Convention to other global or regional conservation treaties or agreements and how the objectives of the Convention may be enhanced or hindered by the existence and implementation of these treaties or agreements; the ease and effectiveness of implementation, including enforcement, of the Convention in Party states; and the anticipated and actual roles of various participants in the implementation of the Convention, including Party states, non-Party states, national and international conservation organizations, and national and international trade and development organizations.

ERM, the contractor on the study, transmitted a questionnaire to all CITES Parties (132 countries at the time), as well as international non-governmental organizations. In addition, representatives of ERM met in person with several governments, in order to obtain more detailed responses to the questionnaire and in order to assist ERM in preparing its report on the effectiveness of the Convention. ERM was not able to meet with all Parties to the Convention while preparing their report, due primarily to time constraints inherent in the project. Therefore, ERM invited other countries in the region of the Party it was visiting to attend the meetings in question for group as well as private consultations (discussed in greater detail, below).

Each country that was visited was asked by ERM to independently decide how to consult with neighboring countries, as well as with non-governmental organizations; the questionnaire sent to the Parties recommends broad consultation. The United States supported an exceedingly broad, transparent, and consultative process, with active input from all non-governmental organizations interested in the effectiveness of CITES and the conservation of species subject to international trade. ERM stated that it was limited in the countries it planed to visit, based on time and funding constraints.

The Monitoring Committee mentioned above worked with ERM to plan the country visits. As outlined in the ERM Study, national consultations, headed by either ''core team members'' of the ERM Study or ERM regional office staff, were held in the following regions and countries (the consultations in question were variable in levels of contact and depth as indicated in the ERM Study): Africa (Egypt, Kenya, Namibia, Senegal, South Africa and Zimbabwe); Asia (India, Japan and Thailand); Europe (separate consultations with members of the European CITES Committee and the Russian Federation); North America (Canada, Mexico and the United States); Oceania (Australia); and South America, Central America and the Caribbean (Argentina, Brazil, Chile, Colombia, Costa Rica and Trinidad and Tobago).

In addition to these consultations, ERM held meetings with CITES Secretariat staff and international non-governmental organizations (the World Conservation Union-IUCN, the World Wide Fund For Nature/World Wildlife Fund-WWF, Trade Records Analysis of Fauna and Flora In Commerce-TRAFFIC, and the World Conservation Monitoring Centre-WCMC). ERM also indicated that they consulted with the Secretariats of the International Tropical Timber Agreement (ITTA), Convention on Biological Diversity (CBD), Ramsar Convention on Wetlands of International Importance, Convention on the Law of the Sea (UNCLOS), International Convention on the Regulation of Whaling (IWC), and the Convention on Migratory Species of Wild Animals (CMS).

The United States appreciates that ERM produced a final report within the allotted time constraints, and met and consulted with many governments, non-governmental organizations, and other bodies during preparation of the study. Although the views of countries were obtained from questionnaire responses and the in-country meetings arranged by

ERM, the United States regrets that the time constraints placed on ERM in conducting this study precluded substantive, detailed discussions with the majority of the Parties. In addition, the United States is concerned that the ERM questionnaire did not specifically pose questions which directly addressed issues related to enforcement issues of the Convention. Nevertheless, ERM has produced a highly professional report despite these problems.

(b) Consideration of the Recommendations Arising From the Study [Doc. 10.21]

The United States believes that the ERM study has produced a great quantity of meaningful recommendations and findings, but concurrently believes that some of these could prove controversial. Nevertheless, some of the recommendations of the ERM study could be implemented either directly by the Secretariat or Standing Committee, or adopted by the Conference of the Parties with little controversy. Therefore, we believe that the Parties must take direct but cautious steps to properly review the recommendations and findings of the report, and act deliberately to advance the interests of the Convention.

The United States recommends that the Parties adopt the report and use it as a valuable reference in future decision-making. The ERM report provides a useful perspective on the views of the Parties on a number of issues. The report is to be commended for focusing on majority versus minority viewpoints, which should be used by the Parties in assessing priorities for action that could result from the study.

The United States notes that the findings of the ERM report demonstrated quite conclusively that the majority of the Parties of the Convention believe that the text of the Convention should not be amended. This perspective is complemented by ERM highlighting the high monetary costs and logistical requirements which would be incurred in attempting to conduct any such textural amendments. The United States strongly concurs with this view, and hopes that this will discourage efforts to amend the treaty or alter its fundamental objectives.

The United States notes that according to the report, the majority of the Parties (including the United States) and international organizations believe there is no reason why the application of CITES should exclude any taxonomic group. The study goes on to say that a minority of the Parties oppose inclusion of commercial fish in the CITES Appendices on the grounds that it is premature to consider such listing until consultations have been held with the relevant inter-governmental bodies charged with managing these species and that there is often insufficient information available to allow adequate listing proposals to be developed.

While the United States supports many of the ERM recommendations, the United States disagrees with others and find some unclear for a variety of reasons. Other recommendations could be acted on by the Secretariat, Standing Committee, or the meeting of the Conference of the Parties. Many of the recommendations in the ERM report could be acted on without the introduction of resolutions. In response to a request from the CITES Standing Committee and a Notification to the Parties, the United States submitted detailed comments on the ERM report on March 14, 1997, including comments on all recommendations in the report; those comments are available by contacting the Service's Office of Management Authority (see **ADDRESSES**, above).

(c) Co-operation/Synergy With Other Conservation Conventions and Agencies

The United States intends to support the concept and practice of cooperation between CITES and other conservation entities, and to support cooperation with the Convention on Biological Diversity (CBD) as being potentially useful and relevant to CITES. Representatives of other conservation conventions and agencies should be invited to attend CITES COPs as observers, including; the CBD, Convention on Migratory Species, Ramsar, World Heritage Convention, Convention on Desertification and Drought, Convention on the Law of the Sea and regional agreements as appropriate.

The United States agrees that cooperation with the CBD is potentially useful and relevant to the purposes of CITES. It is not clear that it is necessary to negotiate a comprehensive agreement between the Secretariats. Cooperation between Conventions will be most effective if it evolves out of recognition of the contribution each can make to the other. It may be best to let the relationship between the two conventions evolve as the CBD matures, rather than to mandate cooperation. Mandated cooperation without a clear sense of how each Convention will benefit may result in more work for each Secretariat and less focus on the goals central to the interests of the Parties to each Convention. It is up to governments to consider the integration of their obligations under respective Conventions.

2. Relationship Between CITES and UNEP [Doc. 10.23]

The United States believes that the current state of the relationship between UNEP and CITES is not only unclear, but potentially quite damaging to the Convention. The United States strongly supports the examination of this relationship, and the renegotiation of the 1992 Agreement between the CITES Standing Committee and UNEP. The United States is actively involved with the Working Group of the Standing Committee that is charged with examining this Agreement. A report of the Working Group will be presented to the Parties at COP10.

XIV. Interpretation and Implementation of the Convention (This Item Consists of Forty-eight Subitems)

1. Review of the Resolutions of the Conference of the Parties

(a) Consolidation of Valid Resolutions [Doc. 10.24]

No document has yet been received. The United States has been supportive of the process of consolidation of valid resolutions, since its inception after COP8 as a Standing Committee project. At the 36th meeting of the Standing Committee the United States provided comments on proposed consolidations of resolutions regarding cetaceans. At the 37th meeting of the Standing Committee the United States supported the Secretariat's efforts to consolidate the resolutions pertaining to cetaceans. The United States recognizes these extant resolutions as current and valid. The Standing Committee agreed to this consolidation. The Committee was presented a draft consolidation on ranching resolutions by the Secretariat. The United States supported the consolidation, with the exception of the Secretariat's proposal to include marine turtle ranching (Resolution Conf. 9.20) in the consolidation. The Standing Committee agreed with the United States, and it is the U.S. position for COP10 that the consolidated ranching resolution should not include the marine turtle ranching resolution from COP9 (Conf. 9.20).

At the 37th meeting of the Standing Committee the Secretariat noted that it would produce additional draft resolutions consolidating previous resolutions for COP10. These drafts have not yet been received from the Secretariat. The United States expressed support for the consolidation process, and continues to do so. These consolidations are procedural, and do

not involve renegotiation of any previously adopted text.

The tentative position of the United States is to fully support the continuing effort to consolidate existing Resolutions of the Conference of the Parties provided that the consolidation process provides a more ''user-friendly'' product and does not create consolidated resolutions which impinge on the validity of resolutions which are still sound.

(b) Index of Resolutions of the Conference of the Parties [Doc. 10.25]

This resolution, submitted by Australia, recommends and proposes an alphabetical index of resolutions of the Conference of the Parties from Res. Conf. 1.1 to Res. Conf. 9.26 (all resolutions adopted from the first CITES COP, through COP9 held in Ft. Lauderdale, Florida).

The United States considers the Index of Resolutions to be a very good idea that could be an effective tool to assist Parties in administrating their responsibilities under the Convention. The index could serve as a guide to all Resolutions and a historical record of Resolutions in force, repealed, and amended. However, the United States proposes not to support the document as drafted. Considerable work needs to be done on the index and input from the Parties gained during its development. The index needs to be revised to reference all resolutions that pertain to a subject and reviewed to ensure that the information is accurate. In addition, the index would be more useful with some format changes, such as alphabetizing categories under each major heading and converting lengthy phrases to key words. The United States is contacting Australia to discuss our proposed position and suggest we would work with them and other interested Parties between this Conference of the Parties and the next to complete the document. If the Parties agree to this approach at COP10, the document once completed could be forwarded to the Standing Committee for review and, if accepted, to the Secretariat for distribution to the Parties and interested non-governmental organizations (prior to COP11).

2. Report on National Reports Under Article VIII, Paragraph 7, of the Convention [Doc. 10.26]

No document has yet been received. The United States proposes to support efforts to encourage all Parties to submit annual reports, for all species of fauna and flora, consistent with their domestic legislation. Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate report data are essential to measure the impact of international trade on species, and can be a useful enforcement tool, particularly when comparing imports into a given country, contrasted with export quotas from other countries. The United States is current in its Annual Report obligations.

3. Amendment to Resolution Conf. 9.1 on Establishment of Committees [Doc. 10.27]

This is a U.S.-sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the U.S. submission of this resolution.

4. Enforcement

(a) Review of Alleged Infractions and Other Problems of Implementation of the Convention [Doc. 10.28]

Article XIII of the Convention provides for COP review of alleged infractions. The Secretariat prepares an Infractions Report for each COP, which details instances that the Convention is not being effectively implemented, or where trade is adversely affecting a species. The United States proposes to support the Secretariat's biennial review of alleged infractions by the Parties, and necessary and appropriate recommendations to obtain wider compliance with the terms of the Convention. The United States also proposes to support an open discussion at COP10 of major infractions, and the enforcement of the laws and regulations implementing the Convention.

The United States received a draft copy of the Infractions Report to be presented at COP10 from the Secretariat and made comments on all matters concerning the United States. A final version of the report has not been received. When it is received from the Secretariat, it will be closely scrutinized by the United States, and comments provided to the Secretariat if necessary.

The United States supports the hard work of the Secretariat in assembling the Infractions Report. However, the United States is concerned that the draft report did not demonstrate a special focus on high priority infractions and violations of the Convention. For example, some cases of technical errors or document irregularities received more attention than major criminal cases involving smuggling of Appendix I species and cooperation among the enforcement agencies of several governments. For example, one case in the draft report refers to the sentencing of a major parrot smuggler in the United States to almost 7 years in prison and a significant fine; this case involved excellent cooperation with several other governments, and the crimes involved caused serious potential harm to macaw populations in South America. Many other countries have also prosecuted significant violators since COP9, and the United States has urged the Secretariat to highlight such cases in the final Infractions Report.

The first draft of the Infractions Report contained numerous such alleged infractions, including some related to U.S. implementation of the Convention. As with previous Infraction Reports prepared by the Secretariat, there is a great difference in the depth of reporting of different alleged infractions, due to what appear to be a variety of reasons, but primarily because Parties to the Convention have not communicated sufficient information to the Secretariat regarding these matters. It appears that, as with previous infraction reports, a large number of alleged infractions may be caused by a lack of training, personnel or knowledge on the workings of CITES. These are matters that can be addressed and significantly improved. The majority of the alleged infractions highlighted in the draft Infractions Report for COP10 should be issues of major concern to the Parties as they have serious consequences for the effectiveness of the Convention, and for conservation.

(b) Working Group on Illegal Trade in CITES Specimens [Doc. 10.29]

This is a U.S.-sponsored resolution. See **Federal Register** notice of March 27, 1997 for a rationale explaining the U.S. submission of this resolution.

(c) Inspection of Wildlife Shipments [Doc. 10.30]

This is a U.S.-sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the U.S. submission of this resolution.

5. National Laws for Implementation of the Convention [Doc. 10.31]

(a) Analysis of the National Legislation of Parties

(b) Measures Taken by Parties to Improve Their Legislation

(c) Measures to be Taken With Regard to Parties Without National Legislation

(d) Technical Assistance Provided to Parties

No documentation has been received on any of the listed topics under this sub-item. The United States will

examine any documents received from the Secretariat on these topics, and then formulate any further necessary position(s).

Generally, the U.S. is strongly supportive of the COP8-initiated review of national laws for the implementation of the Convention; such laws are required of Parties under Article VIII of CITES. The Service has in the past provided funding for this Secretariat-sponsored activity, and has received reviews of national legislation for several countries. The U.S. strongly believes that the Convention's effectiveness is undermined when Party states do not have national laws and regulations in place for implementing CITES, including laws and regulations which authorize the seizure and/or forfeiture of specimens imported or exported in contravention of the Convention, as well as penalties for such violations.

The project, which was approved by the Parties at COP8, will identify deficiencies and highlight those Parties in need of improvements in their national CITES implementing legislation. Parties which are identified as not having adequate legislation are required under a decision reached at COP9 to have initiated efforts to enact such laws. At the 37th meeting of the Standing Committee Doc. SC.37.10 on this topic was discussed, as the current project has categorized the adequacy of Parties' national CITES legislation with numerical assignments of 1, 2, and 3 (3 representing the most inadequate legislation). The U.S. noted at this meeting that action is needed at COP10 to address those countries that have made no progress enacting relevant laws, and have not even communicated with the Secretariat or initiated any efforts towards that end.

6. Training [Doc. 10.32]

No document has yet been received. The United States has provided training on CITES enforcement and/or implementation since COP9 in: Bangladesh, China, Honduras, India, Indonesia, Mexico, Nepal, the Philippines, Russia, and Taiwan. The United States is currently planning several more training programs for the coming years, and considers this a very high priority activity.

The United States supports all efforts by the Secretariat and other Parties to the Convention to provide training in CITES implementation and enforcement to other Parties who are in need of such. The Parties concur that training is of the highest priority, as evidenced in the ERM Report on the Effectiveness of the Convention. United States will endeavor to ensure that this high priority on training will be reflected in the CITES Budget adopted at COP10.

7. Implementation of the Convention in Small Island Developing Nations [Doc. 10.33]

No document has yet been received. Some small island developing nations, particularly those in Oceania, have been unable to accede to CITES because of the substantial resources which they feel are needed to fully implement and enforce the Convention. Of particular concern is the need to name Management and Scientific Authorities. Therefore, under a plan supported by the government of New Zealand, those countries would be permitted to share the services of a multi-national Management and/or Scientific Authority. The United States supports full international membership in CITES and proposes to continue supporting the plan advanced by New Zealand, and believes it is an excellent avenue towards helping small island developing nations accede to the Convention.

8. Relationship with the International Whaling Commission [Doc. 10.34]

This resolution, submitted by Japan, calls for the repeal of Res. Conf. 2.9; that resolution recommends that ''the Parties agree not to issue any import or export permit or certificate'' for introduction from the sea under CITES for primarily commercial purposes ''for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.'' In 1978 the International Whaling Commission [IWC] passed a resolution requesting that CITES ''take all possible measures to support the International Whaling Commission ban on commercial whaling for certain species and stocks of whales as provided in the Schedule to the International Convention on the Regulation of Whaling .''

At the time the 1978 IWC Resolution was passed, some populations of whales were listed in Appendix I and some in Appendix II. From 1979 to 1983, as zero catch limits were set in the ICRW Schedule for additional populations of whales, the CITES Conference of Parties added those populations of whales to Appendix I. Most importantly, at the Fourth Conference of the Parties in 1983, CITES decided that ''All cetaceans for which the catches are regulated by the IWC and for which the Commission has set catch limits for commercial whaling (except for the West Greenland population of minke whales) and not already on Appendix I would be transferred to that Appendix in 1986, when the IWC decision to implement a pause in commercial whaling comes into effect.'' This action by CITES COP4 established a strong relationship between the two organizations whereby CITES has agreed to reflect IWC decisions in its Appendices.

At the most recent meeting (37th) of the CITES Standing Committee, Res. Conf. 2.9 was incorporated into a proposed consolidated resolution for consideration by COP10, although one Party in attendance at the Standing Committee meeting objected to this.

The IWC has not lifted the moratorium, although some nations, such as Japan and Norway, call for the lifting of the IWC moratorium. The IWC continues to work on activities that the United States believes must be completed before any consideration can be given to a resumption of commercial whaling. These elements include development of a scientific scheme for setting quotas and division of an observation and monitoring program to ensure that quotas are not exceeded. Japan continues to circumvent the letter of the Treaty by allowing increasing high catches of whales for ''research'' purposes in the Antarctic, and more recently, in the North Pacific. Norway, has since 1993, openly defied the moratorium, by setting its own quota for the take of whales in the North Atlantic.

In consideration of the process related to this issue to date, the United States opposes this resolution.

9. Revision of Resolution Conf. 9.3 on Permits and Certificates [Doc. 10.35]

This is a U.S. sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the U.S. submission of this resolution.

10. Interpretation of Article II, Paragraph 2(b), and Article IV, Paragraph 3 [Doc. 10.36]

This resolution, submitted by France, recommends (a) that Parties be exempt from the requirements in Article IV, paragraph 3 of the Convention, to monitor exports of species listed in Appendix II for reasons of similarity of appearance, in order to control the trade in other listed species, and (b) to mark such specimens in trade with a special identification tag.

The United States proposes to oppose this resolution for several reasons. Listing under Article II.2.b. of the CITES treaty is a very important tool to provide the necessary protection to other species listed in Appendices I and II. The listing in Appendix II for similarity-of-appearance purposes allows for the detection of shifts in the market toward

species listed for reasons of similarity of appearance (which could put those species at risk as well). In the case of species listed for reasons of similarity of appearance, it is important to sufficiently monitor their international trade to obtain data which could indicate increased levels of trade in them.

11. Interpretation of Article XIV, Paragraph 1 [Doc. 10.37]

This resolution, submitted by France, recommends that Parties to the Convention not adopt stricter domestic measures for non-native species, and only institute such steps for indigenous taxa when illegal trade is present. The resolution also recommends that Parties increase their consultation with other range states if enacting stricter domestic measures for non-native species.

The United States intends to strongly oppose adoption of this resolution on the grounds that it is contrary to the text of the Convention and represents an infringement on state sovereignty. As Article XIV, paragraph 1 of CITES states: ''The provisions of the present Convention shall in no way affect the right of parties to adopt: (a) stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or (b) domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III.''

The resolution submitted by France ignores the series of resolutions adopted at previous COPs, as well as numerous decisions of the Standing Committee, calling for CITES Parties to adopt stricter domestic measures to improve the effective implementation of the Convention for the conservation of species of global concern, regardless of whether the taxa in question were native or non-native to any particular country.

It should also be noted that consultations with range states do occur when Parties are considering listing non-native species in the CITES Appendices. Therefore, range states are consulted and their views and data considered prior to any listing of species in the Appendices.

Many countries have adopted a large number of laws and regulations which are stricter domestic measures with regard to imports and exports of CITES-listed species and non-CITES species. Such laws in the United States include the Wild Bird Conservation Act (16 U.S.C. 4901 *et seq.*), the African Elephant Conservation Act (16 U.S.C. 4201 *et seq.*), the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 73 *et seq.*), and the Endangered Species Act (16 U.S.C. 1531–1544). The United States has also adopted stricter domestic measures under authority of the Pelly Amendment to the Fisherman's Protective Act (22 U.S.C. 1978).

12. Revision of the Definition of ''Primarily Commercial Purposes'' [Doc. 10.38]

This resolution, submitted by Namibia, would amend portions of Conf. 5.10, thus revising the Parties' interpretation of the term ''primarily commercial purposes'' in CITES. Conf. 5.10 was developed to help countries apply the terms ''primarily commercial purposes'', ''commercial purposes'', and ''non-commercial''. The Parties recognized that interpretation of the provisions of Article III, paragraphs 3(c) and 5(c) varied significantly between Parties. Several examples were provided in order to help the Parties address situations that could arise when evaluating whether an import could be considered ''primarily commercial'' or not. The key to understanding both the treaty and Conf. 5.10 however is the fact that the decision on whether or not an import permit is contingent upon the finding of the importing country that the import is for non-commercial purposes.

Under this proposed resolution, the ''primarily commercial purposes'' decision would be based on activities in the exporting country, rather than the importing country (as specified in the treaty and Conf. 5.10), such that transactions with Appendix I specimens or derivatives would not be interpreted as being for ''primarily commercial purposes'' despite commercial components if the following conditions are met: (1) the specimens and derivatives result from routine conservation and management programs, including the recovery of natural populations, which are owned and controlled by a government of a Party and (2) the transaction is (a) conducted under the direct and full control of both the importing and exporting governments and is open to inspection by the CITES Secretariat or any body agreed to by both governments and the CITES Secretariat; (b) the exporting country allocates all net income from the transaction to conservation and management programs for the species concerned, its habitat, education and awareness programs, and to the development of communities directly involved in the management and conservation programs; (c) the importing country certifies that the imported specimens will be used in a cultural and traditional manner and will not be re-exported; (d) the exporting government certifies that the export will not be prejudicial to the species, but will enhance the status of the species; and (e) the transaction receives prior approval by the Standing Committee.

The United States proposes to oppose this resolution as written, conditions notwithstanding, as it potentially could create loopholes for trade in specimens of Appendix I species, resulting in commercialization that could lead to the extirpation or extinction of a species. It would also weaken the intent of CITES, which was to strictly regulate trade in specimens of Appendix I species (Article II, paragraph 1). The resolution as drafted is not in accordance with the treaty.

The United States is sympathetic to the concerns of the proponent country and its conservation efforts; however, the resolution, as written, is inconsistent with the intent of the Convention and could open up loopholes for trade in Appendix I species, that are at a higher risk of exploitation. The draft resolution inappropriately focuses on the purpose of the take of the animal, versus the ultimate use of the animal or specimen.

13. Criteria for Granting Export Permits in Accordance with Article V, Paragraph 2 [Doc. 10.39]

No document has yet been received. This agenda item refers to the decision of COP9 directing the Standing Committee to prepare a draft resolution containing criteria for granting export permits in accordance with Article V, paragraph 2 of the Convention. The United States has previously held the position, in agreement with the Secretariat, that such criteria are not necessary, particularly in light of the adoption of Resolutions Conf. 9.3 and 9.25. This position advocated and advanced by the United States was adopted by the Standing Committee at its 37th meeting.

The United States will examine any documents received from the Secretariat on this agenda item, and formulate any further necessary position(s) at that time.

14. Illegal Trade in Whale Meat [Doc. 10.40]

This is a United States sponsored discussion paper. See **Federal Register** notice of March 27, 1997, for a rationale explaining the U.S. submission of this resolution.

15. Illegal Trade in Bear Specimens [Doc. 10.41]

No document has yet been received. Discussions at COP10 of the illegal trade in bear specimens will most likely follow from previous discussions held at the last meetings for the Animals and Standing Committees. In response to the serious problems of conservation of bear populations throughout the world caused by the illegal trade in bear parts and products of Appendix I species, the United States placed this issue on the agenda of the Animals and Standing Committees.

One important decision of the Animals Committee recognizes that ''bears are native to Asia, Europe, North America, and South America, and as such the problem of conservation of bears caused by illegal trade in their parts and products is a global one.'' The United States believes that this decision is important in that it reflects an awareness that problems of illegal trade are not limited to one region of the world, but affect all populations and all geographic regions. Again, this points to the need for both domestic and multilateral solutions to these problems.

Under a request from the Animals Committee, the CITES Secretariat issued Notification to the Parties #946 which stressed the serious problems of bear conservation and illegal trade, and requested that Parties submit for discussion at COP10 information on wild bear populations, trade, threats, legislative and/or regulatory controls on bear harvesting, enforcement, interdiction, and prosecution efforts related to illegal trade, the kinds of bear derivatives and products available on the open market, efforts to promote the use of substitutes in traditional medicines, and information on public education and outreach efforts. The purpose for this notification, and the compilation of information, was to ascertain what the real problems are, what efforts have been made by countries, and what solutions could benefit bear conservation. The United States has responded to this notification and provided information on its bear populations, and trade and enforcement activities. (Copies of this response are available from the Service's Office of Management Authority.)

The Secretariat will be compiling and reviewing the responses received from the Parties in response to this notification, and preparing a report for discussion at COP10. Upon receiving this report, the United States will review it closely and develop a policy position. The United States intends to stay deeply engaged with CITES efforts to protect bear populations.

16. Exports of Leopard Hunting Trophies and Skins [Doc. 10.42]

No document has yet been received. When relevant documentation is received from the Secretariat, the United States will evaluate it and formulate a policy position.

17. Trade in Tiger Specimens [Doc. 10.43]

No document has yet been received. When relevant documentation is received from the Secretariat, the United States will evaluate it and formulate a policy position.

At the 36th meeting of the Standing Committee, all Parties were asked to provide information at the Committee's 37th meeting on their efforts to end trade in tiger parts and products, reduce poaching of wild tigers, and implement Conf. 9.13 (Conservation of and Trade in Tigers) passed at COP9. The United States provided such documents to the Secretariat for the 36th and 37th meetings of the Standing Committee.

At the 37th meeting of the Committee the United States reported on the following issues: efforts to interdict illegal shipments coming into the United States; training in Asia on CITES enforcement and implementation; progress made by the Service's National Fish and Wildlife Forensics Laboratory (Division of Law Enforcement, Ashland, Oregon), including analysis of levels of arsenic, mercury, and other chemicals found in patented traditional Asian medicinal products; the Service's education and outreach program with the United States Asian community and a similar outreach program with the United States traditional Asian medicine practitioner community; the Rhinoceros and Tiger Conservation Act passed by the United States Congress and the Service's review of grant proposals under the Act; and funding through the National Fish and Wildlife Foundation for such grants. (Copies of this document are available through the Service's Office of Management Authority.)

On March 13, 1997, the Service announced the awarding of the first-ever grants issued under authority of the Rhinoceros and Tiger Conservation Act of 1994. The Act provides monies to fund projects that will enhance sustainable development programs to ensure effective long-term rhino and tiger conservation. Congress had authorized $200,000 in funding for fiscal year 1996 and $400,000 for fiscal year 1997. Ten projects receiving funding were announced, including three specifically targeted on tiger conservation efforts in India, Indonesia, and Nepal, while two additional projects benefiting both tigers and Asian rhinos were funded in India and Indonesia. Combined awards for these projects total $96,300. Additional monies were allocated to grants for rhino conservation projects (see discussion under item 19). The National Fish & Wildlife Foundation also administers the Save The Tiger Fund, a program funded by Exxon to assist with the conservation of tigers by providing grants to a wide variety of applicants.

18. Trade in African Elephant Specimens

(a) Revision of Resolution Conf. 9.16 [Doc. 10.44]

No document has yet been received. When relevant documents are received from the Secretariat the United States will review them and develop a policy position.

(b) Revision of Resolution Conf. 7.9 [Doc. 10.45]

At the 37th meeting of the Standing Committee discussions were held pertaining to the implementation of Conf. 7.9, which establishes the Panel of Experts process for review of proposals to transfer African elephant populations from Appendix I to II. At that meeting the Secretariat recommended repeal of Conf. 7.9 for several reasons, including the view that the new CITES listing criteria (Conf. 9.24) are sufficient. The United States continues to believe that the Panel of Experts review is important and provides an independent assessment that should be retained. The United States recalls that several African elephant range states at the last meeting of the Standing Committee supported continuation of the Panel of Experts process. The United States continues to advocate that the panel review should be expanded to include review of specific ivory importing countries, if so identified in a proposal. The United States believes that the Standing Committee should not make a recommendation to the COP on repeal of Conf. 7.9, but rather should leave that discussion and decision up to the COP. The United States fully intends to evaluate the analyses in the most recent Panel of Experts report, and to take those analyses into consideration in the development of its positions on proposed transfers of certain African elephant populations to Appendix II.

(c) Stockpiles of Ivory [Doc. 10.46]

No document has yet been received. At COP9, the Conference of the Parties asked the Standing Committee to

evaluate issues pertaining to ivory stockpiles, and make recommendations to the Parties. At the 37th meeting of the Standing Committee, representatives of Africa reported on a meeting held in Dakar, Senegal of African elephant range states (the United States provided financial assistance for the meeting). At that meeting, several options were presented and agreed upon by the range states. The United States position at the Standing Committee meeting was that no single option should be endorsed by the Standing Committee, as long as the options are fully in accordance with the provisions of the CITES treaty, since countries should be able to evaluate all options. The United States continues to support that position. The United States will evaluate the document being prepared by the Secretariat, and develop its position on it subsequently.

19. Trade in and Conservation of Rhinoceroses

No document has yet been received. When relevant documents are received from the Secretariat the United States will review them and develop a policy position. At the 37th meeting of the Standing Committee, the Committee agreed to support the continued efforts of the IUCN/SSC African Rhino Specialist Group (AfRSG) (Doc. SC.37.17), and agreed to endorse efforts by that group to develop indicators to measure the impact(s) of the CITES listing of the species. While endorsing the efforts, the document prepared by the AfRSG was not adopted by the Committee. The United States agreed with the Standing Committee's endorsement of the efforts of the AfRSG, but supported the position of the Committee in not adopting the document.

As discussed above, on March 13, 1997, the Service announced the awarding of the first-ever grants issued under authority of the Rhinoceros and Tiger Conservation Act of 1994. The Act provides monies to fund projects that will enhance sustainable development programs to ensure effective long-term rhino and tiger conservation. Congress had authorized $200,000 in funding for fiscal year 1996 and $400,000 for fiscal year 1997. Four projects were funded, which directly benefit African rhino conservation, two in Kenya, and one each in South Africa and Zaire. An additional five projects were funded, which directly benefit Asian rhinos: two projects are in India and three in Indonesia. Two projects were funded which will benefit both tiger and Asian rhino conservation. Combined awards for these projects totaled $154,221.

(a) Implementation of Resolution Conf. 9.14 [Doc. 10.47]

(b) Trade in Live Rhinoceroses from South Africa [Doc. 10.48]

No document has been received on this issue. At COP9, South Africa's population of the white rhinoceros was transferred to Appendix II, with an annotation to allow only trade in live rhinoceroses and sport-hunted trophies. South Africa is expected to submit a report to COP10 on its implementation of this down listing. The United States interpretation of the proceedings at COP9 was that there would be a proposal from the Depositary Government (Switzerland) to transfer the population back to Appendix I, submitted to COP10, as well as a proposal from South Africa to retain the population back to Appendix II (if it wanted to do so). The Secretariat's interpretation differed, and the Secretariat has informed the United States that no such procedure is necessary. The United States notes that South Africa has submitted a proposal to ''amend'' its annotation for this species. The United States believes that this proposal constitutes a new species proposal, one which would transfer the population to Appendix II, and as such must be evaluated in the context of the CITES listing criteria in Resolution Conf. 9.24. The United States believes that these annotations bring up important issues that will be addressed once a document is received on this agenda item.

20. Exports of Vicuña Cloth [Doc. 10.49]

No document has yet been received. The United States will develop its position after the document is received.

21. Conservation of Edible-Nest Swiftlets of the Genus *Collocalia* [Doc. 10.50]

This document has not yet been received from the Secretariat. At COP9, in response to submission of a proposal to include these species in CITES Appendix II, a decision was adopted to convene an international scientific and management workshop on the conservation of edible-nest swiftlets in the genus *Collocalia.* This agenda item will discuss the results of that workshop, held in Indonesia in 1996. The United States did not attend the workshop, and will develop its position after the document is received.

22. Biological and Trade Status of Sharks [Doc. 10.51]

No document has yet been received. The United States has actively participated in the implementation of Conf. 9.17 which directs the Animals Committee to report to COP10 on the biological and trade status of sharks. The Animals Committee prepared a discussion paper in this regard. Conf. 9.17 also requested that the Food and Agriculture Organization (FAO) of the United Nations (UN) and international fisheries management organizations establish programs to collect and assemble the necessary biological and trade data on sharks species, and that such information be distributed to the Parties at COP10. The recommendations contained in the Animals Committee discussion paper call for continued cooperation between the FAO, international fisheries organizations, and CITES. In addition, many questions were raised concerning technical and practical aspects of implementation concerns associated with inclusion of marine fish species which are subject to large-scale commercial harvesting and international trade, and also listed on the CITES Appendices.

In order to provide a framework for this and other activities that CITES will undertake to implement Conf. 9.17, the United States has introduced a resolution for consideration at COP10 concerning the formation of a Marine Fishes Working Group. See the **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

23. Trade in Plant Specimens

No document has yet been received. The United States will develop its position after the document is received.

(a) Implementation of the Convention for Timber Species [Doc. 10.52]

At the 37th meeting of the Standing Committee, the Deputy Secretary General of CITES, acting as Chair of the Timber Working Group (TWG), introduced document Doc. SC.37.13, which sought the direction of the Committee on recommendations to be made to the Parties at COP10. (As noted at this meeting, the Secretariat planned to re-introduce this document, unchanged, to COP10 for consideration by the Parties.) At the Standing Committee meeting, the United States noted the positive, productive, and cooperative tone which characterized the TWG meetings. The United States also noted that the document submitted by the TWG (Doc. SC.37.13) was assembled by the technical experts who attended the Group's meetings.

The United States agreed that the resolutions drafted by the TWG should be submitted to COP10, except the one entitled Regarding Appendix III Listings (TWG.02.Concl.04 (Rev.)). The United

States strongly opposed this recommended amendment of Conf. 9.25, and proposes to continue to do so at COP10. That draft resolution concludes that limiting an Appendix III listing to geographically separate populations would not necessarily result in enforcement difficulties for Parties; the U.S. disagrees. The draft does not take into account implementation and enforcement concerns, especially for species other than timber tree species. The United States believes that the draft resolution is a misinterpretation of Appendix III.

The topic of extending the term of the TWG was also discussed by the Group itself and reported at the Standing Committee meeting. The TWG recommended that extending the term of the working group be considered, if technical issues need to be addressed, with the same membership, but be convened only at the request of the Standing Committee, to discuss specific issues. The United States supported that recommendation, with the caveat that the Terms of Reference of the TWG remain the same.

With regards to United States financial support for future TWG meetings, the United States position is that any such funding is dependent on Federal agency budgets, about which information is not currently available. However, continued financial support from the United States for future TWG meetings should not be considered likely given expected budgetary pressures.

(b) Amendment to the Definition of ''Artificially Propagated'' [Doc. 10.53]

No document has yet been received. The United States will develop its position after the document is received.

(c) Disposal of Confiscated Live Plants [Doc. 10.54]

No document has yet been received. The United States will develop its position after the document is received. The United States has established a system of Plant Rescue Centers (PRC) for the placement of confiscated live plants. The Service's Office of Management Authority and the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) work together closely on the implementation of this rescue center program.

24. Significant Trade in Appendix II Species

(a) Animals [Doc. 10.55]

No document has yet been received. When relevant documents are received from the Secretariat the United States will review them and develop further policy positions as warranted.

At the 12th meeting of the Animals Committee, the review of species slated for examination in 1995 under the Significant Trade Review process (Conf. 8.9) was discussed at length and recommendations to the Secretariat from each of the CITES Regions were made through the Committee Chair. Prior to the 13th meeting of the Committee it was not clear whether the Secretariat had fully followed through with primary and secondary recommendations made to range States which are developed in this process. In reviewing the species slated for examination in 1996, the United States recommended that an assessment of the progress made to date by IUCN on developing a target list be conducted, and the United States advocated a rapid completion of the task if it were not yet complete. In addition, the United States delegation stressed the need for field projects to study significantly traded species in the wild, rather than extensive revision of lists in the Significant Trade Review process.

There was considerable discussion about the Significant Trade Review process, particularly regarding concerns that recommendations made to the Secretariat for transmission to the range states are neither specific enough or sufficiently ''action-oriented.'' (The United States endorsed this point.) Concerns were also discussed regarding consultation with range states in lieu of forwarding specific primary or secondary recommendations to the Secretariat, as this was believed to be a misuse of the Significant Trade Review process. Except for corals and queen conch (both species under review in this process), the Secretariat has transmitted primary and secondary recommendations on the 1995 species significant trade review to range States.

During discussion at the 13th meeting of the Animals Committee of the 1996 review of taxa in the Significant Trade Review process, there was confusion about the timing of the review cycles used in this process. It was clarified that each cycle should correspond to an interval between meetings of the CITES Conference of the Parties. The United States supported an agreement not to initiate another round of reviews (the 1996 reviews), but to complete the 1995 cycle between that meeting and COP10, and then devote efforts to evaluating the outcomes of previously reviewed species, especially involving Parties receiving primary recommendations from the review process. It was also agreed, and the United States supported the concern, that insufficient resources were being applied to field studies and that this aspect of the Significant Trade Review process suffers if new species are reviewed before adequate follow-up, such as field studies, have been implemented for previously reviewed species.

The United States introduced a draft resolution on reporting and identification of corals in trade, at the request of the 12th meeting of the Animals Committee. As this is a United States sponsored resolution, see **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

(b) Plants [Doc. 10.56]

The United States proposes to support the recommendations of the working group on significant trade of the Plants Committee. The recommendations are non-controversial, and accomplish a fine-tuning of the process for plants that is already underway for animals. Such an adjustment is needed to accommodate the greater number of higher-taxon listings of plants in Appendix II of the Convention. The United States believes that this process is a generally effective approach, as has been demonstrated for example, with tree ferns, where entire families are listed.

25. Sale of Tourist Items of Appendix I Species at International Airports, Seaports, and Border Crossings [Doc. 10.57]

This is a United States sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

26. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas [Doc. 10.58]

No document has yet been received from the Secretariat. The United States will develop its position after the document is received.

27. Trade in Alien Species [Doc. 10.59]

This topic is addressed in an issue document co-sponsored by the United States and New Zealand. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this document.

28. Establishment of a Working Group for Marine Fish Species [Doc. 10.60]

This is a United States sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

29. Scientific Justification for National Export Quotas [Doc. 10.61]

This resolution, submitted by Israel, discusses the publication and distribution of CITES export quotas by the Secretariat and recommends the provision of relevant scientific evidence and non-detriment findings by Parties when transmitting their own national export quotas for Appendix II species to the Secretariat.

The resolution raises many concerns which the United States shares and provides for interesting points in need of additional consideration and study by the Parties. It brings forth a valid point with respect to the need for non-detriment findings in support of export quotas submitted by many Parties. Since the CITES Convention requires Parties to make a non-detriment finding when issuing an export permit, providing that finding or the documentation of such finding to the CITES Secretariat should not be burdensome to Parties that are effectively implementing the Convention. There have been problems with the quota system where quotas were established and implemented without a scientific justification.

The United States supports the preparation of scientific non-detriment findings and justifications by all Parties for the export of indigenous Appendix II species before authorizing or otherwise issuing export permits, as required by the Convention. Quotas submitted to the Secretariat should be supported by scientific documentation in the exporting country, and the Secretariat and Parties should be active in utilizing the Significant Trade Process of review by the Animals Committee to make determinations as to whether Parties are appropriately addressing the scientific needs inherent in issuing realistic and appropriate non-detriment findings. However, this resolution however refers to those quotas that are determined by individual exporting countries, and not those quotas that are approved by the Conference of the Parties. At present, the United States is studying the issue of whether the draft resolution submitted by Israel is needed in order to interpret the Convention.

30. Disposal of Stocks of Dead Specimens of Appendix I Species [Doc. 10.62]

The draft resolution would modify Conf. 9.10 in that it recommends that confiscated dead specimens of Appendix I species not be destroyed, but utilized for all useful purposes in accordance with the Convention, in particular for educational, research or scientific activities, but also for ''the cultural and artistic heritage'' (translation provided by the Embassy of France). The resolution makes no reference to the enforcement obligation of Parties to CITES as enumerated in Article VIII, but instead CITES economic and social development provisions of the Convention on Biological Diversity.

The United States intends to oppose this resolution and believes that Conf. 9.10 as adopted by the Parties is effective as written. The United States believes that this draft resolution, if adopted, would create a number of enforcement problems, not the least of which would involve the large stockpiles of African elephant ivory currently maintained in a number of range states. By opening the door to the cultural and artistic utilization of stockpiles of Appendix I species, there would be a serious problem of distinguishing between illegal trade and ''cultural'' trade. The United States is concerned that the use of these specimens for cultural or artistic purposes could result in increased consumer demand for other such specimens.

In addition, the United States believes that this resolution, if adopted, would detrimentally impact controls on seized Appendix I plants and plant materials. The United States recognizes that there may exist many appropriate cultural or artistic uses of accumulated dead specimens of Appendix I animals and plants. However, the United States also recognizes that establishing appropriate mechanisms to ensure that these specimens are only used in the proper context will be very difficult to achieve. In addition, Conf. 9.10 makes a specific reference to the disposition of accumulated dead specimens of Appendix I plant species. The proposed resolution addresses the disposition of specimens of Appendix I species, making no distinction between animal and plant species. This element of the proposed resolution increases the United States' concern regarding the establishment of appropriate mechanisms to ensure that these specimens are only used in the proper context, and fully in accordance with the Convention.

31. Marking of CITES Specimens [Doc. 10.63]

This document was submitted by the CITES Secretariat on behalf of the Animals Committee. The Animals Committee held discussion related to problems of implementation of Conf. 5.16 which lays out the requirements for trade in ranched specimens listed in the Appendices to the Convention. The proposed resolution submitted by the Secretariat seeks to amend the marking requirements to reflect uniform marking only of items of primary economic importance. The resolution also recommends that any ranching proposal include details of the marking system, a list of all specimens of primary economic importance and a current inventory of such stocks.

The resolution was submitted due to the general belief that the previously designed marking requirements were overly burdensome to commercial traders, unenforceable by national authorities, and otherwise impractical. The United States proposes to support this resolution to create a marking regime which is not only practical and enforceable, but institutes necessary marking controls to implement the ranching requirements that are implemented under the authority of the Convention.

32. Universal Tagging System for the Identification of Crocodilian Skins [Doc. 10.64]

No document has yet been received. The United States believes this document will discuss implementation of the resolution on the universal tagging of crocodilian skins, which the United States generally supports. However, the United States will not formulate a final policy position on this issue until the documents are received from the Secretariat.

33. Identification of Corals and Reporting of Coral Trade [Doc. 10.65]

This is a United States sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

34. Implementation of Article VII, Paragraph 2: Pre-Convention Specimens [Doc. 10.66]

This is a United States sponsored resolution. See **Federal Register** notice of March 27, 1997 for a rationale explaining the United States submission of this resolution.

35. Captive Breeding

(a) Implementation of Article VII, paragraphs 4 and 5 [Doc. 10.67; Doc. 10.68; Doc. 10.69]

The United States submitted documents on captive breeding, and these documents are discussed in the March 27, 1997, **Federal Register** notice.

No additional documents have yet been received. At COP9, the Parties directed the Secretariat, working with the Animals Committee, to prepare a

new resolution consolidating the various extant resolutions dealing with the determination of whether a specimen is bred-in-captivity, and captive breeding of Appendix I animals for commercial purposes. When relevant documents are received from the Secretariat, the United States will review them and develop further policy positions as warranted.

(b) Proposals to Register the First Commercial Captive-Breeding Operation for an Appendix I Animal Species

No document has yet been received. Under Conf. 8.15, Parties must submit proposals for inclusion of operations breeding Appendix I species in captivity for commercial purposes. The Secretariat maintains a register of those facilities. Proposals are submitted to the Secretariat, which circulates them to the Parties. When a Party objects to inclusion of a facility in the Secretariat's register, and the objection cannot be resolved by the interested Parties, the proposal is discussed and voted upon by the COP (if the proponent country so wishes). This agenda item will include discussion of pending proposals.

36. Hybrids

(a) Amendment to Resolution Conf. 2.13 [Doc. 10.70]

This resolution was submitted by Australia and seeks to clarify the position of animal hybrids. In accordance with Conf. 2.13, some hybrids may be subject to CITES provisions, even though they may not be specifically included in the Appendices to the Convention, if one or more of the parent's taxa are listed. Accordingly, if the parents are included on different Appendices, then the requirements of the more restrictive appendix apply. The proposed resolution would modify this system substantially, by noting that a hybridized specimen would only be considered as an Appendix I species if it was the progeny of one or more wild-caught Appendix I specimens. Hybridized specimens which do not meet the criteria would be treated as Appendix II species, and progeny from hybridized parental stock would be treated as if they were not included on any Appendix to the Convention.

The United States proposes to oppose this resolution. The United States believes that Conf. 2.13 is effective as written, well balanced in scope, effect, and intent, and needs no revision. By modifying Conf. 2.13 in the manner outlined in this resolution, additional layers of complexity and confusion would be added to the issue of trade in hybrid animal species. In addition, some other important conservation concerns arise from modifying Conf. 2.13 pursuant to the proposed resolution. First, full species in trade could erroneously be declared as hybrids by traders, in which case, effective law enforcement could be difficult. This could be especially significant regarding the trade in birds because of plumage that is highly variable, which may not accurately reflect the parentage of a particular specimen. Second, it is apparent that a hybrid captive-breeding facility may require supplementation of wild-caught parental stock in order to maintain a given level of hybrid specimen productivity. Third, the demand for pure Appendix I specimens will still require the acquisition of wild-caught stock, which may promote the laundering of wild-caught specimens under the guise of being captive-born or captive-bred hybrids. Lastly, if hybrids are not protected by the more restrictive Appendix, deliberate hybridization could increase and serve to dilute available blood lines, thereby increasing pressure on wild populations to provide additional genetic material. Australia, the author of the pending resolution proposal, has concerns over specific species in that country and feels this issue could be satisfactorily addressed with a modification to Conf. 2.13. The United States believes that such concerns could be addressed in a specific listing proposal.

b) Regulation of Trade in Animal Hybrids [Doc. 10.71]

No document has yet been received. When relevant documentation is received from the Secretariat, the United States will evaluate it and formulate a policy position.

37. Shipments Covered by Customs Carnets [Doc. 10.72]

This is a United States sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

38. Frequent Transborder Movements of Personally Owned Live Animals [Doc. 10.73]

This resolution, jointly submitted by Switzerland and Germany, calls for the creation of a certificate of ownership to accompany CITES-listed animals frequently crossing international borders. The United States interprets the term personal or household effects in Article VII, paragraph 3, to include personally owned live animals that were acquired in the owner's state of usual residence. Other countries have not included live animals in their interpretation of this exemption, and the Secretariat maintains that position based on Conf. 4.12. The issuance of separate permits to people with personally owned live animals that cross international borders frequently (i.e., falconry practitioners, pet owners who travel, etc.) poses technical and administrative burdens. In addition, the Service is concerned with the number of retroactive permits we have had to issue since the United States recognizes the exemption while other countries do not.

The United States intends to support the provisions of this resolution. Adoption of this resolution will reduce the administrative burdens to the animal owner and the countries to which the owner enters and exits, while ensuring marking and monitoring of movement to prevent illegal activities. However, despite general support for the provisions of this resolution, the United States believes that there remains a need to clarify the following elements in the resolution: (a) the animals must be accompanied by the owner; (b) the certificate of ownership must be validated by a Party's Customs or other appropriate authorities on import and re-export, and (c) the information on the transit of the animals in question must be recorded in each Party's annual report. In addition, the United States supports adoption of this resolution only if paragraph n) is adopted. This provision is to ensure that the owner not sell or transfer a live animal while outside the owner's usual state of residence under the certificate of ownership.

39. Live Animals in Traveling Circuses [Doc. 10.74]

Under CITES Article VII, paragraph 7, a Management Authority may waive the permit requirements for the movement of live animals that are part of a traveling live animal exhibition if the exporter or importer is registered, the animals qualify as pre-Convention or captive-bred, and the animals are humanely transported and maintained. At the Eighth Meeting of the Conference of the Parties in Kyoto, the Parties adopted Conf. 8.16 to correct technical problems and prevent fraud in the movement of animals that are part of traveling exhibitions. This resolution recommends that Parties issue a pre-Convention or captive-bred certificate for each animal as proof that the animal was registered. The certificates could be issued for three years and would not be collected at the border to allow for multiple shipments. Parties need to mark or identify each specimen.

This proposed resolution, submitted by the Russian Federation, considers a circus a part of a nation's culture which does not use its animals for primarily commercial purposes. The resolution would grant circuses which are owned or funded by governments a ''Certificate of Circus Animal.'' This certificate could not be issued to private or commercial circuses. The Certificate of Circus Animal would be proof that the circus is registered; that its specimens had been acquired in accordance with CITES; and that an Appendix I specimen that is born to the circus or for an animal acquired by the circus before transfer from Appendix II to Appendix I are of legal origin. This Certificate would be valid for all legal specimens, not just for pre-Convention or captive-bred specimens.

The resolution is an attempt to resolve a number of technical problems encountered by circuses. Currently, circuses can obtain certificates for three years under Conf 8.16 for pre-Convention or captive-bred animals. But they need to obtain other permits and certificates under Articles IV and V for Appendix II and III wildlife when pre-Convention or captive-bred requirements are not met. These documents are valid only for six months and cannot be used for multiple shipments, requiring a circus to obtain new re-export documents upon exit from each country. The second problem concerns progeny born to circuses that strictly do not meet Conf. 2.12. This is of particular concern for traditional circus species, such as the Asian elephant, that are long-lived and slow-maturing which have not had time to achieve many F2 specimens. The third problem is the continued use of animals that were owned by circuses when a species is listed in Appendix II and then the species is transferred to Appendix I as happened with the African elephant. These animals that are in the possession of a circus do not qualify as pre-Convention under Conf. 5.11 and so may no longer be used by circuses when traveling to other countries.

The United States proposes to oppose the basic premises of this resolution. The United States does not believe that the CITES Parties should treat circuses owned or funded by a country's government differently from circuses that are privately owned. Although the United States recognizes that animals being moved by circuses are to stay in their possession and are not to be sold while the circus is outside its state of usual residence, the United States considers circuses to be conducting activities that are primarily commercial. The United States also does not agree that circuses should be exempted from the requirements of CITES as long as the Management Authority finds that the animals were legally acquired. This broad general exemption from the provisions of CITES could have serious implications for the conservation of some species.

On the other hand, the United States supports the use of a passport-type certificate similar to the Annex presented in the proposed resolution. The United States also recognizes (61 FR 44332) that there are additional technical issues in Conf. 8.16 that could be clarified and looks forward to opportunities to explore these various issues.

40. Transport of Live Specimens [Doc. 10.75]

This is a United States sponsored resolution on behalf of the Animals Committee. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

41. Designation of Scientific Authorities [Doc. 10.76]

This is a United States sponsored resolution. See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this resolution.

42. Standard Nomenclature [Doc. 10.77]

No document has yet been received. When relevant documents are received from the Secretariat, the United States will review them and develop a policy position.

43. Information on the Population Status and Threats to *Ovis vignei* [Doc. 10.78]

This is an information document submitted by the Government of Germany discussing the population status and threats to *Ovis vignei*. The United States proposes to support the effort to resolve the listing status of *Ovis vignei* and thanks the Government of Germany for presenting this document.

44. Traditional Medicines and CITES [Doc. 10.79 and Doc. 10.80]

One of the two documents in this item is a United States submitted discussion paper, ''Flora, Fauna and the Traditional Medicine Community: Working With People To Conserve Wildlife.'' See **Federal Register** notice of March 27, 1997, for a rationale explaining the United States submission of this document. The other discussion paper, ''Traditional Medicine and CITES: A Discussion of Traditional East Asian Medicine,'' was submitted by the United Kingdom.

The United States supports the United Kingdom's discussion points as adjuncts to its own. It is uncertain, however, that a resolution on trade in traditional medicines containing wild species is necessary at this time. The United States agrees with the recommendation advocating traditional medicine community participation in CITES both nationally and internationally. The United States specifically endorses the involvement of traditional medicine communities at the national level in discussions pertinent to traditional practices. The United States also endorses the items which support effective enforcement, research and use of substitutes and alternatives, development of authentication tools for semi-processed and processed medicines, conservation awareness programs, and international commitment to conservation, regulatory and ethical issues. Likewise, the United States supports the United Kingdom's positions on (1) encouraging more effective implementation of Conf. 9.13 and 9.14, (2) encouraging donor support for these issues, and (3) including under Conf. 8.4 the review of measures taken by Parties in their national legislation to control the import, export, possession, sale and use of medicinal products containing animal and plant species.

The United States, however, does not intend to support the recommendation of this resolution calling for the convening of a technical workshop to establish priority actions for addressing CITES-species use within the context of traditional medicine. The United States believes that priorities should first be identified at a national level between representatives of traditional medicine communities and animal and plant enforcement and CITES authorities. After the identification of national priorities, identified concerns could then be elevated for discussion within the context of the Conference of the Parties.

45. Financing of the Conservation of Biodiversity and Development of Sustainable Use of Natural Resources [Doc. 10.81]

In order to ensure the sustainable use of wildlife resources and to conserve biodiversity, this draft resolution would mandate that the Standing Committee, in liaison with the Convention on Biological Diversity (CBD), the Global Environmental Facility (GEF), the World Conservation Union (IUCN), and each Party, study the terms and conditions under which the establishment of a tax on wildlife specimens could be

implemented and the allocation of such taxes. It recommends that the issuance of labels on wildlife and its products be subjected to the payment of such a tax.

While being supportive of biodiversity conservation and the sustainable use of wildlife, the United States intends to oppose adoption of this resolution. The United States opposes the establishment of an international tax on wildlife use. The text of CITES neither obligates or authorizes Parties to levy any tax, whether direct or indirect, on the trade in animal or plant species that are included in the Appendices to the Convention. Nor is there a mechanism provided in CITES that would administer any funds generated from a tax on trade in a manner that would ensure sustainable trade and habitat conservation.

Because the text of the Convention does not address the issue of taxation, the United States must oppose the draft resolution on Constitutional grounds. The Congress of the United States, which has exclusive jurisdiction over the passage of any legislation that would levy taxes on United States entities engaged in international trade, has not authorized such taxes to be imposed as part of the implementation of CITES.

46. Development of an Information Management Strategy [Doc. 10.82]

The development of an information management strategy by the Secretariat was an item of discussion at the 37th meeting of the Standing Committee. The Secretariat presented a document for consideration by the Committee and described its proposal which involved the World Conservation Monitoring Centre (WCMC). The United States supported the Secretariat's efforts to develop a better communication system between its offices and the Parties to facilitate the distribution of Notifications to the Parties and other pertinent information. At the Standing Committee meeting, the United States requested that the Secretariat prepare a list of Parties and their computer needs to assist developing countries in obtaining the necessary computer equipment for an information management system to be put in place.

No documents have yet been received from the Secretariat. However, the Secretariat has indicated that it will be preparing a document for COP10 which will include the financial implications of putting this system into place.

47. Inclusion of Higher Taxa [Doc. 10.83]

This resolution, submitted by Namibia, recommends that the listing of higher taxa on the Appendices to the Convention not be made without considering negative consequences to geographically distinct populations. It also recommends the use of annotations on the Appendices to the Convention so that generalized indicators would be presented according to the conservation status and most appropriate management program for each listed species.

The United States proposes to oppose this resolution, but hopes that some of the issues raised can be addressed in the Nomenclature Committee. The United States believes that this resolution presents a system which would lead to a proliferation of confusing split-listings, a provision which is only occasionally appropriate for CITES species. There is already adequate flexibility in the Convention for Parties to make decisions as to how they manage populations of native species listed on the Appendices. In addition Conf. 9.24, Annex 3 (the new listing criteria) already adequately addresses the issues associated with split-listings, and in general, discourages their use. This subject was addressed at COP9 through this resolution, and the submission of this newer resolution does not allow for a fair amount of time for the Parties to implement the terms of 9.24. The subject should not be reconsidered so soon, as the Parties agreed at COP9 that reconsideration of the listing criteria should not occur until COP12, so that there is adequate experience gained with the use of the new listing criteria in 9.24.

48. Proposals Concerning Export Quotas for Specimens of Appendix I or II Species [Doc. 10.84]

No document has yet been received. When relevant documentation is received from the Secretariat, the United States will evaluate it and formulate a policy position.

XV. Consideration of Proposals for Amendment of Appendices I and II (This Item Consists of Four Subitems)

1. Proposals Submitted Pursuant to Resolution on Ranching [Doc. 10.85]

2. Proposals Resulting from Reviews by the Animals and Plants Committees [Doc. 10.86]

3. Proposals Concerning Export Quotas for Specimens of Appendix I or II Species [Doc. 10.87]

4. Other Proposals [Doc. 10.88]

Proposal to amend the appendices have been received, and tentative U.S. negotiating positions on these proposals are presented in a separate **Federal Register** notice.

XVI. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties [Doc. 10.89]

No documents have been received from the Secretariat regarding candidates as host government for COP11. The United States favors holding COP11 in a country where all Parties and observers will be admitted without political difficulties. The United States proposes to support the holding of COPs on a biennial basis, or, as in the case of COP10, after an interval of approximately two and one half years.

2. Closing remarks

Request for Information and Comments

With this notice, the Service invites information and comments on the proposed negotiating position on COP10 agenda items. (Comments on amendments to the Appendices of the Convention should be based on the **Federal Register** notice of the same date as this notice). Information and comments on this present notice should be submitted to the Service no later than May 9, 1997. Interested Parties can also make verbal or submit written comments to the Service at the Public Meeting of April 25, 1997 (See Public Meeting, above).

Authors: This notice was prepared by Bruce J. Weissgold and Dr. Susan S. Lieberman, Office of Management Authority, United States Fish and Wildlife Service.

Dated: April 11, 1997.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–00; OMB Approval Number 1004–0011]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March

27, 1996, BLM published a notice in the **Federal Register** (61 FR 13515) requesting comment on this proposed collection. The comment period ended on May 28, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0011), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the BLM Clearance Officer (WO–630), 1849 C Street NW, Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of technology.

Title: Color-of-title Tax Levy and Payment Record (43 CFR 2540). OMB approval number: 1004–0011.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 2540. That rule provides for the issuance of a land patent (deed) to eligible individuals, groups, or corporations who believe they have a valid claim to public lands under color-of-title. Respondents supply identifying information to be used by the agency to determine validity of a color-of-title claim and aid in the documentation of tax payments in support of the color-of-title application to public lands.

Bureau Form Number: 2540–3.

Frequency: Once.

Description of Respondents: Individuals applying for a color-of-title claim to public lands. Estimated completion time: 1 hour.

Annual Responses: 9.

Annual Burden Hours: 9.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: March 12, 1997.

Dr. Annetta L. Cheek,

Manager, Regulatory Affairs Group.

[FR Doc. 97–9904 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–01–24 1A; OMB Approval Number 1004–0004]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On March 28, 1996, BLM published a notice in the **Federal Register** (61 FR 13866) requesting comment on this proposed collection. The comment period ended on May 28, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. (202) 452–0367.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0004), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D. C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Desert-Land Entry (43 CFR 2520). OMB approval number: 1004–0004.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 2520. That rule provides guidelines and procedures for individuals to make desert-land entries to reclaim, irrigate, and cultivate arid and semiarid public lands of the Western United States under the Desert Land Act as amended (43 U.S.C. 231, 321–323, 325, 327–329).

Bureau Form Number: 2520–1.

Frequency: Once.

Description of Respondents: Respondents are individuals.

Estimated Completion Time: 1½ hours.

Annual Responses: 9.

Annual Burden Hours: 13½.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: February 3, 1997.

Dr. Annetta L. Cheek,

Chief, Regulatory Affairs Group.

[FR Doc. 97–9905 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–01–24 1A; OMB Approval Number 1004–0012]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On March 22, 1996, BLM published a notice in the **Federal Register** (61 FR 11861) requesting comment on this proposed collection. The comment period ended on May 21, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed

collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. (202) 452–0367.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0012), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments:

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Recreation and Public Purposes Act (43 CFR 2740). OMB approval number: 1004–0012.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 2740. That rule provides guidelines and procedures for the transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 seq.)

Bureau Form Number: 2740–1.

Frequency: Once.

Description of Respondents: Respondents are State and local governments, and nonprofit corporations and associations.

Estimated Completion Time: 40 hours.

Annual Responses: 42.

Annual Burden Hours: 1,680.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: February 3, 1997.

Dr. Annetta L. Cheek,

Chief, Regulatory Affairs Group.

[FR Doc. 97–9906 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–00; OMB Approval Number 1004–0010]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March 28, 1996, BLM published a notice in the **Federal Register** (61 FR 13867) requesting comment on this proposed collection. The comment period ended on May 28, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0010), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the BLM Clearance Officer (WO–630), 1849 C Street, NW, Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments:

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of technology.

Title: Conveyances Affecting Color or Claim of Title (43 CFR 2540). OMB approval number: 1004–0010.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 2540. That rule provides for the issuance of a land patent (deed) to eligible individuals, groups, or corporations who believe they have a valid claim to public lands under color-of-title. Respondents supply identifying information to be used by the agency to determine the validity of a color-of-title claim to public lands.

Bureau Form Number: 2540–2.

Frequency: Once.

Description of Respondents: Individuals applying for a color-of-title claim to public lands. Estimated completion time: 1 hour.

Annual Responses: 9.

Annual Burden Hours: 9.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: March 21, 1997.

Dr. Annetta L. Cheek,

Manager, Regulatory Affairs Group.

[FR Doc. 97–9907 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–00; OMB Approval Number 1004–0029]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On April 17, 1996, BLM published a notice in the **Federal Register** (61 FR 16805) requesting comment on this proposed collection. The comment period ended on June 17, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond

after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0029), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the BLM Clearance Officer (WO–630), 1849 C Street NW, Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of technology.

Title: Color-of-Title Application (43 CFR 2540). OMB approval number: 1004–0029.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 2540. That rule provides for the issuance of a land patent (deed) to eligible individuals, groups, or corporations who believe they have a valid claim to public lands under color-of-title. Respondents supply identifying information to be used by the agency to determine validity of a color-of-title claim to public lands.

Bureau Form Number: 2540–1.

Frequency: Once.

Description of Respondents: Individuals applying for a color-of-title claim to public lands. Estimated completion time: 15 minutes.

Annual Responses: 9.

Annual Burden Hours: 2.25.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: March 25, 1997.

Dr. Annetta L. Cheek,

Manager, Regulatory Affairs Group.

[FR Doc. 97–9908 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting Dennis C. Jones at (303) 231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the OMB Paperwork Reduction Project (1010–0064), Washington, D.C. 20503, telephone number (202) 395–7340.

Dates: Written comments should be received on or before May 19, 1997.

Title: Payor Information Form, Solid Minerals.

OMB Approval Number: 1010–0064.

Abstract: The Minerals Management Service (MMS) Royalty Management Program (RMP) is proposing to continue collecting certain information from royalty payors on Federal or Indian mineral leases in order to establish and maintain a database consisting of royalty information and reference data.

Bureau Form Numbers: MMS–4030.

Frequency: As submitted by lessee.

Description of Respondents: Royalty payors on Federal and Indian mineral leases.

Estimated Completion Time: .33 hours.

Annual Responses: 130.

Annual Burden Hours: 173 hours.

Bureau Clearance Officer: Joanne Lauterbach, (202) 208–7744.

Dated April 14, 1997.

Donald Sant,

(Acting) Associate Director for Royalty Management.

[FR Doc. 97–9984 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: The Superintendent of Gates of the Arctic National Park and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of summary of meeting minutes for May 15–17, 1996, and November 12–14, 1996.
(4) Review agenda.
(5) Superintendent's introductions of guests and staff and review of Commission function and purpose.
(6) Superintendent's management/research reports:
  a. Administration and management.
  b. Park operations.
  c. Resource management.
  d. Subsistence program.
(7) Public and agency comments.
(8) Old business:
  a. Correspondence.
  b. Federal Subsistence Program update.
  c. Discussion of specific issues within the draft NPS Subsistence Issues Paper.
  d. Review status of revised Hunting Plan Recommendation #12: Residency Requirement for Cabin Use on Public Land.
  e. Shared North Slope Borough/NPS position in Anaktuvuk Pass.
  f. Kobuk River sheefish harvest.
(9) New business:
  a. Other park SRC actions.
  b. Subsistence eligibility.
  c. Work Session: Subsistence Management Plan.
(10) Set time and place of next SRC meeting.
(11) Adjournment.

DATES: The meeting will be held Tuesday through Thursday, April 29-May 1, 1997. The meeting will be from 1 p.m. to 5:00 p.m. Tuesday, 8:30 a.m. to 5:00 p.m. Wednesday, and from 8:30 a.m. to noon on Thursday.

LOCATION: The meeting will be held at Sophie Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: David Mills, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operate in accordance with the

provisions of the Federal Advisory Committees Act.

Judith C. Gottlieb,

Acting Regional Director.

[FR Doc. 97–9956 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Development of Strategic Plan for the Bureau of Reclamation, Pursuant to the Government Performance and Results Act of 1993

AGENCY: Bureau of Reclamation, Interior.

ACTION: Request for comments.

SUMMARY: The Government Performance and Results Act of 1993 (GPRA) requires the Bureau of Reclamation (Reclamation) and other Federal agencies to set strategic goals, measure performance, and report on results. It requires development, no later than the end of fiscal year 1997, of a 5-year strategic plan, to include the organization's mission statement, identify its long-term strategic goals, and describe how it intends to achieve its goals. The Act also requires that in developing its Strategic Plan, that Reclamation solicit and consider the ideas of those potentially affected by or interested in the Strategic Plan. This notice asks for public comment concerning the development of the Bureau of Reclamation's Strategic Plan for the years 1997–2002.

DATES: Comments must be received by May 9, 1997.

ADDRESSES: Written comments should be directed to Karen Pedone, GPRA Program Manager, W–6300, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Karen Pedone, (202) 208–4972. Copies may be obtained by contacting your local Reclamation office or by calling Karen Pedone.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Government Performance and Results Act of 1993, Public Law 103–62 was enacted to make Federal programs more effective and publicly accountable by targeting results, service quality, and customer satisfaction. Other statutory goals were to improve Congressional decisionmaking and to improve internal management of the Federal Government.

Section 306 of title 5, United States Code, requires that Reclamation submit to the Director, Office of Management and Budget, and to the Congress a strategic plan for program activities no later than September 30, 1997. The plan is to contain:

(1) A comprehensive mission statement covering the major functions and operations of the agency;

(2) General goals and objectives, including outcome-related goals objectives, for the major functions and operations of the agency;

(3) A description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

(4) A description of how the performance goals included in the plan required by section 1115(a) of title 31 shall be related to the general goals and objectives in the strategic plan;

(5) An identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

Strategic Plan Summary

The Bureau of Reclamation Strategic Plan also provides the framework for Reclamation's implementation of the other parts of the Act, including development of annual performance plans, and annual program performance reports that compare actual performance to the annual goals.

Reclamation is the largest water resources management agency in the West, administering or operating 348 reservoirs (with a total storage capacity of 245 million acre-feet), 58 hydroelectric powerplants, and more than 300 recreation sites. With these facilities, Reclamation delivers water to over 31 million people and about 10 million acres of irrigated land or about one-third of the irrigated acreage in the West; generates more than 40 billion kilowatt hours of energy each year, making it the Nation's second largest producer of hydroelectric power and the fifth largest electric producer (based on generating capacity) in the West; provides water-based recreation activities for about 90 million visitors a year; provides water supplies to support habitat for wildlife refuges, migratory waterfowl, anadramous and resident fish, and endangered and threatened species; and provides flood control including $414 million in 1995 in flood control benefits. This number reflects the amount of damages from flooding predicted to have occurred if Reclamation facilities had not been in place.

Reclamation projects stimulate an estimated $24 billion in economic activity each year. Benefits in agriculture, recreation, power dependent industries, municipal and industrial water service, and other related areas, including the construction industry, are the direct result of Reclamation management of a finite, but variable natural yearly water supply. These multipurpose benefits generate about $5 billion in State and Federal tax revenues. An estimated 700,000 person-years of employment are produced each year as a result of the Reclamation program.

The Reclamation program was created by the Reclamation Act of 1902 to reclaim the arid West and to provide economic stability in the 17 western states by developing irrigation projects. Over time, these single purpose projects gave way to the development and construction of multipurpose water resources projects. Over the past 90 plus years, the Federal Government has invested more than $16 billion in Reclamation projects, 80 percent of which is subject to repayment to the U.S. Treasury (although often without interest). Project beneficiaries pay for annual operation and maintenance costs. In addition, Reclamation is responsible for securing the safety of its dams and ensuring that Reclamation facilities are maintained, operated, and repaired in a manner that assures project purposes are reliably met.

With a major network of water supply and power generation facilities in place and settlement of the West accomplished, public interest has shifted to concern for the efficient use of already developed water supplies, the protection of social and environmental values, and the protection of the Federal investment and infrastructure. As a corollary, Reclamation's emphasis has evolved from narrowly focused project development to the broadest aspects of contemporary water and related resources management and protection.

The transition from a development emphasis to a resources management orientation has involved several years of introspection and change. In the mid-1980's, Reclamation undertook an agency-wide assessment and published the findings in a public document: ''Assessment '87 * * * A New Direction for the Bureau of Reclamation.'' That document concluded that Reclamation's

* * * mission must change from one based on Federally supported construction to one based on effective and environmentally sensitive resource management.

Based upon that conclusion and further introspection over the next 4 years, Reclamation adopted a new mission statement in 1992—a mission statement which will lead us into our second century of service to the Nation.

In 1993, Reclamation's ''Blueprint for Reform'' solidified this change in mission by establishing contemporary program priorities, functional realignments, and streamlined operating processes throughout Reclamation. Specifically, the ''Blueprint for Reform'' called for the delegation of decision-making authority to the lowest practical organizational level, reductions in organizational layering and the number of supervisory personnel, streamlining regulations, and revision of program and budget execution processes to reflect the current mission and programs. Collectively, the implementation of these changes would enable Reclamation to become a more efficient and effective agency, that is more responsive to its modern mission and its customers.

Strategic Planning Process

The Strategic Plan has been developed around a framework of Reclamation's three essential mission objectives, desired long-term outcomes, and 5-year strategic goals linked to more tactical strategies to guide the agency in attaining mission objectives. These strategies will enable Reclamation to implement measurable and demonstrable annual program performance goals. Accomplishments will be measured through the use of 5-year strategic goals and strategies as program measures. Both the 5-year strategic goals and the annual goals will be described in the annual plans. With sufficient resources and the ability to effectively deal with factors beyond the agency's control, the annual goals will be accomplished leading ultimately to the achievement of the progressive levels of 5-year, outcome, and mission goals set forth in the Strategic Plan.

In forthcoming annual plans, Reclamation's performance indicators will be used for assessing the results of program activities. They will help Reclamation determine whether it has met its objectives and achieved desired results. Measures may be expressed in the form of outputs—the more traditional quantitative and qualitative ways of describing work products—or they may be in the form of outcomes—measures designed to show a program's achievements in light of intended results.

In addition to objective, tangible measures of Reclamation-wide performance, the agency will report on selected activities that demonstrate progress. Because much of the on-the-ground mission is focused on managing a finite but highly variable water supply across the 17 western states, Reclamation must consider individual situations as well as the overall picture to understand how well it is managing a finite water supply among competing demands, multiple project purposes, and national and international policies and priorities.

Mission Statement

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

Mission Goals and Strategies

Mission Objective I—Manage, Develop, and Protect Water and Related Resources

Strategy 1—Manage Water and Related Resources
Strategy 2—Facilities Operation
Strategy 3—Facilities Maintenance and Rehabilitation
Strategy 4—Dam Safety
Strategy 5—Efficient Use of Water (Conserve Water)
Strategy 6—Water Quality
Strategy 7—Complete Projects Under Construction
Strategy 8—Indian Water and Related Resources Management
Strategy 9—Fulfill Obligations to Indian Tribes
Strategy 10—Research and Technology Development

Mission Objective II: Protect the Environment

Strategy 11—Fish and Wildlife
Strategy 12—Enhance Recreational Opportunities
Strategy 13—Federal Land Interests

Mission Objective III: Improve our Business Practices and Increase Productivity of our Employees

Strategy 14—Use Common Sense Business Approaches
Strategy 15—Implement Programmatic Budgeting and Accountability
Strategy 16—Recover Federal Investments
Strategy 17—Diverse, Skilled Workforce Excellence
Strategy 18—Improve Customer Service

Electronic Access

The Bureau of Reclamation draft Strategic Plan may be reviewed in its entirety on the World Wide Web at www.usbr.gov/Events/public-involve.html.

Dated: April 14, 1997.

Karen Pedone,

GPRA Program Manager.

[FR Doc. 97–9977 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: project selection criteria, output from the technical teams, development of the annual workplan, public outreach and funding coordination. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 1:00 a.m. to 4:00 p.m. on Wednesday, April 30, 1997.

ADDRESS: The Ecosystem Roundtable will meet in Room 1131, Resources Building, 1416 Ninth Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory

responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 9, 1997.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 97–9901 Filed 4–16–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. Its grant program, formerly called the Targeted Training Program, has been renamed the Susan Harwood Training Grant Program. This notice announces grant availability for training in safety and health programs for small businesses, ergonomics, scaffolding, and workplace violence. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by June 13, 1997.

ADDRESSES: Grant applications may be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail helen.beall@oti.osha.gov.

SUPPLEMENTARY INFORMATION: The program previously known as the Targeted Training Program is being renamed the Susan Harwood Training Grant Program in memory of Susan Harwood, an OSHA employee who died in 1996. Ms. Harwood, who had a Ph.D. in microbiology and immunology, was an outstanding figure in the world of workplace safety and health. She was a dedicated OSHA employee from 1979 until her death. She spent her last eight years as Director of the Office of Risk Assessment in the Directorate of Health Standards Programs. Ms. Harwood's leadership role in developing standards to protect the health of workers resulted in the implementation of many requirements that significantly reduced occupational diseases in the workplace. Among others, she was responsible for developing the standards for bloodborne pathogens, cotton dust, benzene, formaldehyde, asbestos and lead in construction, and the guidelines for tuberculosis, all of which have had lasting impact on the health of workers. The Susan Harwood Training Grant Program commemorates her exceptional services to occupational health.

What is the Purpose of the Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities identified by OSHA or as part of an OSHA special emphasis program.

Grantees are expected to develop training and/or educational programs that address one of the targets named by OSHA (see below), recruit workers and employers for the training, and conduct the training. Grantees will also be expected to follow-up with people who have been trained to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What are the Training Topics this Year?

The purpose of this notice is to announce that funds are available for grants. Each grant application must address one of the following target areas.

1. *Safety and health programs for small businesses.* OSHA is interested not only in training small businesses about safety and health, but in assisting them to implement safety and health programs. Applications addressing this target should include provisions for following up with trainees to help them put what they have learned to use in their workplaces. A small business is a firm with 250 or fewer employees.

2. *Ergonomics.* This training should be designed to inform workers and employers about ergonomic hazards, how to recognize them, and how to abate them.

3. *Scaffolding.* Applications for this topic should provide training in the hazards of scaffolding on construction sites and how to abate them. Training

should be based on OSHA's scaffolding standard (29 CFR 1926 Subpart L) published on August 30, 1996.

4. *Workplace violence.* This training should address the prevention of violence in the workplace. In selecting applications for grant award, OSHA will give preference to those that provide training for workers and employers of commercial establishments at risk at night, particularly 24-hour workplaces such as retail stores, gas stations, and restaurants.

Who is Eligible to Apply for a Grant?

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the IRS.

A consortium of two or more eligible applicants is also eligible to apply. Each consortium must have a written agreement that spells out roles and responsibilities for each consortium member and names one member as the lead agency. The lead agency will receive the grant and be responsible for grant administration.

What Can Grant Funds be Spent On?

Grant funds can be spent on the following.

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in the training.
- Sharing educational materials with others in the industry to which the materials apply.

Are There Restrictions on How Grant Funds Can be Spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include state and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under a State Plan, or consultation programs provided by State designated agencies under section 7(c)(1) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements are There?

1. *OSHA review of educational materials.* Educational materials produced by the grantee will be reviewed by OSHA for technical accuracy during development and before final publication. OSHA will also review curriculums and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they will provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Grant recipients' audiovisual materials will be included in this lending program.

2. *OMB and regulatory requirements.* Grantees will be required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- 29 CFR part 96 and OMB Circular A–133, which provide information about audit requirements.

3. *Certifications.* All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. *Matching share.* The program requires the grantee to provide a matching share. Grant recipients are to provide a minimum of 20% of the total grant budget. This match may be in-kind, rather than a cash contribution. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

How are Applications Reviewed and Rated?

Grant applications will be reviewed by OSHA staff and the review results presented to the Assistant Secretary who will make the selection of organizations to be awarded grants.

Preference will be given to applications that plan to conduct train-the-trainer programs. Applicants are encouraged to include managers and/or supervisors in their training. In general, applications that propose to serve a single employer will not be selected, since OSHA is interested in reaching multiple employers with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses one of the following targets.

i. Safety and health programs for small businesses.

ii. Ergonomics.

iii. Scaffolding.

iv. Workplace violence.

b. The proposal plans to train workers and/or employers and clearly states the numbers to be trained.

c. The proposal contains a train-the-trainer program, and the numbers to be trained by these trainers are clearly stated.

d. The planned activities are appropriate for the workers and/or employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for

making these materials available in the industry to which they apply.

g. There is a plan to evaluate the program's effectiveness and this includes plans to follow-up with trainees to see if the training resulted in workplace change.

h. The planned work can be accomplished in one year.

2. Program Experience

a. The organization applying for the grant has experience with occupational safety and health.

b. The organization applying for the grant has experience training adults in work-related subjects.

c. The staff to be assigned to the project have experience in (1) occupational safety and health, (2) the specific target chosen, and (3) training adults.

d. The organization applying for the grant has experience in recruiting and training the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization has had experience managing a variety of programs.

b. The applicant organization has administered a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How much money is available for grants?

There is approximately $1,900,000 available for this program. The average Federal award will be $100,000.

How Long Are Grants Awarded For?

Grants are awarded for twelve-month periods. Grants may be renewed for additional twelve-month periods depending on whether there are funds available, there is still a need for the training, and the grantee has performed satisfactorily.

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at http://www.osha.gov/training/.

When and Where are Applications to be Sent?

The application deadline is 4:30 p.m. Central Time, June 13, 1997.

Applications can be mailed to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications *will not* be accepted by fax.

How Will I be Told if My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 10th day of April 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–9874 Filed 4–16–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–22; Exemption Application No. D–10285 thru D–10287, et al.]

Grant of Individual Exemptions; General Electric Pension Trust (The GE Trust), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Electric Pension Trust (The GE Trust), Located in Fairfield, Connecticut

[Prohibited Transaction Exemption 97–22 Exemption Application Nos. D–10285 thru D–10287]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code [1] shall not apply, effective July 12, 1996, to the past sale by the GE Trust of its stock in AmeriData Technologies, Inc. (AmeriData) to General Electric Capital Corporation (GECC) and GECC's indirect, wholly-owned subsidiary, GAC Acquisition I Corporation (GAC), both of which are parties in interest with respect to the GE Trust and affiliates of the General Electric Company (GE), the sponsor of the GE Trust, in connection with the merger of GAC and AmeriData Technologies, Inc., provided that the following conditions were satisfied:

(a) the sale of the AmeriData Stock was a one-time transaction for cash;

(b) the GE Trust received the fair market value for each share of the AmeriData Stock on the date of the sale;

(c) the GE Trust received no less consideration than that received by similarly situated AmeriData shareholders at the same time in the same transaction;

(d) the GE Trust paid no commissions, fees or other expenses in connection with the sale of AmeriData Stock to GECC and GAC;

(e) the terms of the sale were no less favorable to the GE Trust than those obtainable by other similarly situated shareholders of AmeriData Stock;

(f) the GE Trust tendered its shares of AmeriData Stock only at the close of the tender-offer period and only after a majority of the outstanding shares of AmeriData had been tendered; and

(g) the transactions engaged in by the GE Trust with respect to the AmeriData Stock (including the acquisition, holding and the subsequent sale to GECC and GAC), were not part of an arrangement designed to benefit GE, any of its affiliates, or any other party in interest with respect to the GE Trust.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 13, 1996 at 61 FR 58241.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Hawaiian Airlines, Inc. Pilots' 401(k) Plan, Hawaiian Airlines, Inc. 401(k) Plan for Flight Attendants, and Hawaiian Airlines, Inc. 401(k) Savings Plan (collectively, the Plans) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 97–23; Exemption Application Nos. D–10380, D–10381, and D–10382]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The past acquisition by the Plans of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) to the Plans by Hawaiian Airlines, Inc. (the Employer), the sponsor of the Plans; (2) the past holding of the Rights by the Plans during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plans provided the following conditions are satisfied: (A) The acquisition and holding of the Rights by the Plans occurred in connection with the Offering made available to all shareholders of the common stock of the Employer; (B) The acquisition and holding of Rights by the Plans resulted from an independent act of the Employer as a corporate entity and all holders of the common stock of the Employer, including the Plans, were treated in the same manner with respect to the Offering; and (C) All decisions regarding the holding and disposition of the Rights by the Plans were made in accordance with provisions of the Plans for individually-directed investment of participant accounts by the individual participants of the Plans whose accounts in the Plans received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering, and if no timely instructions concerning the Rights were given by participants of the Plans, the Rights were sold.

EFFECTIVE DATE: This exemption is effective as of August 7, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this proposed exemption, refer to the notice of proposed exemption published on February 18, 1997, at 62 FR 7273.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Signed at Washington, DC, this 14th day of April, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 97–9975 Filed 4–16–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. L–10280, et al.]

Proposed Exemptions; Operating Engineers Local 150 Apprenticeship Fund (the Fund)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Operating Engineers Local 150 Apprenticeship Fund (the Fund), Located in Plainfield, Illinois

[Exemption Application No. L–10280]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (2) shall not apply to the proposed sale (the Sale) of a certain parcel of improved real property (the Property) from the Fund to International Union of Operating Engineers, Local 150 (Local 150), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Local 150 pays the greater of $180,000 or the current fair market value of the Property as of the date of the transaction;

(3) The Sale is a one time transaction for cash; and

(4) The Fund pays no fees or commissions related to the Sale.

Summary of Facts and Representations

1. The Fund is a welfare plan which is an apprenticeship and training plan with approximately 600 apprentices and 5,494 journeymen. The Fund was established on June 1, 1967. As of December 31, 1995, the fair market value of the Fund's assets was $6,492,242. The Fund sponsors include the Local 150 and other employer associations.

2. The Fund acquired the Property as part of a merger with the Operating Engineers Local 537 Apprenticeship and Re-training Fund on or about October 28, 1992. During this time, the Operating Engineers Local 537 terminated and transferred all of its assets to the Fund. The Property is located in Rock Island, Illinois and consists of an office building on approximately 53 acres of land. The applicant represents that the Property has been leased by the Fund to Local 150 pursuant to Prohibited Transaction Class Exemption 76–1 (41 FR 1270, March 26, 1976).[1] Since 1992, the Fund has received net income from the Property in the amount of $33,461.

3. In March 1993, the Property was appraised at a value of $180,000 by Baecke Appraisers, a qualified independent real estate appraisal firm. The value of the Property was determined by using the market value approach which is defined in the appraisal as the most probable price a property should bring on requisite to a fair sale, the buyer and seller each acting prudently and assuming the price is not affected by undue stimulus. In April 15, 1996, Mr. Robert Baecke of Baecke Appraisers, updated the appraisal and recertified the value of the Property to be $180,000. Mr. Baecke researched sales of comparable properties in the Property's market area that have occurred since the time of the original appraisal. His analysis consisted of research of data from the multiple listing service, county records, exterior inspections of the properties and conversations with individuals

[1] The Department is making no determination with respect to whether or not the Lease met the conditions of PTE 76–1.

involved in the transactions. Additionally, Mr. Baecke analyzed the valuation approaches used in the original appraisal, taking into consideration all current data. Mr. Baecke concluded that the Property's appraised value remains $180,000. In this regard, Mr. Baecke represented that the value of the Property at time the Fund acquired the Property was $180,000. The Fund will pay no commissions or fees associated with the Sale.

4. The Fund proposes to sell the Property to Local 150. The Trustees of the Fund have determined that the Fund no longer needs the Property, and wish to sell the Property. Local 150 has offered to purchase the Property for cash at the appraised value of $180,000.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Sale is a one-time transaction for cash, and no commissions will be paid upon the Sale; (2) the Fund will be receiving at least fair market value for the Property as determined by an independent qualified real estate appraiser; and (3) the Fund pays no commissions or fees associated with the Sale.

For Further Information Contact: Allison Padams of the Department, telephone (202)219–8971. (This is not a toll-free number.)

Joint Apprenticeship Committee of Plumbers Local No. 27 (the Plan), Located in Pittsburgh, Pennsylvania

[Application No. L–10366]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan of certain improved real property located in Allegheny County, Pennsylvania (the Property) to the Local Union No. 27 (the Plumbers Local) of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, a party in interest with respect to the Plan; provided that the following conditions are met:

(A) The Plan does not incur any expenses or suffer any loss with respect to the transaction; and

(B) The Plan receives a cash purchase price for the Property of no less than the greater of (1) the Plan's cost basis in the Property as of the date of the sale, or (2) the fair market value of the Property as of the date of the sale, as determined by an independent, qualified appraiser, and in no event less than $265,597.

Summary of Facts and Representations

Introduction

The Plan's operations are conducted in the Pipe Trades Training Center (the Property), which is owned by the Plan. The Trustees of the Plan have determined that it is no longer economically feasible for the Plan to maintain and operate its own facility, and that the Plan can be operated more efficiently as a tenant in the Property. The Trustees propose to sell the Property to the Union, the members of which are participants in the Plan, and to arrange for the Plan to lease space in the Property from the Union. An exemption is requested to allow the sale transaction under the terms and conditions described herein.

1. The Plan is an apprenticeship training plan providing educational and occupational training for apprentices and journeymen plumbers who are members of the Union. The Plan was created and is maintained pursuant to collective bargaining agreements between the Union and the Mechanical Contractors Association of Western Pennsylvania (the Association), which represents employers of plumbers who are members of the Union. The Plan is administered by a board of six trustees (the Trustees), three of whom are representatives of the Union and three of whom are representatives of the Association and other employers in signed agreements with the Union. As of October 1, 1996, approximately 610 members of the Union were participants in the Plan, which had total assets of approximately $360,080 as of December 31, 1995.

2. Among the assets of the Plan is the Property, a parcel of improved real property located at 104 Montour West Industrial Park in North Fayette Township near Pittsburgh in Allegheny County, Pennsylvania. The Property consists of 1.29 acres of land improved with a one-story structure (the Building) occupied by the Plan and operated by the Trustees as the Pipe Trades Training Center and ancillary office facility. The Building, which is constructed of cement block on reinforced concrete slab, has a total interior area of 6,948 square feet, consisting of 984 square feet of office space (the Office Space) and the remainder utilized as classrooms, shop, computer, and file room areas. The Office Space is occupied by the Union, which has leased the Office Space from the Plan since 1987 (the Union Lease). The Trustees and the Union represent that the Union Lease satisfies the requirements of Prohibited Transaction Class Exemption 76–1 (PTE 76–1, 41, FR 12740, March 26, 1976) and Prohibited Transaction Class Exemption 77–10 (PTE 77–10, 42 FR 33918, July 1, 1977), relating to, among other things, a lease of office space by a multiemployer plan to a participating employee organization.[2]

3. The Property is described legally as lot 113R of the Montour West Industrial Park (the Industrial Park) as recorded with the Recorder's Office of Allegheny County, and it consists of a parcel originally described in the county legal records as lot 113 and one third of an adjacent parcel originally described as lot 112. The Trustees represent that the Plan purchased the original lot 113 from an unrelated party on August 22, 1974, and on December 17, 1975 the Plan sold a one-half interest in original lot 113 to the Joint Apprenticeship Committee of Steamfitters Local Union No. 449 (the Steamfitters Plan), an apprenticeship training plan providing benefits to members of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 449 (the Steamfitters Local). Thereafter, the original lot 112 was acquired jointly by the Plan and the Steamfitters Plan from an unrelated party on December 29, 1991. Although the Plumbers Local and the Steamfitters Local are components of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, the Trustees represent that the Steamfitters Local and the Steamfitters Plan are not parties in interest with respect to the Plan, within the meaning of section 3(14) of the Act, and that the trustees of each plan are independent of and unrelated to each other. The Trustees explain that in many jurisdictions plumbers and steamfitters are members of the same local union, with referrals for work based on a determination of whether water or steam pipes are involved. In the Pittsburgh/Western Pennsylvania area, however, the Trustees maintain that there was historically substantial employment in the steel mills and factories for steamfitters, and consequently, two separate local unions

[2] The Department expresses no opinion as to whether the Union Lease satisfied the conditions of PTE 76–1 or PTE 77–10, or whether such lease of office space by the Plan to the Union was exempt from the prohibitions of section 406 of the Act.

emerged, one representing steamfitters and one representing plumbers. Because the training for apprentices in each local union is similar, and because each local union had similar needs in a training facility, the trustees of the apprenticeship plans of each local union agreed to share the same training facility for their apprenticeship programs. In this context, the two plans jointly owned the original lot 113, on which the Building is situated, and the adjacent original lot 112, an unimproved lot utilized for parking space.

In 1987, the trustees of the Steamfitters Plan determined to commence arrangements for a movement of the operations of that plan to a separate training facility in Pittsburgh. The trustees of the Steamfitters Plan then transferred that plan's one-half interest in lots 113 and 112 to the Plan, by deed dated January 9, 1987. (The Steamfitters Plan continued to utilize facilities on the Property as a tenant until that plan acquired its own building in 1993.) Subsequently, on June 1990, the legal records for the Industrial Park were revised to provide that two thirds of lot 112 was redesignated as lot 111R and the remaining one third of lot 112 was combined with lot 113 and redesignated as lot 113R. The Trustees sold lot 111R to an unrelated party in 1990, and lot 113R remains the legal designation of the Property. According to Daniel F. Smith, IFA (Smith), a professional independent real estate appraiser in Pittsburgh, Pennsylvania, the Property had a fair market value of $246,000 as of June 13, 1996. The Plan's actual cost basis in the Property is $265,597, as determined as of May 14, 1996 by the certified public accounting firm of R.S. Cumberledge & Associates (Cumberledge) in Pittsburgh, Pennsylvania.

4. The Trustees represent that it is not economically feasible for the Plan to continue maintaining the Property while continuing to provide a quality training program for the Union's members. The Trustees state that recent financial statements indicate a declining balance of reserves in the assets of the Plan, which is operating at a deficit due to increasing Building maintenance and related expenses. The Trustees represent that employer contributions to the Plan and rents paid by the Union to the Plan are not sufficient to cover escalating costs of maintaining the Property, even though such employer contributions have increased pursuant to collective bargaining and the Trustees represent that the rentals paid by the Union are in excess of the Building's fair market rental value as indicated by Smith's appraisal. The Trustees are concerned that the Plan's continued ownership of the Property will threaten the availability of funds for instructor salaries, equipment, and training program operations. The Trustees represent that they have determined that the Plan would be able to operate its training program more economically as a tenant, rather than an owner, in the Property.

5. Accordingly, the Trustees and representatives of the Union propose that the Union purchase the Property from the Plan and are requesting an exemption for such transaction under the terms and conditions described herein. The Union will pay the Plan a cash purchase price for the Property in the amount of no less than the greater of (a) the Plan's cost basis in the Property as of the date of the sale, or (b) the Property's fair market value as of the sale date as determined by Smith in an update of his appraisal of June 13, 1996, and in no event less than $265,597, which was the Plan's cost basis in the Property as determined by Cumberledge as of May 14, 1996. The Plan will incur no costs related to the transaction.

6. Commencing with the Union's purchase of the Property, it is proposed that the Plan will continue to utilize the Property as its training facility by leasing from the Union the same space in the Property which the Plan has utilized prior to the purchase transaction. The Union and the Trustees represent that this lease of space in the Property from the Union (the Plan Lease) will meet the requirements of Prohibited Transaction Class Exemption 78–6 (PTE 78–6, 43 FR 23024, May 30, 1978), relating to, among other things, a lease of real property by an employee organization to a related apprenticeship training plan.[3] In addition to other requirements, the conditions of PTE 78–6 require the Plan Lease to be on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and the Plan Lease must be appropriate and helpful in carrying out the purposes for which the plan is established or maintained. The Trustees represent that the Plan Lease will satisfy these and all other conditions of PTE 78–6 and that the Plan Lease will enable the Plan to terminate the lease arrangement with sixty days written notice to the Union. The Trustees represent that if the exemption is granted, the Plan Lease will be executed between the Plan and the Union immediately after the sale transaction is consummated and the Plan's use of the Property will continue uninterrupted.

7. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The transaction will be a one-time transaction for cash; (2) The Plan will receive a purchase price for the Property which is no less than the greater of the Plan's cost basis in the Property or the Property's fair market value as of the date of the transaction; (3) The Plan will incur no expenses with respect to the transaction; and (4) The transaction will enable the Plan to reduce its total expenses and to operate more efficiently.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[3] In this proposed exemption the Department expresses no opinion as to whether the Plan Lease will meet the requirements of PTE 78–6.

Howes Leather Company, Inc. Employee Stock Ownership Plan (the Plan), Located in Curwensville, Pennsylvania

[Application No. D–10385]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of an individual life insurance policy (the Policy) to the Howes Leather Company, Inc. (the Employer), the sponsor of the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) The Plan receives a purchase price for the Policy of no less than the greater of (1) the fair market value of the Policy as of the sale date, or (2) Policy's cash surrender value (as described below) as of the sale date;

(C) The Plan does not incur any expenses or suffer any loss with respect to the transaction; and

(D) In the event the Employer recovers with respect to the Policy a total amount in excess of the purchase price paid to the Plan for the Policy, such excess

amount shall be distributed prorata among the participants of the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution employee stock ownership plan with 32 participants and total assets of approximately $465,168 as of February 16, 1996. The Plan is sponsored by the Employer, Howes Leather Company, Inc., a Delaware corporation engaged in the business of leather processing in the city of Curwensville, Pennsylvania. The trustees of the Plan are James M. Fitzgibbons and Barry I. Getto, each of whom is an officer, director and shareholder of the Employer. The Plan invests primarily in common stock of the Employer, which constituted approximately 92 percent of the Plan's assets as of February 16, 1996.

2. The Employer represents that the Plan has been terminated and that distribution of Plan assets was completed in April 1996. Although the Plan is an individual-account employee stock ownership plan, at the time of the Plan's termination date there remained in the Plan one general asset in which all Plan participants held undivided pro-rata interests: the Policy. The Policy is an individual life insurance policy issued by the Fidelity Mutual Life Insurance Company (the Insurer) on the life of Harry J. Widney, a former participant in the Plan who had terminated participation in the Plan and received full payment of Plan benefits many years prior to the Plan termination. The Employer represents that Mr. Widney had been a shareholder of the Employer and that the Plan had acquired the Policy to provide the Plan with assets to purchase Employer stock from his estate in the event of his death. When Mr. Widney left the Employer's business and terminated his participation in the Plan during the Plan year commencing July 1, 1982, his account balance in the Plan was distributed to him in the form of Employer stock. The Employer represents that Mr. Widney was offered the Policy but refused to accept it. As a result, the Policy was retained as a general asset of the Plan.

With an original face value of $50,000 and paid-up additions totaling $7,998, the Policy has a total face value of $57,998. The Employer represents that upon termination of the Plan, the Trustees were unable to liquidate the Policy, by surrendering it for its cash surrender value, because the Insurer is in rehabilitation proceedings (the Rehabilitation) which have rendered the Policy frozen and inaccessible. The Employer represents that it is uncertain when the Rehabilitation will be resolved to enable the cash surrender of the Policy by the Plan and that, due to the current status of the Insurer, the ability of the Insurer to pay the full value of the Policy is in question.

3. The Employer represents that upon termination of the Plan, the Trustees undertook to make prompt distributions to all Plan participants of their respective benefits from the Plan, and that they did not wish to delay distribution until resolution of the Rehabilitation. Accordingly, in order to enable the Plan to proceed with complete distributions, the Employer represents that it made an interest-free loan to the Plan (the Loan) in the amount of cash which the Plan would have realized from a cash surrender of the Policy on the Termination Date. The Loan proceeds were distributed pro rata among all participants in the Plan as of the Termination Date. The Loan was in the amount of $34,044.77, which was the cash surrender value of the Policy upon the termination of the Plan as determined by the Insurer. The Employer represents that the Loan satisfied the requirements of Prohibited Transaction Class Exemption 80–26 (PTE 80–26, 45 FR 35040, May 23, 1980), relating to interest-free loans to a plan for, among other things, the payment of benefits.[4] The Policy remains an asset in the Plan's trust even though distribution to Plan participants has been completed.

4. In order to complete the liquidation of the Plan, the Employer now proposes to purchase the Policy from the Plan so that the last remaining Plan asset may be liquidated and the Plan's trust may be dissolved, and the Employer is requesting an exemption for such transaction under the terms and conditions described herein. The Employer proposes to purchase the Policy from the Plan for a purchase price in the amount of the Loan, and to consummate the purchase transaction by means of canceling the Loan in exchange for the Policy. Accordingly, the purchase price for the Policy will be $34,044.77, the Policy's cash surrender value as of the date of Plan termination, which was the same amount of cash which the Plan would have realized from a cash surrender of the Policy if the Rehabilitation proceedings had not prevented the cash surrender of the Policy upon the Plan termination. The Plan will not incur any expenses with respect to the transaction.

5. Upon cancellation of the Loan, the Policy will be transferred to the Employer, and thereafter the Employer will be entitled to amounts due the holder of the Policy under its terms and conditions. The Employer represents that due to the Rehabilitation and the financial condition of the Insurer, it is questionable whether the Employer will ever recover the cash surrender value of the Policy, and it is unlikely the Employer will ever recover any amounts in excess of the amount the Employer is paying the Plan for the Policy. Nonetheless, the Employer has agreed that in the event it receives total proceeds from the Policy in excess of the amounts paid the Plan as purchase price for the Policy, such additional amounts will be distributed pro rata among Plan participants with active accounts in the Plan as of the date of the Plan termination.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The transaction will enable the completed termination of the Plan and dissolution of the Plan trust; (b) The Plan will not incur any expenses with respect to the transaction; (c) The purchase price of the Policy will be its cash surrender value as of the date of Plan termination as determined by the Insurer; (d) The transaction will include the Employer's cancellation of the Plan's obligations under the Loan; and (e) Any proceeds from the Policy received by the Employer in excess of the purchase price will be distributed among the Plan's participants with active accounts as of the Termination Date.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Roquette America, Inc. Pension Plan for Salaried Employees (the Plan), Located in Keokuk, Iowa

[Application No. D–10390]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the proposed loan to the Plan by Aon Consulting, Inc. (Aon Consulting), in connection with certain excess

[4] The Department expresses no opinion as to whether the Loan satisfied the conditions of class exemption PTE 80–26.

distributions (the Overpayments) that Aon Consulting inadvertently caused to be made under the Plan, and (2) the potential repayment of the loan by the Plan to Aon Consulting.

This proposed exemption is subject to the following conditions:

(1) The Plan pays no interest nor incurs any other expense relating to the loan;

(2) The loan amount covers the Overpayments, plus lost opportunity costs attributable to the Overpayments;

(3) Any repayment of the loan is restricted solely to the amount, if any, recovered by the Plan with respect to the Overpayments in litigation or otherwise; and

(4) A qualified, independent fiduciary for the Plan has reviewed the terms and conditions of the loan on behalf of the Plan and determined that such terms and conditions are in the best interests of and appropriate for the Plan.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan sponsored by Roquette America, Inc. (the Employer). The Employer, a Delaware corporation, is engaged in the production of corn sweeteners for use in foods. As of December 29, 1995, the Plan had total assets of approximately $14,203,379.29. As of July 18, 1996, the Plan had approximately 334 participants and beneficiaries. The trustee of the Plan is the Northern Trust Company (Northern Trust).

2. Aon Consulting, a Pennsylvania corporation, performs actuarial and recordkeeping services for the Plan and other services for the Employer. In 1994, Aon Consulting actuaries miscalculated the value of the accrued benefits of two Plan participants (the Participants), both former officers of the Employer, and, as a consequence, caused the Plan to overpay the Participants upon the termination of their employment. One Participant's lump sum payment was calculated at $412,719.32 instead of $238,843.17 (overstated by $173,876.15). The other Participant's lump sum payment was calculated at $222,722.31 instead of $127,419.26 (overstated by $95,303.05). The applicant represents that the Plan's benefit formula was one of extraordinary complexity and that the errors were not noticed before the inflated benefit payments were made to the Participants on March 18, 1994.

Aon Consulting discovered the errors in May, 1994, and reported them to Northern Trust in June, 1994. In August, 1994, the Employer informed each of the Participants of the errors by registered mail and requested immediate return of the Overpayments. Separately, each Participant has refused.

Repeated subsequent requests, both in writing and by telephone, for return of the Overpayments have yielded no result.

3. Aon Consulting proposes to make the Plan whole by making an interest-free loan to the Plan for $269,179, the amount of the Overpayments, plus lost opportunity costs attributable to the Overpayments. Among other reasons, because the loan is to be secured by the possible recovery of the Overpayments by the Plan, the loan is outside the scope of relief provided by Prohibited Transaction Class Exemption 80–26 (PTCE 80–26, 45 FR 28545, April 29, 1980).[5]

The loan amount will include an additional $50,640 to make up for the Plan's lost opportunity costs for the period from March 18, 1994, the date of occurrence of the Overpayments, to December 31, 1995, for a subtotal of $319,819.[6] The loan amount will also include an amount yet to be determined to provide the Plan with a rate of investment return on the $319,819, for the period from January 1, 1996 to the effective date of this exemption.[7] The loan will be evidenced by a promissory note and the loan proceeds paid to the Plan within 30 days of publication in the **Federal Register** of the notice of the grant of this exemption.

The loan will be repaid only to the extent of any amount recovered by the Plan with respect to the Overpayments. Northern Trust will continue to cooperate with Aon Consulting in pursuing recovery of the Overpayments, including, if necessary, the commencement of litigation against the Participants and their respective heirs, estates, executors, administrators, or other personal representatives, in the name of the Plan. Aon Consulting will fund all activities relating to recovery of the Overpayments. In consideration for the loan, the Employer, Northern Trust, and the Plan will release Aon Consulting from any further claims that they may have arising from the Overpayments. The costs of this exemption application will be borne by Aon Consulting.

5. The interests of the Plan with respect to the loan are represented by Northern Trust, acting as an independent fiduciary for the Plan. In a letter from Richard W. Long, Trust Officer, dated March 17, 1997, Northern Trust represents that it is unrelated to and independent of both Aon Consulting and the Employer. Northern Trust further represents that it has extensive experience as a fiduciary under the Act, that it is knowledgeable as to the subject transactions, and that it has reviewed the terms and conditions of the loan on behalf of the Plan and determined that such terms and conditions are in the best interests of and appropriate for the Plan. Specifically, Northern Trust notes that the Plan is guaranteed to be made whole by Aon Consulting by virtue of the interest-free loan (which covers the full amount of the Overpayments, plus interest), and is thus able to avoid the legal costs and uncertainties associated with recouping the Overpayments through alternate means. The potential repayment obligation on the part of the Plan serves the legitimate purpose of preventing a ''double recovery'' by the Plan.

6. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The Plan will pay no interest nor incur any other expense relating to the loan; (2) the loan will enable the Plan to immediately recover the amount of the Overpayments, including appropriate interest; (3) any repayment of the loan will be restricted solely to the amount, if any, recovered by the Plan with respect to the Overpayments in litigation or otherwise; and (4) Northern Trust, acting as an independent fiduciary for the Plan, has reviewed the terms and conditions of the loan on behalf of the Plan and determined that such terms and conditions are in the best interests of and appropriate for the Plan.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons, and all employee organizations in which any Plan participant is a member, by mail or by posting in the Employer's offices within 30 days of the date of publication of this notice of pendency in the **Federal Register**. Such notice shall include a copy of this notice of

[5] PTCE 80–26 provides an exemption, under certain conditions, from section 406(a)(1) (B) and (D) and section 406(b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (B) and (D) of the Code, for interest-free loans by a party in interest or disqualified person to an employee benefit plan.

[6] The Department notes the applicant's representation that the figure of $50,640 is based upon an assumed 18.8% return, which was the Plan's actual investment experience for the period from March 18, 1994 to December 31, 1995.

[7] The Department notes the applicant's representation that the Plan's lost opportunity costs for the period from January 1, 1996 to the effective date of this exemption will be calculated based upon an assumed rate of return which is equal to the Plan's actual investment experience for that period.

pendency as published in the **Federal Register** and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 60 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Norwest Investment Services, Inc. (NISI), Located in Minneapolis, Minnesota

[Application No. D–10430]

Proposed Exemption

I. Transactions

A. Effective February 12, 1997, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[8]

B. Effective February 12, 1997, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[9] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective February 12, 1997, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[10]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective February 12, 1997, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's

[8] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2), and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[9] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[10] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch Investors Service, L.P. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) above for which NISI or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *guaranteed governmental mortgage pool certificates,* as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);[11]

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) NISI;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with NISI; or

(3) any member of an underwriting syndicate or selling group of which NISI or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust

[11] It is the Department's view that the definition of ''trust'' contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *NISI* means Norwest Investment Services, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

Summary of Facts and Representations

1. NISI is the wholly-owned, separately capitalized investment banking subsidiary of Norwest Corporation (Norwest), a diversified financial services company which was incorporated in Delaware and registered under the Bank Holding Company Act of 1956, as amended. On September 30, 1996 Norwest's consolidated assets were approximately $78 billion. The principal executive offices of Norwest are located in Minneapolis, Minnesota. As of September 30, 1996, Norwest had subsidiary banks located in 16 states. In addition, non-bank subsidiaries of Norwest offer insurance, securities brokerage services, investment banking and venture capital investment, and mortgage banking and consumer finance.

Norwest Mortgage, Inc., an indirect wholly-owned subsidiary of Norwest headquartered in Des Moines, Iowa, is one of the largest mortgage banking originators in the United States, with offices in all 50 states. Norwest Financial Services, Inc. (NFI) and its subsidiaries engage in consumer finance activities in each of the 50 states, the Caribbean and Central America and Canada. NFI is also an indirect wholly-owned subsidiary of Norwest. Subsidiaries of NFI also engage in data processing activities for other consumer finance companies.

Norwest Bank Minnesota, N.A. (the Bank), a separate wholly-owned subsidiary of Norwest, is engaged in banking and related activities and is the largest bank in the banking group. At September 30, 1996, the Bank had total assets of $17.1 billion. The principal executive offices of the Bank are located in Minneapolis, Minnesota. The banking group also includes ten other commercial banks and one federal savings bank, located in 10 states, exceeded $2 billion dollars in total assets as of September 30, 1996.

NISI was incorporated in 1984. It maintains its principal place of business in Minneapolis, Minnesota, and has branches in Arizona, Colorado, Iowa, Illinois, Indiana, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Texas, Washington, Wisconsin and Wyoming, as well as the Twin Cities Metropolitan Area.

NISI is a member of the National Association of Securities Dealers and a primary dealer in U.S. Treasury securities. NISI underwrites and deals in corporate debt securities, municipal securities, high-yield securities and asset-backed securities, provides private placement and corporate finance advisory services, including merger and acquisition advisory services, publishes research on a wide range of securities and issuers, and engages in syndication, arranging and trading of bank loans.

NISI has experience in asset securitizations. NISI's participation in securitization transactions includes the underwriting of public offerings and serving as private placement agent or commercial paper conduit agent/dealer for transactions backed by retail auto receivables and bank and retail credit cards receivables.

NISI represents that in 1989 it received Federal Reserve Board authorization to underwrite and deal in commercial paper, municipal revenue bonds, residential mortgage-related securities and consumer receivable-related securities. This order is currently subject to the condition that NISI does not derive more than 10% of its total gross revenues from such activities. In addition, NISI's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

Trust Assets

2. NISI seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [12] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts. [13]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[14]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[15]

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. NISI, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by NISI on a firm commitment basis. In addition, NISI anticipates that it may privately place certificates on both a firm commitment and an agency basis. NISI may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer

[12] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. NISI requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, NISI has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[13] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[14] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[15] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. NISI requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[16]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[17]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to NISI, the trust sponsor or the servicer. NISI represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer

[16] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[17] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to NISI. In other cases, however, affiliates of NISI may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[18] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a

[18] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point.

Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) Out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by NISI in connection with the offering of any certificates, but NISI may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and NISI may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is NISI's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. NISI anticipates that it will make a market in certificates, although it will have no obligation to do so.

Retroactive Relief

26. NISI represents that it has not assumed that retroactive relief would be granted prior to the date of its application, and therefore has not engaged in transactions related to mortgage-backed and asset-backed securities based on such an assumption. However, NISI requests the exemptive relief granted to be retroactive to February 12, 1997, the date of its application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which NISI seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) NISI anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[19]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

NISI represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[20] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[21] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, NISI represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. NISI represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, NISI represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing

[19] In referring to different ''types'' of asset-NISIcked securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[20] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which NISI or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[21] The applicant represents that where a trust sponsor is an affiliate of NISI, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if NISI is not a fiduciary with respect to plan assets to be invested in certificates.

must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 14th day of April, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–9974 Filed 4–16–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–16]

United States Trust Company of New York and Affiliated Companies (US Trust)

AGENCY: Department of Labor.

ACTION: Notice of Technical Correction.

On March 5, 1997, the Department of Labor (the Department) published in the **Federal Register** (62 FR 10080) an individual exemption which permits: (1) Effective as of May 31, 1996, the in-kind transfer to any diversified open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 to which US Trust serves as investment adviser and may provide other services (i.e. ''Secondary Services'' as defined in therein), of the assets of various employee benefit plans (the Plans) that are either held in certain collective investment funds (CIFs) maintained by US Trust or otherwise held by US Trust as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds; and (2) effective as of June 30, 1996, the receipt of fees by US Trust from the Funds for acting as the investment adviser for the Funds as well as for acting as the custodian, transfer agent, sub-administrator or for providing other ''Secondary Services'' to the Funds in connection with the investment in the Funds by Plans for which US Trust acts as a fiduciary, other than Plans established and maintained by US Trust for the benefit of its employees and their beneficiaries.

In the March 5th **Federal Register** publication, there was an error in the numerical sequence of the exemptions published on that date. In this regard, the subject exemption was erroneously designated as ''* * * Prohibited Transaction Exemption 97–17'', rather than Prohibited Transaction Exemption 97–16 as intended by the Department.

Therefore, the Department hereby corrects such error by designating the exemption as Prohibited Transaction Exemption 97–16.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams, of the Department, at (202) 219–8194.

Signed at Washington, DC, this 14th day of April, 1997.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 97–9976 Filed 4–16–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

TIME, DATE, AND PLACE:

- NCLIS Meeting 7 May 1997, 10:00 a.m.–5:00 p.m. 1110 Vermont Avenue, NW., Suite 810, Washington, DC.
- Joint NCLIS Meeting with National Museum Services Board 8 May 1997, 9:00 a.m.–4:00 p.m. Old Post Office Building, Room M–09, 1100 Pennsylvania Avenue, NW., Washington, DC.
- NCLIS Meeting 9 May 1997, 9:00 a.m.–1:30 p.m. 1110 Vermont Avenue, NW., Suite 810, Washington, DC.

MATTERS TO BE DISCUSSED ON 7 MAY AND 9 MAY 1997:

- Reports from NCLIS Commissioners on meetings of library, information or other related groups.
- Annual ethics training.
- Update on NCLIS project to assess standards for the creation, dissemination, and permanent accessibility of electronic government information products.
- Update on NCLIS/ALA 1997 survey of public libraries and the Internet.
- Library Services and Technology Act (LSTA): Review of LSTA transition to the Institute of Museum and Library Services (IMLS), discussion of draft regulations for National Leadership Grants and Contracts, NCLIS process for advising IMLS, LSTA coordination with other federal programs.
- NCLIS programs, plans, and actions—FY 1997–98.
- White House Conference on Library and Information Services Taskforce (WHCLIST).
- Library Statistics Program.
- Other matters.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: 15 April 1997.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 97–10139 Filed 4–15–97; 2:58 pm]

BILLING CODE 7527–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that agency business requires the deletion of the following items from the previously announced open meeting (Federal Register, Vol. 62, No. 7, Page 18152, April 14, 1997) scheduled for Wednesday, April 16, 1997.

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Request from a Federal Credit Union to Expand its Community Charter.

The Board voted (2–to–1, Vice Chairman Bowné voted against) to delete these items from the open agenda. Agency business requires these changes and no earlier announcement of this was possible.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Request from a Federal Credit Union to Convert to a Community Charter.
3. Request from a Federal Credit Union to Expand its Community Charter.
4. Request from a Federal Credit Union to Convert to a Low-Income Community Charter.
5. Charter Application from a Proposed Community Federal Credit Union.
6. Request from a Federal Credit Union to Convert to a Mutual Savings Bank Charter.
7. NCUA Board Policy Statement on Special Actions.
8. Notice of Proposed Rulemaking: Amendments to Part 792, NCUA's Rules and Regulations, Production of Nonpublic Records and Testimony of NCUA Employees in Private Legal Proceedings.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–10061 Filed 4–15–97; 9:31 am]

BILLING CODE 7535–01–M

NATIONAL INSTITUTE FOR LITERACY

Proposed OMB Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before May 19, 1997.

ADDRESSES: All comments concerning these proposed activities should be addressed to Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington DC 20006. Comments may also be sent through the Internet to JSoroui@nifl.gov.

FOR FURTHER INFORMATION CONTACT: Jaleh Behroozi Soroui at (202) 632–1506, Fax at (202) 632–1512, or e-mail: JSoroui@nifl.gov

SUPPLEMENTARY INFORMATION:

Title: NIFL Regional Technology HUB Project.

Abstract: The National Literacy Act of 1991 established the National Institute for Literacy and required that the NIFL conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by organizations to apply for funding to expand LINCS regional hubs activities, resources, and services that will enhance technological capacity for electronic exchange across the literacy community. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a minimum of one cooperative agreement award for a period of up to 3 years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Statewide Adult Basic Education and Literacy Organizations, Regions II, III and IV.

Estimated Number of Respondents: 15.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 210 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to: Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200, Washington, DC 20006.

Request for Comments

NIFL solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Dated: April 11, 1997.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 97–9909 Filed 4–16–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Proposed Collection: Comment Request

Title of Proposed Collection: National Science Foundation Applicant Survey.

The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this proposed renewal. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB grant renewal of this survey for no longer than 3 years.

To request more information on the proposed project that is described below or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1125 x2010 or email at gmchenry@nsf.gov.

Comments are invited on (a) whether the proposed collection of information

is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Renewal Project: The current National Science Foundation Applicant Survey has been in use for 3 years. Data were collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

*Burden on the public: T*he Foundation estimates about 5,000 responses annually at 3 minutes per response; this computes to approximately 250 hours annually.

Please send comments to Gail A. McHenry, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 245, Arlington, Virginia 22230 or send email to gmchenry@nsf.gov. Written comments should be received within 60 days of the date of this notice.

Dated: April 11, 1997.

Gail A. McHenry,

Reports Clearance Officer.

[FR Doc. 97–9899 Filed 4–16–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Request for Comments; Notice of Public Hearing

The National Skill Standards Board (NSSB) announces a public hearing to stimulate public dialogue on key issues relevant to the decision-making of the NSSB, and notifies the public of the date, location, and time of the hearing. This public hearing will solicit the public's views on the NSSB's proposed criteria necessary to receive NSSB recognition as a Voluntary Partnership, the entity that will develop skill standards systems in accordance with the 1994 National Skill Standards Act. The NSSB's proposed criteria cover: roles and governance of a Voluntary Partnership' voting leadership; and diversity requirements.

DATE AND ADDRESS:

Hearing Date and Address

Monday, May 12, 1997, Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, N.W., Washington, DC 20001, (202) 737–1234.

Comment Date for Public Hearing

Comments and notices of intent to present oral statements at the hearing must be received 5 business days before the hearing by the NSSB Public Hearing Coordinator at the address below.

Written comments may be submitted through the hearing date, May 12, to the National Skill Standards Board office. The requirements for the comments are set forth in the ''Additional Information'' section below.

TO SUBMIT WRITTEN TESTIMONY OR FOR FURTHER INFORMATION CONTACT: NSSB Public Hearing Coordinator, National Skill Standards Board, 1441 L Street, NW, Suite 9000, Washington, DC 20005–3512, (202)–254–8628 (voice) (202)–254–8646 (fax).

ADDITIONAL INFORMATION:

Form of Public Comment

The hearing will begin at 9:00 a.m. and adjourn at 3:00 p.m. To assist the NSSB in scheduling speakers, the written notice of intent to present oral comments should include the following information: 1) the name, address, and telephone number of each person to appear; 2) title and affiliation; and 3) the specific questions, issues or concerns that will be addressed.

Individuals who do not register in advance will be permitted to register and speak, if time permits, in order of registration. Speakers should limit their oral remarks to no more than 10 minutes. Although it is anticipated that all persons desiring to speak will have an opportunity to do so, time limits may not allow this to occur. However, all written statements will be accepted and incorporated into the public record. The proceedings will be audit-taped and transcribed.

Meeting Procedure

Members of the National Skill Standards Board will comprise the hearing panel. A designated member of the NSSB will preside at the hearing. The Presiding Board Member will:

(1) Regulate the course of the meeting, including the order of appearance of persons presenting oral statements;

(2) Dispose of procedural matters; and

(3) Limit the presentations to matters pertinent to the issues raised in this notice.

Background: National Skill Standards Board

The National Skill Standards Board was created by The National Skill Standards Act of 1994 (108 Stat 192,20 U.S.C. 5933), signed into law by President Clinton on March 31, 1994. The Board's purpose as stated in the Act is ''to serve as a catalyst in stimulating the development and adoption of a voluntary national system of skill standards and of assessment and certification of attainment of skill standards: (1) that will serve as a cornerstone of the national strategy to enhance workforce skills; (2) that will result in increased productivity, economic growth, and American economic competitiveness; and (3) that can be used consistent with civil rights laws'' by the stakeholders enumerated in the Act: the nation, industries, employers, labor organizations, workers, students, entry-level workers, training providers, educators and government.

This hearing is one in a series of activities conducted by the NSSB to engage in extensive public consultation as it deliberates the creation of a national voluntary skill standards system. At prior public hearings held in 1996 at numerous locations throughout the country, the Board gathered input from employers, professional associations, trade associations, unions, educators, parents, community organizations, state government agencies, and others. Their views provided a framework for the Board's development of a voluntary system of skill standards. The National Skill Standards Board will continue to develop its policies and approaches by sharing its preliminary thinking with the public before the Board's final adoption of policies.

The Board also published in the December 19, 1996 **Federal Register** its Proposal to Establish a Voluntary National Skill Standard System and requested comments from the public. The Proposal described the grouping of jobs for the purpose of creating skill standards, as required by the National Skill Standards Act, and the framework to guide the establishment of a skill standards system.

Background: Voluntary Partnerships

To create these skill standards, the enabling legislation charges the NSSB with the encouragement of the establishment of voluntary Partnerships within each cluster. These Voluntary Partnerships will establish the

standards, subject to NSSB approval, for basic skill certificates. They will also review and endorse the standards for specialty certificates established for more narrowly defined occupations within the occupational cluster by groups other than the voluntary Partnership.

The enabling legislation requires representation of all key stakeholders groups as described herein:

Excerpted from the National Skill Standards Act of 1994

Establishment of Voluntary Partnerships to Develop Standards.—

(1) In General—For each of the occupational clusters identified pursuant to subsection (a), the National Board shall encourage and facilitate the establishment of voluntary partnerships to develop a skill standards system in accordance with subsection (d).

(2) Representatives—Such voluntary partnerships shall include the full and balanced participation of—

(A)(i) representatives of business (including representatives of large employers and representatives of small employers) who have expertise in the area of workforce skill requirements, and who are recommended by national business organizations or trade associations representing employers in the occupation or industry for which a standard is being developed; and

(ii) representatives of trade associations that have received grants from the Department of Labor or the Department of Education to establish skill standards prior to the date of enactment of this title;

(B) employee representatives who have expertise in the area of workforce skill requirements and who shall be—

(i) individuals recommended by recognized national labor organizations representing employees in the occupation or industry for which a standard is being developed; and

(ii) such other individuals who are nonmanagerial employees with significant experience and tenure in such occupation or industry as are appropriate given the nature and structure of employment in the occupation or industry;

(C) representatives of—

(i) educational institutions;

(ii) community-based organizations;

(iii) State and local agencies with administrative control or direction over education, vocational-technical education, or employment and training;

(iv) other policy development organizations with expertise in the area of workforce skill requirements; and

(v) non-governmental organizations with a demonstrated history of successfully protecting the rights of racial, ethnic, or religious minorities, women, individuals with disabilities, or older persons; and

(D) individuals with expertise in measurement and assessment, including relevant experience in designing unbiased assessments and performance-based assessments.

(3) Experts—The partnerships described in paragraph (1) may also include such other individuals who are independent, qualified experts in their fields.

The NSSB Proposed Criteria in Addition to Statutory Criteria Necessary for Recognition as a Voluntary Partnership

The NSSB proposes that there will be two levels of participation in the Voluntary Partnerships; (1) general membership; and (2) voting membership.

General membership will be open to all individuals interested in participating in the discussion and receiving communications about the development of a voluntary skill standards system for the cluster. Representatives from the trade associations that have received grants from the Department of Labor or the Department of Education to establish skill standards prior to the date of enactment of the National Skill Standards Act of 1994 are specifically invited to participate at this level, and may participate in the voting membership as well.

Voting membership will be determined by the general membership through a democratic process. The voting membership will make decisions regarding the cluster's skill standards systems. The voting leadership must reflect, to the extent possible, the criteria defined below.

The NSSB mission statement indicates that ''voluntary skill standards will be developed by industry in full partnership with education, labor and community stakeholders.'' The NSSB expects that, in keeping with its mission statement, the Voluntary Partnerships will demonstrate employer leadership, but will make every effort to include equal numbers from each of the following three broadly defined groups of stakeholders in the voting leadership:

(1) Employer representatives from large, medium, small companies, public and private employers, and trade associations.

(2) Worker representatives from recognized national labor organizations and expert workers who are representatives of employee associations.

(3) Community representatives from education and training institutions, community-based organizations, relevant state and local agencies, other policy development organizations with expertise in the area of workforce skill requirements, individuals with expertise in measurement and assessment, and non-governmental organizations with a demonstrated history of successfully protecting the rights of women, individuals with disabilities, older persons, and racial, ethnic or religious minorities.

Specific representation from community members and institutions will be determined as is logical for the cluster, e.g. if training is primarily delivered in community and career colleges, then representation should include individuals from that community.

The voting members of the Voluntary Partnerships shall also, to the extent feasible, be geographically representative of the United States and reflect the racial, ethnic, and gender diversity of the United States.

A copy of the authorizing legislation will be available at the hearing. Interested parties may access a copy on the National Skill Standards Board web site, www.nssb.org or call (202) 254–8628 to request a copy.

Signed at Washington, DC, this 14th day of April, 1997.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 97–9973 Filed 4–16–97; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Reports: Implementation of Section 208 Energy Reorganization Act of 1974; Revision to Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Revise policy statement.

SUMMARY: This policy statement presents the revised criteria the Commission will use in submitting the annual abnormal occurrence (AO) reports to Congress and the public in a timely manner as stated in Section 208 of the Energy Reorganization Act of 1974, as amended. The AO policy statement incorporates minor changes to implement the Commission's direction to develop conforming changes as necessary and revise criteria III., ''For Fuel Cycle Licensees,'' to include facilities that are not licensed but are

otherwise regulated and will receive NRC certification such as gaseous diffusion plants. The revision clarifies the AO criteria for all fuel facilities including gaseous diffusion plants. Such revision provides criteria which are more specific for fuel facilities in determining those incidents and events that the Commission considers significant from the standpoint of public health and safety for reporting to Congress.

EFFECTIVE DATE: April 17, 1997.

ADDRESSES: The final policy statement published in the **Federal Register** (December 19, 1996; 61 FR 67072) may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harriet Karagiannis, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–6377, internet: hxk@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. The Commission Policy

I. Background

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93–438, 42 U.S.C. 5848), as amended, required the Commission to submit to Congress each quarter a report listing for that period any AOs at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or pursuant to this Act. In a letter to the Senate Subcommittee on Oversight of Government Management, dated October 1, 1993, the NRC recommended to Congress a change in the AO report publication frequency from quarterly to yearly. As a result, Senate 790, ''Reports Elimination Act,'' Public Law 104–66, was signed by President Clinton on December 21, 1995, changing the AO report to a yearly publication.

For the purposes of Section 208 of the Energy Reorganization Act of 1974, as amended, an AO is an unscheduled incident or event which the Commission has determined to be significant from the standpoint of public health and safety. Each such report shall contain:

(1) The date and place of each occurrence;

(2) The nature and probable consequence of each occurrence;

(3) The cause or causes of each occurrence; and

(4) Any action taken to prevent recurrence.

The Commission also shall provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within 15 days of its receiving information of each AO and shall provide as wide dissemination to the public as reasonably possible of the information specified in clauses (3) and (4) as soon as such information becomes available.

In July 1975, in the exercise of the authority conferred upon the Commission by Congress to determine which unscheduled incidents or events are significant from the standpoint of public health and safety and are reportable to Congress as AOs, the Commission developed interim criteria for evaluating licensee incidents or events. On the basis of these interim criteria and as required by Section 208 of the Energy Reorganization Act of 1974, as amended, the Commission began issuing quarterly reports to Congress on AOs. These reports,[1] ''Report to Congress on Abnormal Occurrences,'' have been issued in NUREG–75/090 and NUREG–0090–1 through 5 for the period from January 1975 through September 1976. On the basis of its experience in the preparation and issuance of AO reports, the Commission issued a general statement of policy that described the manner in which it would, as part of the routine conduct of its business, carry out its responsibilities under Section 208 of the Energy Reorganization Act of 1974, as amended, for identifying AOs and making the requisite information concerning each occurrence available to Congress and the public in a timely manner. This general statement of policy was published in the **Federal Register** on February 24, 1977 (42 FR 10950) and provided criteria and examples of types of events that the Commission would use in determining whether a particular event is reportable to Congress as an AO. The Commission has since refined this statement of policy on a number of occasions to reflect changes in regulation and policy. On the basis of these criteria, and as required by Section 208 of the Energy Reorganization Act of 1974, as amended, the Commission has issued quarterly reports to Congress on AOs since March 1977. These reports, ''Report to Congress on Abnormal Occurrences,'' have been issued in NUREG–0090–6 through 10 and NUREG–0090, Volumes 1 through 18.

The Commission published a further revision to the AO policy statement and criteria in the **Federal Register** on December 19, 1996 (61 FR 67072) to reflect changes in the Commission's policy and changes to the regulations. In the Staff Requirements Memorandum dated November 7, 1996, SECY–96–193, approving this most recent revision to the AO criteria the Commission directed the NRC staff to determine whether modifications to criteria III., ''For Fuel Cycle Licensees,'' were necessary to explicitly include fuel cycle facilities that are not licensed but are otherwise regulated by NRC such as the gaseous diffusion plants. The NRC staff evaluated the criteria applicable to fuel cycle facilities and has revised the criteria as follows:

A. AO criteria published December 19, 1996:

III. For Fuel Cycle Licensees.

1. A required plant shutdown as a result of violating a license condition or other safety limit.

2. A major condition not specifically considered in the license that requires immediate remedial action.

3. An event that seriously compromises the ability of a confinement system to perform its designated function.

B. Revised AO criteria to include gaseous diffusion plants:

IV. For Fuel Cycle Facilities.

1. A shutdown of the plant or portion of the plant resulting from a significant event and/or violation of a law, regulation, or a license/certificate condition.

2. A major condition or significant event not considered in the license/certificate that requires immediate remedial action.

3. A major condition or significant event that seriously compromises the ability of a safety system to perform its designated function that requires immediate remedial action to prevent a criticality, radiological or chemical process hazard.

It is expected that as additional experience is gained, further changes in the criteria may be required.

Abnormal Occurrence Reporting

The AO statement of policy has been developed to comply with the legislative intent of Section 208 of the Energy Reorganization Act of 1974, as amended, to keep Congress and the public informed of unscheduled incidents or events which the Commission considers significant from the standpoint of public health and safety. The policy reflects a range of

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, (P.O. BOX 37082), Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20037.

health and safety concerns and is applicable to incidents and events involving a single occupational worker as well as those having an overall impact on the general public.

The policy statement contains criteria that include the reporting thresholds for determining those incidents and events that are reportable by NRC for the purposes of Section 208 of the Energy Reorganization Act of 1974, as amended. The Commission has established the reporting thresholds at a level that will ensure that all events that should be considered for reporting to Congress will be identified. At the same time, the thresholds are generally above the normal level of reporting to NRC to exclude those events that involve some variance from regulatory limits, but are not significant from the standpoint of public health and safety.

Licensee Reports

This general statement of policy will not change the reporting requirements imposed on NRC licensees by Commission regulations, license conditions, or technical specifications (TS). NRC licensees will continue to submit required reports on a wide spectrum of events, including events such as instrument malfunctions and deviations from normal operating procedures that are not significant from the standpoint of the public health and safety, but do provide data useful to the Commission in monitoring operating trends of licensed facilities and in comparing the actual performance of these facilities with the potential performance for which the facilities were designed and/or licensed. Information pertaining to all events reported to the NRC will continue to be made available and placed in the public document rooms for public perusal. In addition, the NRC publishes annual reports on events (NUREG–1272 series). Information can also be obtained by writing to the U.S. Nuclear Regulatory Commission, Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC 20555–0001. In addition, the Commission will continue to issue news announcements on events that seem to be newsworthy whether or not they are reported as AOs.

II. The Commission Policy—General Statement of Policy on Implementation of Section 208 of the Energy Reorganization Act of 1974, as Amended

1. *Applicability.* Implementation of Section 208 of the Energy Reorganization Act of 1974, as amended, Abnormal Occurrence Reports, involves the conduct of Commission business and does not impose requirements on licensees [2] or certified facilities. Reports will cover certain unscheduled incidents or events related to the manufacture, construction, or operation of a facility or conduct of an activity subject to the requirements of Parts 20, 30 through 36, 39, 40, 50, 61, 70, 71, or 72 of Chapter I, Title 10, *Code of Federal Regulations* (10 CFR).

Through an exchange of information, Agreement States provide information to the NRC on incidents and events involving applicable nuclear materials that have occurred in their States. Those events reported by Agreement States that reach the threshold for reporting as an AO are also published in the ''Report to Congress on Abnormal Occurrences.''

2. *Definition of terms.* As used in this policy statement:

(a) An ''abnormal occurrence'' means an unscheduled incident or event at a facility or associated with an activity that is licensed or otherwise regulated, pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, that the Commission determines to be significant from the standpoint of public health and safety; and

(b) An ''unintended radiation exposure'' includes any occupational exposure, exposure to the general public, or exposure as a result of a medical misadministration (as defined in § 35.2) involving the wrong individual that exceeds the reporting values established in the regulations.

All other reported medical misadministrations will be considered for reporting as an AO under the criteria for medical licensees. In addition, unintended radiation exposures include any exposure to a nursing child, fetus, or embryo as a result of an exposure (other than an occupational exposure to an undeclared pregnant woman) to a nursing mother or pregnant woman above specified values.

3. *Abnormal occurrence general statement of policy.* The Commission will apply the following policy in determining whether an incident or event at a facility or involving an activity that is licensed or otherwise regulated by the Commission is an AO within the purview of Section 208 of the Energy Reorganization Act of 1974, as amended.

An incident or event will be considered an AO if it involves a major reduction in the degree of protection of the public health or safety. This type of incident or event would have a moderate or more severe impact on the public health or safety and could include, but need not be limited to the following:

(1) Moderate exposure to, or release of, radioactive material licensed by or otherwise regulated by the Commission;

(2) Major degradation of essential safety-related equipment; or

(3) Major deficiencies in design, construction, use of, or management controls for facilities or radioactive material licensed by or otherwise regulated by the Commission.

Criteria by type of event used to determine which incidents or events will be considered for reporting as AOs are set out in Appendix A of this policy statement.

4. *Commission dissemination of AO information.*

(a) The Commission will provide as wide a dissemination of information to the public as reasonably possible. Information on potential AOs (events that may meet the AO criteria) will be sent to the NRC Public Document Room and all local public document rooms as soon as possible after the staff determines that the incident is a potential AO. A **Federal Register** notice will be issued on each AO report with copies distributed to the NRC Public Document Room and all local public document rooms. When additional information is anticipated, the notice will state that the information can be obtained at the NRC Public Document Room and in all local public document rooms.

(b) Each year, the Commission will submit a report to Congress listing for that period any AOs at or associated with any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. This report will contain the date, place, nature, and probable consequence of each AO, the cause or causes of each AO, and any action taken to prevent recurrence.

Appendix A—Abnormal Occurrence Criteria

Criteria by types of events used to determine which incidents or events will be considered for reporting as AOs are as follows:

[2] In addition to the criteria listed in Appendix A, section III, ''For Fuel Cycle Facilities,'' which are applicable to licensees and certificate holders, such as the gaseous diffusion plants (GDPs), other criteria of the policy statement which reference ''licensees'' or ''licensed facility'' or ''licensed material'' may also be applied to events at certified facilities such as the GDPs.

I. For All Licensees

A. Human Exposure to Radiation From Licensed Material

1. Any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent (external dose) and committed dose equivalent (intake of radioactive material) to any individual organ or tissue other than the lens of the eye, bone marrow and the gonads, of 2500 mSv (250 rem) or more; or an annual dose equivalent to the lens of the eye, of 1 Sv (100 rem) or more; or an annual sum of the deep dose equivalent and committed dose equivalent to the bone marrow, and the gonads, of 1 Sv (100 rem) or more; or an annual shallow-dose equivalent to the skin or extremities of 2500 mSv (250 rem) or more.

2. Any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual TEDE of 50 mSv (5 rem) or more, or to an embryo/fetus resulting in a dose equivalent of 50 mSv (5 rem) or more.

3. Any radiation exposure that has resulted in unintended permanent functional damage to an organ or a physiological system as determined by a physician.

B. Discharge or Dispersal of Radioactive Material From Its Intended Place of Confinement

1. The release of radioactive material to an unrestricted area in concentrations which, if averaged over a period of 24 hours, exceed 5000 times the values specified in Table 2 of Appendix B to 10 CFR Part 20, unless the licensee has demonstrated compliance with § 20.1301 using §§ 20.1302 (b) (1) or 20.1302 (b) (2) (ii).

2. Radiation levels in excess of the design values for a package, or the loss of confinement of radioactive material resulting in one or more of the following: (a) a radiation dose rate of 10 mSv (1 rem) per hour or more at 1 meter (3.28 feet) from the accessible external surface of a package containing radioactive material; (b) a radiation dose rate of 50 mSv (5 rem) per hour or more on the accessible external surface of a package containing radioactive material and that meet the requirements for ''exclusive use'' as defined in 10 CFR 71.47; or (c) release of radioactive material from a package in amounts greater than the regulatory limits in 10 CFR 71.51(a)(2).

C. Theft, Diversion, or Loss of Licensed Material, or Sabotage or Security Breach [3]

1. Any lost, stolen, or abandoned sources that exceed 0.01 times the A_1 values, as listed in 10 CFR Part 71, Appendix A, Table A–1, for special form (sealed/nondispersible) sources, or the smaller of the A_2 or 0.01 times the A_1 values, as listed in Table A–1, for normal form (unsealed/dispersible) sources or for sources for which the form is not known. Excluded from reporting under this criterion are those events involving sources that are lost, stolen, or abandoned under the following conditions: sources abandoned in accordance with the requirements of 10 CFR 39.77(c); sealed sources contained in labeled, rugged source housings; recovered sources with sufficient indication that doses in excess of the reporting thresholds specified in AO criteria I.A.1 and I.A.2 did not occur during the time the source was missing; and unrecoverable sources lost under such conditions that doses in excess of the reporting thresholds specified in AO criteria I.A.1 and I.A.2 were not known to have occurred.

2. A substantiated case of actual or attempted theft or diversion of licensed material or sabotage of a facility.

3. Any substantiated loss of special nuclear material or any substantiated inventory discrepancy that is judged to be significant relative to normally expected performance, and that is judged to be caused by theft or diversion or by substantial breakdown of the accountability system.

4. Any substantial breakdown of physical security or material control (i.e., access control containment or accountability systems) that significantly weakened the protection against theft, diversion, or sabotage.

D. Other Events (i.e., Those Concerning Design, Analysis, Construction, Testing, Operation, Use, or Disposal of Licensed Facilities or Regulated Materials)

1. An accidental criticality [10 CFR 70.52(a)].

2. A major deficiency in design, construction, control, or operation having significant safety implications requiring immediate remedial action.

3. A serious deficiency in management or procedural controls in major areas.

4. Series of events (where individual events are not of major importance), recurring incidents, and incidents with implications for similar facilities (generic incidents) that create a major safety concern.

II. For Commercial Nuclear Power Plant Licensees

A. Malfunction of Facility, Structures, or Equipment

1. Exceeding a safety limit of license technical specification (TS) [§ 50.36(c)].

2. Serious degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary.

3. Loss of plant capability to perform essential safety functions so that a release of radioactive materials, which could result in exceeding the dose limits of 10 CFR Part 100 or 5 times the dose limits of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system).

B. Design or Safety Analysis Deficiency, Personnel Error, or Procedural or Administrative Inadequacy

1. Discovery of a major condition not specifically considered in the safety analysis report (SAR) or TS that requires immediate remedial action.

2. Personnel error or procedural deficiencies that result in loss of plant capability to perform essential safety functions so that a release of radioactive materials, which could result in exceeding the dose limits of 10 CFR Part 100 or 5 times the dose limits of 10 CFR Part 50, Appendix A, GDC 19, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system).

III. For Fuel Cycle Facilities

1. A shutdown of the plant or portion of the plant resulting from a significant event and/or violation of a law, regulation, or a license/certificate condition.

2. A major condition or significant event not considered in the license/certificate that requires immediate remedial action.

3. A major condition or significant event that seriously compromises the ability of a safety system to perform its designated function that requires immediate remedial action to prevent a criticality, radiological or chemical process hazard.

IV. For Medical Licensees

A medical misadministration that:

(a) Results in a dose that is (1) equal to or greater than 1 gray (Gy) (100 rads) to a major portion of the bone marrow, to the lens of the eye, or to the gonads, *or* (2) equal to or greater than 10 Gy (1000 rads) to any other organ; and

(b) Represents either (1) a dose or dosage that is at least 50 percent greater than that prescribed in a written directive *or* (2) a prescribed dose or dosage that (i) is the wrong radiopharmaceutical,[4] or (ii) is delivered by the wrong route of administration, or (iii) is delivered to the wrong treatment site, or (iv) is delivered by the wrong treatment mode, or (v) is from a leaking source(s).

V. Guidelines for ''Other Events of Interest''

The Commission may determine that events other than AOs may be of interest to Congress and the public and be included in an Appendix to the AO report as ''Other Events of Interest.'' Guidelines for events to be included in the AO report for this purpose are items that may possibly be perceived by the public to be of health or safety significance. Such items would not involve a major reduction in the level of protection provided for public health or safety; therefore, they would not be reported as abnormal occurrences. An example is an event where upon final evaluation by an NRC Incident Investigation Team, or an Agreement State equivalent response, a determination is made that the event does

[3] Information pertaining to certain incidents may be either classified or under consideration for classification because of national security implications. Classified information will be withheld when formally reporting these incidents in accordance with Section 208 of the Energy Reorganization Act of 1974, as amended. Any classified details regarding these incidents would be available to the Congress, upon request, under appropriate security arrangements.

[4] The wrong radiopharmaceutical as used in the AO criterion for medical misadministrations refers to any radiopharmaceutical other than the one listed in the written directive or in the clinical procedures manual.

not meet the criteria for an abnormal occurrence.

Dated at Rockville, Maryland, this 11th day of April, 1997.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 97–9912 Filed 4–16–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power & Light Company; Notice of Consideration of Issuance of Amendments 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–14 and NPF–22, issued to Pennsylvania Power & Light Company (PP&L) (the licensee) for operation of the Susquehanna Steam Electric Station Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would clarify the scope of the surveillance requirements for response time testing of instrumentation in the reactor protection system, isolation actuation system, and emergency core cooling system in the Technical Specifications (TSs) for each unit (Sections 4.3.1.3, 4.3.2.3, and 4.3.3.3).

PP&L's request for a license amendment for each unit under exigent circumstances resulted from its recent discovery that the wording of the TS surveillance was not reconciled with the initiative to eliminate selected response time testing from the TSs. Accordingly, the licensee determined that this condition was a TS noncompliance and that prompt action to correct this situation was necessary because failure to satisfy TS surveillance requirements for response time requires that the various instruments and systems be declared inoperable, resulting in the TS required entry into cold shutdown for Unit 1 (shutdown from 100% power) and the prevention of fuel movement and the imposition of additional restrictions for Unit 2 currently in a refueling outage. The staff finds that it would be more prudent to permit the licensee to rely upon the existing response time testing for Unit 1 in lieu of testing at power, and forcing an unnecessary plant challenge by shutting down this plant, and also in lieu of restricting refueling and other activities at Unit 2. Further the staff finds the above sufficient justification for the licensee's exigent request for the license amendments.

Before issuance of the proposed license amendments, 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change only reconciles the scope of response time testing described in the surveillance requirements with the elimination of selected response time testing, performed in accordance with the NRC-approved methodology delineated in the BWROG [Boiling Water Reactor Owners Group] Licensing Topical Report (LTR) NEDO–32291, 'System Analyses for Elimination of Selected Response Time Testing Requirements,' dated January 1994. Implementation of the LTR (i.e., elimination of response time testing for selected instrumentation in the Reactor Protection System, Isolation Actuation System and Emergency Core Cooling System) does not increase the probability or consequences of an accident or malfunction of equipment important to safety as previously evaluated in the FSAR.

All SSES component model numbers were analyzed for the failure mode of a sluggish response. As documented in the LTR, each component's sluggish response can be detected by other Technical Specification required tests (functional tests, calibrations and logic system functional tests). This supports the contention that the use of such ''qualitative'' testing does not affect the capability of the associated systems to perform their intended function within their required response time.

Based upon the analysis presented above, PP&L concludes that the proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The proposed change only reconciles the scope of response time testing described in the surveillance requirements with the elimination of selected response time testing, performed in accordance with the NRC-approved methodology delineated in the LTR.

Implementation of the LTR methodology for eliminating selected response time testing also does not create the probability of a new or different type of accident from any accident previously evaluated. A review of the failure modes of the affected plant equipment indicates that sluggish response of the instruments and relays can be detected by other Technical Specification surveillances. A review of SSES response time testing history revealed one response time test failure. This failure would have been detectable by the logic system functional test for this channel. Redundancy and diversity of the affected channels provide additional assurance that all affected functions will operate within the acceptance limits assumed in the plant safety analyses.

PP&L's adherence to the conditions listed in the NRC SER [Safety Evaluation Report] for the LTR provides additional assurance that sluggish response of instruments and relays will be detected by the other required Technical Specification tests. A review of various safety analyses performed as part of PP&L's 10 CFR 50.59 safety evaluation revealed that the five-second delay did not adversely affect the assumptions in the respective analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The change does not involve a significant reduction in the margin of safety. The proposed change only reconciles the scope of response time testing described in the surveillance requirements with the elimination of selected response time testing, performed in accordance with the NRC-approved methodology delineated in the LTR.

Implementation of the LTR methodology for eliminating selected response time testing also does not involve a significant reduction in the margin of safety. The current response times are based on the maximum allowable values assumed in the plant safety analyses. The analyses conservatively establish the margin of safety. As described above, the elimination of selected response time testing does not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. Plant and system response to an initiating

event will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected. This is based upon the sluggish response of an instrument or relay being detected by the other required Technical Specification tests, component reliability, and redundancy and diversity of the affected functions. A review of the five-second delay of each function confirms that margin exists in the design basis for the technician to detect a sluggish response within five seconds. PP&L's adherence to the conditions listed in the NRC SER for the LTR provides additional assurance that sluggish response of instruments and relays will be detected by the other required Technical Specification tests. As described above, a review of various safety analyses performed as part of PP&L's 10 CFR 50.59 safety evaluation revealed that the five-second delay did not adversely affect the assumptions in the respective analyses.

Thus, PP&L concludes that the proposed change does not involve a significant reduction in the 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 14 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 14-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 14-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 Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 19, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701. 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 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 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 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, 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 April 4, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Osterhout Free Library, Reference Department, 71 South Franklin street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 11th day of April 1997.

For the Nuclear Regulatory Commission.

Chester Poslusny,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9911 Filed 4–16–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Firms with Significant Pension Plan Underfunding

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget (''OMB'') extend the approval for a collection of information under the Paperwork Reduction Act. The information collection relates to the opportunity the PBGC gives companies maintaining single-employer pension plans with significant underfunding to correct data that the PBGC has on their plans' underfunding. The effect of this notice is to solicit public comment on this collection of information prior to the PBGC's request for an extension of approval.

DATES: Comments should be submitted to the PBGC by June 16, 1997.

ADDRESSES: All written comments should be addressed to: The Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K Street, NW., Washington, DC 20005. The comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m. Copies of the materials may be obtained free of charge by writing to the PBGC Communications and Public Affairs Department at the above address.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA'') (29 U.S.C. 1001 *et seq.*). To address concerns about the potential vulnerability of the single-employer insurance program to large claims, the PBGC needs current information on the funded status of plans with large amounts of underfunding. Information otherwise available to the PBGC is either not current enough (Form 5500 filings), not complete enough (PBGC Form 1 filings), or not public (filings under ERISA section 4010).

Since 1990, the PBGC has collected information on the companies whose underfunded plans present the largest potential claims against the PBGC by taking data from public corporate annual reports and the PBGC premium filings and adjusting that information to a standard interest rate and mortality table. Because the annual report data often includes foreign and other non-PBGC covered plans and the premium filings are not complete enough for this purpose, companies (and the PBGC) were concerned about the accuracy and completeness of the data. After the first public use of this data, companies suggested that the PBGC give them a chance to review the data.

As a result, the PBGC now annually contacts companies with the largest underfunding and requests that they verify (or correct) and, if they wish, supplement PBGC information on the amount of accumulated and vested benefits, the amount of plan assets, and the interest and mortality assumptions they used to value benefits in their covered plans. Respondents also may choose to recalculate accumulated, vested, and guaranteed benefits, and administrative expense loading charges, as well as to provide information on additional contributions made to the plans. The PBGC provides two simple response forms (which are not required to be used). In response to requests from companies, the PBGC also provides sample enrolled actuary certifications. These certifications are required for companies that elect to recalculate benefits or administrative expenses.

The PBGC uses the responses to improve the accuracy, timeliness, and completeness of information obtained from other sources. The data is used in various agency efforts, including estimating the potential exposure of the single-employer termination insurance program, legislative and other policy analyses, selecting plans for monitoring, responding to congressional requests for information on companies whose plans are significantly underfunded, and identifying for the public those companies with large levels of underfunding (including the amount of underfunding by company) or poor funding ratios.

The PBGC expects to contact about 400 companies annually (more if the interest rate is low; fewer if the interest rate is high) whose underfunding for vested benefits is greater than $25 million. Based on prior experience, the PBGC assumes that 90% of those contacted (360 responses) will choose to respond (even though this collection of information is voluntary). The PBGC estimates that the total annual hour

burden that will result from this collection is 1,440 hours and that the total annual cost burden is $216,000.

The PBGC is soliciting public comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC this 14th day of April, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–9929 Filed 4–16–97; 8:45 am]

BILLING CODE 7708–01–P]

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, May 1, 1997 and Friday, May 2, 1997 at the Washington Marriott, 1221 22nd Street NW, Washington, D.C. The May 1 meeting will be in the West End Salon and the May 2 meeting will be in the DuPont Ballroom. The meetings are tentatively scheduled to begin at 10:00 a.m. on May 1 and at 9:00 a.m. on May 2.

At the meeting, the Commission will review drafts of reports due to the Congress later this spring concerning volume performance standards and conversion factor updates, beneficiary access to care under fee for service, and beneficiary financial liability. It will also discuss the Administration's fiscal year 1998 budget proposal.

The Commission also plans to hear from outside experts concerning several issues on its work plan:

- Monitoring access under managed care;
- Serving vulnerable populations in managed care;
- Monitoring changes in the health care market; and
- Coordinating retiree health coverage with Medicare.

Final agendas will be mailed on April 24, 1997 and will be available on the Commission's web site (www.pprc.gov) at that time.

ADDRESS: 2120 L Street, N.W.; Suite 200; Washington, D.C. 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Debbie Kramer, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after April 24, 1997.

Lauren LeRoy,

Executive Director.

[FR Doc. 97–9872 Filed 4–16–97; 8:45 am]

BILLING CODE 6820–SE–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2933; Amendment #4]

Commonwealth of Kentucky

In accordance with a notice from the Federal Emergency Management Agency, dated April 7, 1997, the above-numbered Declaration is hereby amended to include the Counties of Adair and Metcalfe in the Commonwealth of Kentucky as a disaster area due to damage caused by severe storms, tornadoes, and flooding beginning on March 1, 1997 and continuing through March 31, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Casey and Russell in the Commonwealth of Kentucky. Any counties contiguous to the above-named primary counties and not listed herein have already been covered.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 3, 1997 and for economic injury the termination date is December 4, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 9, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–9892 Filed 4–16–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2933]

Commonwealth of Kentucky (Amendment #5)

In accordance with a notice from the Federal Emergency Management Agency, dated April 9, 1997, the above-numbered Declaration is hereby amended to include the Counties of Barren, Boyle, Green, Johnson, Knott, Letcher, Logan, Marion, Muhlenberg, Perry, Russell, Taylor, and Trigg in the Commonwealth of Kentucky as a disaster area due to damage caused by severe storms, tornadoes, and flooding beginning on March 1, 1997 and continuing through March 31, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Breathitt, Clay, Clinton, Harlan, Leslie, Lincoln, Owsley, Pulaski, and Wayne in the Commonwealth of Kentucky. Any counties contiguous to the above-named primary counties and not listed herein have already been covered.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 3, 1997 and for economic injury the termination date is December 4, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 10, 1997.

Herbert Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–9944 Filed 4–16–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2945]

State of Tennessee

As a result of the President's major disaster declaration on April 2, 1997, I find that the following counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and tornadoes on March 28 through March 29, 1997: Bradley, Hamilton, Polk, Sequatchie, and Smith. Applications for loans for physical damages may be filed until the close of business on June 1, 1997, and for loans for economic injury until the close of business on January 2, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area

2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bledsoe, DeKalb, Grundy, Jackson, Macon, Marion, McMinn, Meigs, Monroe, Putnam, Rhea, Trousdale, Van Buren, Warren, and Wilson in the State of Tennessee; Catoosa, Dade, Fannin, Murray, Walker, and Whitfield in the State of Georgia; and Cherokee in the State of North Carolina.

Interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.875
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.250
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 294512. For economic injury the numbers are 945300 for Tennessee, 945400 for Georgia, and 945500 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 10, 1997.

Herbert Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–9942 Filed 4–16–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2946]

State of Washington

As a result of the President's major disaster declaration on April 2, 1997, I find that the following counties in the State of Washington constitute a disaster area due to damages caused by heavy rains, snow melt, mud/landslides, and flooding beginning March 18 and continuing through March 28, 1997: Grays Harbor, King, and Mason. Applications for loans for physical damages may be filed until the close of business on June 2, 1997, and for loans for economic injury until the close of business on January 2, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Chelan, Jefferson, Kitsap, Kittitas, Lewis, Pacific, Pierce, Snohomish, Thurston, and Yakima in the State of Washington.

Interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.875
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.250
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 294606 and for economic injury the number is 945600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 10, 1997.

Herbert Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–9943 Filed 4–16–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) will submit the following emergency processing public information collection requests (ICRs), (pursuant to 5 CFR 1320.13), to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 USC Chapter 35). These ICRs are for reinstatements, some with name changes, of previously approved collection for which approval has expired. The **Federal Register** Notice with a 60-day comment period soliciting comments on these collections was published on October 1, 1996 [61 FR 51315–51316]. The ICR describes the nature of the information collection and its expected cost and burden. Because OMB approval is valid for 180 days, DOT is taking appropriate steps to obtain a regular approval.

DATES: Comments on this notice must be received on or before May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Delmer Billings, Information Collection Clearance Officer, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4482.

SUPPLEMENTARY INFORMATION:

Research and Special Programs Administration

Title: Crashworthiness Protection Requirements for Tank Cars (Former title: Rail Carrier and Tank Car Tank Requirements).

OMB Control Number: 2137–0559.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Abstract: This information collection consolidates provisions for detection and repair of cracks, pits, corrosion, lining flaws, thermal protection flaws and other defects of tank car tanks under various provisions in parts 173, 179 and 180 of the HMR. The HMR require facilities that build, repair and ensure the structural integrity of tank cars to develop and implement a quality assurance program; allow the use of non-destructive testing techniques, in lieu of currently prescribed periodic hydrostatic pressure tests, for fusion welded tank cars; require thickness measurements of tank cars, with limited reduced shell thicknesses, for certain hazardous materials; increase the frequency for inspection and testing of tank cars; and other provisions to ensure crashworthiness protection for tank cars.

Estimated Annual Burden: 2,659.

Title: Rulemaking Procedures and Exemption Requirements (Former title: Rulemaking and Exemption Requirements).

OMB Control Number: 2137–0051.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Abstract: Rulemaking procedures enable RSPA to determine if a rule change is necessary; be consistent with public interest; and maintain a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes for approval or denial of requests for exemptions.

Estimated Annual Burden: 4,279.

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Affected Public: Manufacturers and owners of cargo tanks.

Abstract: This information collection consolidates provisions for manufacture, qualification, maintenance and use of all specification cargo tank motor vehicles. It clarifies certain commodity sections in part 173, reorganizes the cargo tank specifications in part 178 and provides for vacuum-loaded cargo tanks. It includes part 180 requirements governing the maintenance, use, inspection, repair, retest and requalification of cargo tanks used to transport hazardous materials and certain registration requirements in part 107 for persons who are engaged in manufacture, repair or certification of any DOT specification cargo tank or cargo tank manufactured under exemption to transport hazardous materials.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention RSPA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 11, 1997.

Vanester M. Williams,

Clearance Officer, Department of Transportation.

[FR Doc. 97–9958 Filed 4–16–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32607 (Sub-No. 2)]

DeQueen & Eastern Railroad Company and Texas, Oklahoma & Eastern Railroad Company—Trackage Rights Exemption—WFEC Railroad Company

WFEC Railroad Company (WFECR) has agreed to grant bridge trackage rights to DeQueen & Eastern Railroad Company and Texas, Oklahoma & Eastern Railroad Company (collectively TOE) over its entire line of railroad in Choctaw and McCurtain Counties, OK.[1]

The transaction is scheduled to be consummated on or after the April 14, 1997 effective date of the exemption. The purpose of the trackage rights is to increase the efficiency of the unit train rail operation serving Western Farmers.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32607 (Sub-No. 2) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Donald G. Avery, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Decided: April 10, 1997.

[1] TOE will conduct actual train operations over the WFECR line to serve Western Farmers Electric Cooperative's generating station (Western Farmers) and will have no authority to serve any other shippers that might locate on the line. WFECR will retain the authority and responsibility for serving any such shippers.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–9851 Filed 4–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33340; STB Finance Docket No. 33341]

StatesRail, Inc.—Acquisition of Control Exemption—Kyle Railways Inc.; Kauri L.L.C.—Continuance in Control Exemption—StatesRail, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25: (1) The acquisition of control via stock purchase of Kyle Railways Inc. by StatesRail, Inc.; and (2) the continuance in control of StatesRail, Inc. by Kauri L.L.C.

DATES: The exemption will be effective May 17, 1997. Petitions to stay must be filed by April 28, 1997. Petitions to reopen must be filed by May 7, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33340 and STB Finance Docket No. 33341 must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; a copy of all pleadings must be served on petitioners' representative: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: April 4, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–9850 Filed 4–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506–A, Request for Public Inspection or Copy of Exempt Organization Tax Form.

DATES: Written comments should be received on or before June 16, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Public Inspection or Copy of Exempt Organization Tax Form.

OMB Number: 1545–0495.

Form Number: 4506–A.

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501 (c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 40 min.

Estimated Total Annual Burden Hours: 13,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–9980 Filed 4–16–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4797, Sales of Business Property.

DATES: Written comments should be received on or before June 16, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545–0184.

Form Number: 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 1,396,388.

Estimated Time Per Respondent: 63 hr., 31 min.

Estimated Total Annual Burden Hours: 88,698,566.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–9981 Filed 4–16–97; 8:45 am]

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federal register

Thursday
April 17, 1997

Part II

Federal Communications Commission

47 CFR Part 1, et al.

Private Land Mobile Radio Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, 74, 90, and 101

[PR Docket No. 92–235; FCC 97–61]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Second Report and Order (Second R&O)* in PR Docket No. 92–235 which continues its efforts to develop a strategy for encouraging more efficient use of private land mobile radio (PLMR) spectrum below 800 MHz. In the *Report and Order* (*R&O*) in this docket, the Commission concluded that the PLMR bands below 800 MHz should be consolidated and competition should be introduced into the frequency coordination process. This *Second R&O* consolidates the twenty existing PLMR services into two broad service pools—Public Safety and Industrial/Business—with appropriate provisions for ensuring that the safety of the public will not be compromised. Additionally, the Commission adopts rules to allow centralized trunking, under certain conditions, in the shared bands below 800 MHz and implements a plan for protecting current low power operations in the 450–470 MHz band. Finally, the Commission addresses a Request for Temporary Relief filed by several public safety frequency coordinators.

EFFECTIVE DATE: October 17, 1997 except for the amendment to § 90.17(a) which will be effective April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0680 or via E-Mail at mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order,* FCC 97–61, adopted February 20, 1997, and released March 12, 1997. The full text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Second Report and Order

1. Our primary goal in this proceeding has been to address the increasing communications requirements of the private land mobile radio (PLMR) community by developing a strategy for encouraging more efficient use of PLMR spectrum below 800 MHz—*i.e.,* those PLMR Services within the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz bands. The *Report and Order* (60 FR 37152, July 19, 1995) in this docket served as a critical first step toward achieving this goal. In that decision, we adopted extensive rule changes to promote highly effective and efficient use of the PLMR spectrum and to facilitate the introduction of advanced technologies into the private mobile services. We also concluded that the PLMR Services must be consolidated and that competition should be introduced into the coordinator services for each service group. We stated that consolidation of the twenty PLMR service groups below 800 MHz would ''provide for more efficient allocation of the increased capacity created by the introduction of more efficient technology.''

2. By this *Second Report and Order,* we consolidate the twenty PLMR Services into two broad service pools, with appropriate provision for ensuring that the safety of the public will not be compromised. In addition, we resolve two other issues raised in conjunction with consolidation: (a) Whether to permit centralized trunking, and (b) how to implement the decision in the *R&O* to provide protection for current low power operations in the 450–470 MHz band. Additionally, we address a Request for Temporary Relief filed by several public safety coordinators. We have, generally, delayed the effective date of these rules until six months after publication in the **Federal Register** in order to provide coordinators sufficient time to implement consolidation. Today's action is the next critical step toward providing a regulatory framework which promotes efficient use of PLMR spectrum below 800 MHz.

3. This proceeding concerns PLMR frequencies in the bands below 800 MHz administered under part 90 of the Commission's rules (47 CFR part 90). The bands, in general, are: 150–174 MHz, 421–430 MHz, 450–470 MHz and 470–512 MHz. Under our current rules, these frequencies are divided into twenty separate radio services, grouped in four general categories: (1) Public Safety Radio Services (Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Emergency Medical Radio Services); (2) Special Emergency Radio Service; (3) Industrial Radio Services (Power, Petroleum, Forest Products, Film & Video Production, Relay Press, Special Industrial, Business, Manufacturers, and Telephone Maintenance Radio Services); and (4) Land Transportation Radio Services (Motor Carrier, Railroad, Taxicab, and Automobile Emergency Radio Services). The Radiolocation Service (47 CFR part 90, subpart F) is not listed, even though it has frequencies below 800 MHz, because it is not considered a PLMR Service.

4. In determining that consolidation of the twenty PLMR Services would best serve the public interest, we stressed that the intended purpose of consolidating radio services ''is to distribute assignments between low-use and high-use groups more evenly, to simplify interservice sharing procedures, to organize channel allocations that will enable licensees to more easily utilize advanced technologies, and to organize the services in such manner to achieve more efficient and flexible spectrum use.'' We also recognized the importance of different services, particularly Public Safety, and encouraged commenters to develop a plan that included a Public Safety pool. We further recommended that such a plan contain clear guidelines regarding the requirements for inclusion in such a Public Safety pool. We considered these guidelines necessary to prevent overcrowding and to maintain the integrity of critical functions of the users included within this pool. While we indicated that two to four broad categories, including one for Public Safety licensees, appeared reasonable, we deferred a final decision on the precise contours of consolidation to provide members of the PLMR community, including users, manufacturers, and frequency coordinators, with an opportunity to negotiate and submit a consensus consolidation proposal to the Commission. In providing this opportunity, we stated that if a consensus could not be reached, we would adopt a plan based on the record. That contingency has come to pass; no consensus was reached.

5. We also recommended that the PLMR community address other related issues, such as how to effectively introduce competition among frequency coordinators, whether a single coordinator or multiple coordinators should be authorized for public safety users, how the existing databases can be shared to ensure fair competition among all of the frequency coordinators, whether a national real-time data base to reflect frequency assignments can be created and used, and what approach should be taken to designate frequencies for low power use on a primary basis. We received twenty-eight comments, fourteen reply comments, and two

supplemental comments recommending or supporting a variety of consolidation plans and a number of *ex parte* submissions. In addition, the Industrial Telecommunications Association (ITA) submitted a proposed technical blueprint for consolidation (Blueprint). We placed this on Public Notice and received forty comments and nine reply comments in response.

6. The Commission also received a number of petitions for reconsideration requesting that we reconsider or clarify various rule changes adopted in the *R&O*. Several of the petitions raised issues related to consolidation. In our recent *Memorandum Opinion and Order* (*MO&O*) (62 FR 2027, January 15, 1997) addressing these petitions, we stated that we would address the issues related to consolidation when we adopted a specific consolidation plan. Finally, the Commission received a Request for Temporary Relief to permit the frequency coordinators for the Fire, Highway Maintenance, and Forestry-Conservation Radio Services to continue to coordinate frequencies that were formerly assigned to their respective pools as low power offset channels.

7. *Number of pools.* We received a wide range of recommendations in response to our call for a consensus plan on consolidation. The comments contain a range of choices, proposing consolidation of the PLMR Services into two to five pools. Those who propose specific plans all agree that there should be a separate pool for public safety services. Additionally, a number of commenters oppose consolidation in general, arguing that the current system should be retained.

8. After careful analysis, we have determined that a modified two-pool approach will best achieve the benefits of consolidation without compromising safety of the general public. A consolidation of all twenty PLMR services will significantly increase licensee flexibility to manage the spectrum more efficiently through access to additional spectrum and accommodation of advanced technologies. An additional benefit of PLMR service consolidation is that it should reduce administrative burdens on users as well as the Commission. We believe that the safeguards we are adopting for safety-related communications combined with the modifications to the frequency coordination process will adequately address the concerns raised by the proponents of three or more service pools.

9. This two-pool structure is also best in terms of increasing flexibility and spectrum efficiency by giving users access to a larger pool of frequencies. Further, the increased flexibility provided by a two-pool structure enhances the use of advanced technologies, such as trunking. For example, making additional spectrum available to licensees will allow public safety entities to more easily implement and use trunked systems to perform a number of their public safety functions. We believe that such a result is in the public interest because it will help improve public safety communication capabilities and reduce the costs of building and operating public safety communication systems.

10. A two-pool structure also reduces administrative and financial burdens on applicants. For example, this consolidation approach will eliminate the need to go through interservice sharing procedures in order to obtain authorization to operate on frequencies available in other radio services. This in turn allows users to get on the air sooner as well as saves them from having to pay more than one coordination fee.

11. Accordingly, we are adopting two pools—Public Safety and Industrial/Business—as the basic framework for the PLMR bands below 800 MHz. Frequencies that were in any of the Public Safety Radio Services will be combined in the new Public Safety Pool. Similarly, frequencies that were in any of the Industrial or Land Transportation Radio Services will be combined in the new Industrial/Business Pool. Further, we put frequencies in the 421–430 MHz band allocated for public safety use in three cities in the Public Safety Pool and those frequencies allocated for business and industrial/land transportation use in three cities in the Industrial/Business Pool. Frequencies in each of the two pools will be available to all eligibles in that pool, unless reserved for a specific function. We have listed the 470–512 MHz band in each pool rather than divide up the frequencies between the two pools. The Commission already consolidated the various pools in this band into one pool—the General Access Pool. Further, unlike our current approach to the other bands, where frequencies are allocated to a specific service or group of services, frequencies in the 470–512 MHz band are available to all eligibles on a first come, first served basis. Thus, it would be impossible to divide these frequencies into different pools.

12. Finally, we recognize that the fundamental changes to the PLMR Services below 800 MHz adopted herein cannot be implemented without a reasonable transition time. Accordingly, we will delay the effective date of the new pools and associated rules adopted in this proceeding until October 17, 1997.

13. *Eligibility—Public Safety Pool.* We believe that all of the six current Public Safety Radio Services, as well as the Special Emergency Radio Service, should be included in the Public Safety Pool. Any governmental entity will be eligible to use any Public Safety Pool frequency. Additionally, non-governmental entities that apply for frequencies that were previously available solely for public safety services shall obtain a statement of support from the governmental entity having legal jurisdiction over the area to be served. Including all the Public Safety Radio Services and the Special Emergency Radio Service in one pool will promote the development of wide-area (state and regional) trunked systems that, in turn, will save scarce resources. Further, it will promote interoperability by allowing all governmental entities as well as non-governmental entities involved in ensuring the safety of life (*e.g.*, hospitals, ambulance companies) to communicate with one another. To further promote interoperability, we suggest coordinators in this pool examine the benefits of using the consensus plan approach discussed herein for low power operations as a way to reserve channels for universal mutual aid. Finally, defining eligibility in this way is consistent with (1) the Commission's definition of public safety services in GEN Docket No. 87–112 (53 FR 1022, January 15, 1988), which established the Public Safety National Plan in the 821–824/866–869 MHz bands, and (2) the PSWAC's definition of public safety as specified in its *Final Report* [1] as well as the Commission's proposals in the *Notice of Proposed Rule Making* in WT Docket No. 96–86 (61 FR 25185, May 20, 1996).

14. An additional issue was raised by several public safety frequency coordinators with respect to entities in the Public Safety Pool. These coordinators are concerned that the reallocation of former low power offset channels in the *R&O* from the Fire, Forestry-Conservation, and Highway Maintenance Radio services to the Local Government Radio Service adversely affects the ability of users to access these channels and restricts the coordinators' abilities to recommend suitable channels. Specifically, non-governmental entities, such as volunteer fire departments and nature conservatories, who are currently

[1] *See* Final Report of the Public Safety Wireless Advisory Committee, September 1996, Volume 1, Section 1.18.

eligible in the Fire and Forestry-Conservation Radio Services respectively, are not eligible in the Local Government Radio Service and may suffer harm due to this reduction in available channels.

15. Pursuant to the rules adopted herein concerning consolidation, these non-governmental entities will be eligible for all frequencies in the public safety pool, including the low power offsets transferred from the Fire and Forestry-Conservation Radio Services to the Local Government Radio Service. However, since the rule amendments being adopted in this *Second R&O* will not take effect for six months, we are concerned that the identified entities could suffer harm if the Commission does not take more immediate action. Therefore, effective immediately, we are amending the eligibility requirements of the Local Government Radio Service to include non-governmental entities who are currently eligible in the Fire and Forestry-Conservation Radio Services. As under the previous rules, these non-government entities must obtain a statement of support from the governmental entity having legal jurisdiction over the area to be served. Such action will provide these non-governmental entities access to the spectrum they need to ensure the integrity of their communications systems.

16. This action is taken pursuant to section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) which permits an agency to implement a rule prior to thirty days after publication when the rule ''* * * relieves a restriction.'' Here, we find that this rule amendment will provide certain non-governmental entities the ability to access spectrum that they were able to prior to the effectiveness of the rules adopted in the Refarming R&O. Additionally, we note that pursuant to the consolidation rules being adopted herein, these non-governmental entities will be eligible for licensing on any frequency in the Public Safety Pool, upon the effective date of the consolidation rules, subject to a statement of support from the governmental entity having legal jurisdiction over the area to be served.

17. *Eligibility—Industrial/Business Pool.* The Industrial/Business Pool will be comprised of frequencies that were previously allotted to any of the Industrial or Land Transportation Radio Services, including the Business Radio Service. Anyone eligible in one of these radio services will be eligible in the new Industrial/Business Pool for any frequency in that pool unless specifically precluded. In this regard, we have adopted the eligibility criteria from the old Business Radio Service. Accordingly, anyone engaged in a commercial activity is eligible. Also, educational, philanthropic and ecclesiastical institutions are eligible.

18. We note that our consolidation of the Industrial and Land Transportation Services, including the Business Radio Service, into one pool—the Industrial/Business Pool, potentially may affect the current regulatory classification of the licensees in this pool. In the *Second Report and Order* in GN Docket No. 93–252 (59 FR 18493, April 19, 1994) (*CMRS Second Report and Order*), we examined the regulatory status of all existing mobile services to determine whether they were commercial mobile radio services (CMRS) or private mobile radio services (PMRS) under section 332 of the Communications Act of 1934, as amended (the Act).[2] In the *CMRS Second Report and Order*, we concluded that with the exception of the Business Radio Service, all Industrial and Land Transportation Services would be classified as PMRS under section 332(d)(3) of the Act. In the case of the Business Radio Service, however, we determined that the eligibility rules are sufficiently broad to render this service effectively available to a substantial portion of the public. Consequently, classification of Business Radio Service licensees depends on whether they meet the other two elements of the CMRS definition—operating a for-profit service and interconnected with the public switched network. As a result, we are concerned that by defining the eligibility for this consolidated pool in the same fashion as we did for the Business Radio Service, licensees (both current and future) on the old Industrial and Land Transportation frequencies (Industrial/Business Pool frequencies under consolidation) may now be deemed to offer service to a substantial portion of the public. Consequently, such licensees offering for-profit, interconnected service arguably could be classified as CMRS. Given that the rules we adopt today will not be effective for six months, we believe that the most prudent course of action is to defer resolution of this issue and fully address it in a future proceeding. In the context of this future proceeding, we will also examine the negative impact, if any, of such regulatory classification on the availability of frequencies to satisfy the communications needs of PLMR users.

[2] See Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Title VI, section 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

19. *Interservice sharing.* Under the existing rules, there are provisions that allow entities establishing eligibility under one radio service to obtain a license for a frequency in another radio service under certain conditions (interservice sharing). Because we are eliminating the individual radio service categories and consolidating the PLMR Services into two pools, interservice sharing rules will no longer be necessary. Under consolidation, applicants will have the opportunity to apply directly for in-pool frequencies that were previously allocated to radio services other than their own. Accordingly, we will delete § 90.176.

20. The existing interservice sharing rules allow for sharing between radio services in the Public Safety Radio Services (group 1). The rules also permit sharing between the Special Emergency Radio Service and radio services in the Industrial and Land Transportation Radio Services (group 2). Sharing has not been permitted, however, between radio services in group 1 and group 2. While we believe that such sharing could increase flexibility, we do not think that it is appropriate to introduce interpool sharing at this time. Given the difficult logistics of consolidating twenty radio services into two pools, introducing additional requirements on the frequency coordinators could put undue pressures on the new two-pool system. Therefore, we will prohibit sharing between the Public Safety Pool and the Industrial/Business Pool, at least for the present time. We may revisit this issue once the consolidated system is running smoothly.

21. *Frequency Coordination.* In stating our intention to consolidate the PLMR Services, the Commission recognized that changes may have to be made in the current frequency coordination process. In the paragraphs below, we discuss changes in the coordination process in light of our decision to consolidate the PLMR Services into two pools. We recognize that additional changes may be necessary as we gain more experience with consolidation or if additional responsibilities are given to coordinators.

22. *Coordinators.* Allowing existing certified coordinators to continue their coordination functions will reduce confusion and help ensure that the public continues to receive access to vital services. Therefore, we certify current coordinators for the Public Safety Radio Services and the Special Emergency Radio Service as coordinators in the new Public Safety Pool. Similarly, we certify current coordinators in the Industrial and Land Transportation Radio Services as

coordinators in the new Industrial/Business Pool.

23. With respect to the Public Safety Pool, we generally agree with the commenters that at the present time, except as indicated below, applicants for a frequency in the new Public Safety Pool should be required to obtain coordination from the current recognized frequency coordinator for the specified frequencies.

24. We are taking a slightly different approach regarding frequencies that are currently assigned to the Local Government Radio Service. We will allow any coordinator currently certified in the Public Safety Radio Services to coordinate frequencies in the Local Government Radio Service. This action is taken for several reasons. Frequencies in the Local Government Radio service are used routinely by Police, Fire, Highway Maintenance, Forestry Conservation and Emergency Medical (governmental entities) eligibles for both non-emergency and emergency communications. For example, in many communities Local Government frequencies may be the principal fire or highway maintenance frequencies and part of a public safety communications plan for these services. Therefore, it would seem appropriate for the fire or highway maintenance coordinator (or other public safety coordinator if those frequencies are being used in another context) to be able to provide coordination for these frequencies if they are being used in a fire or highway maintenance communications system. Further, there are a large number of 450–470 MHz frequencies allocated to all the Public Safety Radio Services. Since these frequencies are available to all public safety entities (just like Local Government frequencies) any of the certified public safety coordinators may provide coordination. Thus, there is a coordination mechanism already in place to accommodate multiple coordinators where public safety frequencies are shared between public safety eligibles. Finally, this will introduce competition, to the extent possible, into this pool which, in turn, should result in lower coordination costs and better service to the public.

25. The integrity of the public safety services must be maintained without fail. Having each public safety coordinator continue to manage the same frequencies and have access to all of the current Local Government frequencies, will preserve much of the *status quo,* provide coordinators access to a greater number of frequencies with which to accommodate applicants, and permit applicants to apply directly for frequencies that were previously available only through interservice sharing procedures. Also, preserving the jurisdiction of the individual coordinators over their current spectrum, while expanding access to Local Government frequencies, will help ensure consistency with local, regional, and state public safety communications plans. This issue could be revisited in the future if a more integrated coordination system could be designed that would not impair public safety interests.

26. The Industrial/Business Pool does not present the same concerns as the Public Safety Pool. Therefore, except as discussed below, we will allow any in-pool coordinator to coordinate any frequency in the pool. As a direct result of this action, we believe that further competition will be introduced into the frequency coordination process. This, in turn, should result in lower coordination costs and better service to the public. For example, we believe market forces will reduce the time it takes to obtain a coordination thereby allowing users to get on-the-air quicker. Further, the concept of allowing applicants the opportunity to select among multiple coordinators is not unique among Part 90 users. Before the band was reallocated, applicants for conventional and trunked systems on General Category frequencies had the option of seeking frequency coordination from any of three frequency coordinators certified to recommend 800 MHz frequencies.

27.We recognize that within the Industrial/Business Pool, some types of radio users employ radio not just for day-to-day business needs but also to respond to emergencies that could be extremely dangerous to the general public. We believe maintaining the integrity of spectrum used for such public safety purposes is extremely important and using coordinators who are knowledgeable with such special communication needs is the best way to protect these systems.

28. Therefore, for the time being, entities who apply for frequencies which are currently allocated solely to the Railroad, Power, or Petroleum Radio Services must obtain coordination from the current certified frequency coordinator for the respective service. We expect, however, that these coordinators will make every effort to accommodate all applicants on these frequencies, regardless of the type of business they conduct. We believe that using coordinators who are knowledgeable with such special communication needs is the best way to protect these operations, which involve safety-related communications, and outweighs any potential benefits that may be gained through a competitive frequency coordination process. For frequencies in the Railroad, Power, or Petroleum Radio Services that are also allocated to another radio service, however, entities may utilize the services of any certified frequency coordinator in the Industrial/Business Pool. The alternative would be to require entities in the radio services where the frequencies are shared to go through a different coordinator than they do now. We may revisit this issue once we obtain more experience with the new coordination system or when we address the issue of exclusivity raised in the Further Notice of Proposed Rule Making (60 FR 37148, July 19, 1995) in this docket.

29. *Technical Coordination Procedures.* The consolidation of the PLMR services and the introduction of multiple coordinators raise concerns of unfair coordinations and coordinator shopping. We believe that a minimum set of technical coordination procedures to which all frequency coordinators must adhere is the least burdensome method of providing all members of the PLMR community with confidence that all new and existing radio systems will be adequately protected from interference. A minimum set of coordination procedures will also alleviate concerns of coordinator shopping. Rather than establish specific procedures at this time, however, we believe that the coordinators should attempt to reach consensus themselves on the applicable coordination procedures. We understand that this process takes time. In this regard, we note the efforts of Telecommunications Industry Associations (TIA) Working Group 8.8 (WG 8.8), which has been developing technical procedures for the frequency coordination process. Given the progress of the TIA WG 8.8 and the potential harm that could befall clients' systems from a lack of technical coordination procedures we are confident that the frequency coordinators will reach an agreement on such procedures quickly.

30. *Data exchange.* Under the current PLMR Service structure, there has been little need for frequency coordinators to share detailed information about applicants' systems with other coordinators. Under the consolidated pool approach, however, commenters have indicated a need to establish a system for information exchange, but disagree on how this should best be achieved. For example, UTC recommends that coordinators in each pool devise a means of exchanging data

either through a real-time method, using a shared database, or by providing notice, by facsimile or E-Mail, with a limited opportunity for response provided. Other coordinators state that a common database has to be established and maintained to ensure that applications, once submitted, are not in conflict with other applications being submitted at the same time. The Joint Pool, however, also expresses opposition to developing a national database noting that the complexity of such an undertaking would involve coordinating a substantial number of parties in order to include information that is necessary and relevant to the coordination process. It contends that electronic transmitting and receiving of frequency notifications is preferable to establishing a national coordinators' database.

31. We agree with the commenters that a real-time common coordinator database may be desirable. Such a resource could be an ideal method for coordinators to share data and maintain up-to-date records of all frequency recommendations so that they can avoid coordinating multiple applications for the same channel, in the same area, at approximately the same time. We also recognize, however, that implementing a real-time common database would require extensive time, expense, and testing to perfect and that there may be other less costly and less complex methods to ensure that all necessary data is exchanged in a timely manner. Therefore, at this time, we will leave the issue of whether to use a real-time common database to perform their coordination duties to the coordinators' discretion. We believe that they are in the better position of determining what will allow them to perform such duties in an efficient effective, and expeditious manner. Coordinators may select to develop their own common database to make frequency recommendations, use the Commission's data base, or use the services of a third party. We note that copies of the Commission's database are available through the National Technical Information Service. Further, the Commission provides on-line access to its PLMR Service database through a third party contractor and puts license grant information on the Internet. Any disputes that arise due to inconsistencies or discrepancies in the records of different coordinators, however, will be resolved using the Commission's database.

32. Although we are not requiring that a common database be implemented at this time, the need to share accurate and timely coordination information with all in-pool coordinators still exists. Without such information, frequency coordinators would not know what other in-pool coordinators are doing and could make conflicting coordinations. Therefore, coordinators must provide notification of all frequency recommendations within one business day of making such recommendations to every certified in-pool coordinator that is also certified to coordinate that frequency. Additionally, on frequencies that are shared between both the Public Safety and Industrial/Business Pools, coordinators must notify all coordinators of frequency recommendations. We believe this notification requirement is extremely important to the consolidation process. Notification will not only improve the speed and quality of recommendations, but it will also encourage and facilitate the cooperation between in-pool coordinators that is so important to the success of the overall coordination process. We believe a one-day notification period is a good compromise between the need to provide information to coordinators quickly to minimize the chance of conflicting coordinations and the need to minimize burdens on the coordinators. Additionally, notification must be made to all in-pool coordinators at approximately the same time. At a minimum, each notification must include: name of applicant, frequency or frequencies recommended, antenna height, antenna locations, type of emissions, effective radiated power, a description of the service area, and the time the recommendation was made. To safeguard this system, we will require that each coordinator communicate at least once each business day with each other in-pool coordinator. Therefore, on days in which no coordinations are made, notification is still required. Coordinators, if they desire, are free to include additional information such as more data or a list of rejected coordination requests with their notifications.

33. In addition to notification of basic information on frequency recommendations, coordinators, in certain cases, may need more detailed information in order to perform engineering analyses. Therefore, each coordinator must supply, upon request, within one business day, any additional information requested regarding a pending coordination that it processed. Of course, coordinators are free to provide this information in their routine notifications if they so desire.

34. Another issue raised in the comments was the question of concurrence. Given the requirement to establish standard coordination procedures, we believe requiring concurrence would be redundant. Further, it could have a negative impact on our efforts to increase the quality of customer service through competition. Nevertheless, we are concerned that under the approach described herein applicants could start transmitting prior to other in-pool coordinators being notified. While we want the licensing process to be as quick as possible and believe that such situations will rarely occur, we believe all affected coordinators should be aware of a proposed operation before the entity can start transmitting. Therefore, we will amend § 90.159 to institute a mandatory waiting period of ten business days before applicants can begin transmitting pursuant to temporary and conditional authorization.

35. We believe that the procedures outlined above will prevent the filing of conflicting applications. However, we realize that the one-day period between when a frequency recommendation is made and other coordinators are notified could still result in a small number of conflicting applications. In these instances, it is the joint responsibility of the applicable coordinators to take action necessary to resolve the conflict, up to and including notifying the Commission that an application may need to be returned. The coordinators are in the best position to recognize and expediently resolve such conflicts. Additionally, we believe that each coordinator should have some responsibility to help resolve problems related to their recommendations. The Commission will become involved only if the coordinators cannot agree to a solution.

36. As discussed above, coordinators will be responsible for providing other coordinators certain information within a specified time frame. We are confident, based on past experience, that coordinators will meet these requirements. However, as we have noted in the past when giving responsibility to coordinators, the Commission may, on its own motion, or at the public's request conduct an inquiry into a particular coordinator's performance. After any such investigation we will determine whether decertification or other action is warranted.

37. *Coordinator authority.* Currently, frequency coordinators have the authority to request additional information from applicants requesting coordination if they believe that such information is needed to make proper frequency recommendations. The Land Mobile Communications Council (LMCC) in its petition for

reconsideration requests that we (1) amend § 90.175 to provide specific authority for coordinators to request all appropriate technical information, system requirements, and justification for requested station parameters from applicants; (2) indicate that applicants bear the burden of proof in overturning the recommendations of a certified frequency coordinator; and (3) state that frequency coordinators may recommend appropriate changes to the parameters of previously licensed stations, or take other appropriate measures that will help to minimize harmful interference or remedy incompatible adjacent channel or co-channel operations.

38. In the *R&O,* the Commission stated that coordinators may request additional information from the applicant when such information is needed for the coordinator to make a proper frequency recommendation. The Commission also noted in that same proceeding that, in the event of a dispute between the coordinator and an applicant, the applicant will have the burden of proof and persuasion in overturning the coordinator's recommendation. While we consider this to be our present policy, in order to eliminate any confusion we will amend § 90.175 to specify this authority. With respect to LMCC's other suggestion, coordinators, as well as anyone else for that matter, can always make recommendations concerning minimizing interference. We see no reason to state this explicitly in our rules.

39. *Trunking in the PLMR Bands Below 800 MHz.* In the Notice of Proposed Rule Making (56 FR 31097, July 9, 1991) in this proceeding we proposed to allow centralized trunking (''trunking'') in the 150–174 MHz and 421–512 MHz bands in those areas where exclusivity is recognized by the Commission, or where all co-channel licensees concur. Although the comments on this issue supported allowing centralized trunking, we did not adopt rules since the Further Notice of Proposed Rule Making (Further NPRM) (60 FR 37148, July 18, 1995) in this docket addressed the issue of exclusivity.

40. Trunked systems will allow PLMR licensees to construct systems which are more efficient than conventional systems, thereby allowing licensees to use fewer channels to provide the same communications capability. Therefore, rather than defer the issue until we reach a decision on exclusivity, we believe the public will benefit by allowing trunking on frequencies below 800 MHz now, provided certain conditions are met.

41. To allow trunking to work effectively and efficiently in the PLMR shared bands, we are adopting rules similar to those adopted for interconnection of PLMR stations with the Public Switched Network. We will permit licensees to implement centralized trunked systems in the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz bands, provided that they (1) obtain the consent of all licensees whose service areas overlap a circle with a radius of 113 km (70 mi) from the trunked system's base station and whose operating frequency is 15 kHz or less removed from the operating frequency of a trunked system designed to operate on 25 kHz channels or 7.5 kHz or less removed from a 12.5 kHz trunked system or 3.75 kHz or less removed from a 6.25 kHz trunked system; and (2) comply with all frequency coordination requirements. Statements stipulating the terms of such agreements must be forwarded to the applicable frequency coordinator and the Commission as an attachment to the license application or modification. In the Further NPRM, we proposed that PLMR licensees be able to obtain some form of exclusivity in their respective service areas. If such rules are adopted, licensees would be able to implement trunked systems in these exclusive areas, provided that they modify their license to show such operation.

42. In areas where licensees implement trunking, new licensees can be assigned the same channel(s) as the trunked system if the new licensee reaches a mutual agreement with the licensee(s) operating the trunked system. If a licensee who previously consented or agreed to participate in a trunked system later decides against this use, and that licensee is unable to negotiate a mutual agreement with the operator(s) of the trunked system, that licensee may request that the Commission reassign it to another channel. This approach provides licensees with maximum flexibility in the operation of their systems while assuring that the use of centralized trunking will not detrimentally impact the operation of another licensee's system.

43. *Low Power Frequencies.* To encourage more efficient use of the available spectrum, the Commission permitted all eligible users in the 450–470 MHz band to be licensed for low power operations (*i.e.*, not to exceed 2 watts) on a secondary non-interference basis on frequencies offset 12.5 kHz from regularly assignable frequencies (''offset channels''). Since that time, these channels have been heavily used for certain low power operations such as medical telemetry and remote operation of heavy machinery. Under the new channel plan adopted in the *R&O,* these channels are no longer considered offset channels. Rather, they are regularly assignable channels available for high power operations on a primary basis. We have previously recognized, however, that there is a continuing need for low power operation and provided frequency coordinators with the authority to designate specific channels for low power use. Additionally, we suggested that frequency coordinators exercise this authority in conjunction with the formulation of a consolidation plan. Finally, the Commission provided low power licensees with the option of staying on their currently licensed channel or moving to a coordinator-designated low power frequency and obtaining primary status. Due to the uncertainty surrounding consolidation of the PLMR Services, coordinators have been reluctant to designate any channels specifically for low power use before a Commission decision on consolidation. On August 11, 1995, at the request of HP, the Commission froze applications requesting power in excess of that previously permitted on the offsets until such time as the issues relative to consolidation and/or the designation of low power frequencies are resolved.

44. *Designated Channels.* We understand the reluctance, to date, of coordinators to designate specific channels for low power use. At the same time, however, we believe it is vitally important for the PLMR community to address the issue of low power channels as soon as possible. Would-be licensees of offset channels cannot apply to use these channels for high power operations because of the current licensing freeze, and low power users want assurance that they will be protected from interference by high powered operations before switching channels. Accommodating these competing interests while establishing a workable low power frequency plan is not a trivial matter. In major metropolitan areas, the demand for both high power and low power operations exceeds the number of frequencies available. Moreover, it is highly likely that such high power and low power needs will vary based on geographic location. In this connection, we believe that the coordinators will need some time to analyze the current use patterns of these offset channels and determine a compromise solution between the two types of operations. Therefore, in accordance with the recommendation of LMCC, we will give the coordinators in each of the two pools six months from

publication of this *Second Report and Order* in the **Federal Register** to develop a consensus plan for low power operations in their respective pools.

45. HP recommended that we codify the basic aspects of the plan fashioned by the coordinators. In the *R&O,* we delegated to the frequency coordinators the authority to designate low power frequencies; our decision was not to specify such frequencies in the rules. We continue to believe that this approach provides the frequency coordinators, who have knowledge of user requirements and local conditions, with maximum flexibility in the management of the PLMR spectrum. Further, this allows frequencies to be easily added or subtracted from the designated list as may be warranted. We find nothing in the record at this time that persuades us to change this approach. Further, consistent with this approach, we will leave it up to the coordinators whether to designate contiguous spectrum or to specify individual channels (non-contiguous spectrum) for low power operations. Low power operation on the designated channels will be protected through coordination and the Commission's licensing process. As specified in the *R&O,* frequency coordinators will be required to maintain a list of low power channels and make it available to the public upon request. We encourage the frequency coordinators to periodically review the low power channel plan and modify it when appropriate. If a consensus regarding the establishment of a low power channel plan cannot be reached, we will revisit this issue.

46. *Time Frame for Migration.* In addition to its recommendation that the frequency coordinators be given six months to determine which channels should be designated for low power use, LMCC recommends several steps to ensure that the migration of low power users from their current channels to these new designated channels occurs smoothly. These suggested measures include (1) low power offset licensees being given six months to declare their intent to convert to primary status by either registering their coordinates or by modifying their license to operate on the designated low power channels; and (2) providing seven months for offset licensees to migrate to the designated channels. We agree with LMCC that low power users should be able to attain primary status on these offset channels if they so desire by modifying their licenses to specify transmitter coordinates so that frequency coordinators know the location of such systems and can take them into account when making frequency recommendations. In this connection, we will confer primary status on licensees operating on the former low power offset channels that already have provided their coordinates to the Commission. These licensees should notify the Commission at the time of their license renewal that they are operating in this manner. This will give offset licensees the flexibility to remain on their current licensed frequency or change to a new low power frequency. Because these channels are available for high power operation, however, licensees that remain on their current licensed frequency may have to share it with a new high power user. Therefore, we expect that the majority of low power users will be inclined to migrate to the new low power channels once they are identified in order to reduce the chance of interference from co-channel high powered operations.

47. Further, contrary to LMCC's contention, we do not believe that low power users should be required to declare their intent to migrate to low power channels or modify their license to obtain primary status within a certain time frame. We believe the decision whether or not to migrate or obtain primary status is a business decision and best left up to individual licensees to make within their own time frame according to their individual requirements. Additionally, because the designated channels, in some cases, may be the same channels that many low power users are already using, licensees would not be able to make informed decisions regarding migration until channels are designated. Therefore, we decline to require current low power users to declare their intent to migrate to dedicated low power channels or modify their license to obtain primary status by a certain date.

48. We do agree, however, with LMCC's suggestion to give licensees on the low power channels a chance to migrate before licensing high power operations on these channels. The PLMR community believes seven months is a reasonable amount of time for offset licensees to decide whether to switch to new low power channels. Therefore, in this connection, we will provide a period of seven months for low power users to migrate to new low power frequencies. Additionally, concurrent with the end of this migration period we note our intention to lift the current licensing freeze in the 450–470 MHz band and allow new high power systems to be licensed on any former 12.5 kHz offset channel not specifically designated for low power use. We will not lift the freeze, however, if a consensus plan has not been established. In the interim, we will grant partial relief and permit the licensing of high power systems on these channels, provided that the license applications are accompanied by a statement from the frequency coordinator attesting that operation of a new high powered system will not impact any currently operating co-channel low power system. If interference to a low power system from a high power operator using the offset frequencies does occur prior to the end of the migration period, the high power licensee will be expected to remedy the situation through any means possible, including shutting its system down.

49. In a related matter, PCIA, in its petition for reconsideration, recommends that we allow a six-month transition period for low power licensees to migrate to new low power channels before accepting any new low power applications on the designated channels. We will not adopt such a policy. We believe that it is not in the public interest to keep applicants, especially those who propose to operate in a highly efficient manner (*i.e.,* with low power), from obtaining licenses on designated low power channels. Additionally, because low power systems have small operating areas, we believe that there should be enough frequencies to accommodate all current and prospective low power licensees.

50. Finally, in its petition for reconsideration, Florida predicts a windfall for frequency coordinators and asks the Commission to reconsider the financial impact of this migration on existing licensees. We acknowledge that coordinators will collect fees from low power licensees when they apply to modify their systems to operate on the dedicated low power frequencies. In light of this, we encourage the coordinators to develop a reasonable fee schedule to reflect the relative ease of this type of coordination as compared to coordinating new high power stations.

51. *Conclusion.* This *Second Report and Order* represents a significant step in the evolution of the private land mobile radio services. With its adoption, we are consolidating the PLMR services into two service pools—Public Safety and Industrial/Business—while protecting critical safety related communications and providing benefits that are not realizable under the current system. We are also incorporating regulatory changes to the frequency coordination process to provide PLMR users with increased choices and flexibility. These changes reflect a comprehensive restructuring of the PLMR regulatory environment and will promote the highly effective and efficient use of PLMR spectrum and

contribute to an environment in which advanced technologies will thrive.

Final Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the *Notice of Proposed Rule Making* and the *Further Notice of Proposed Rule Making* in PR Docket 92–235.[3] The Commission sought written public comments on the proposals in the *Refarming Notice* and *Further Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Second Report and Order (Second R&O)* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[4]

I. Need for and Objective of the Proposed Rule

53. Our objective is to increase spectrum efficiency and facilitate the introduction of advanced technologies into the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz private land mobile radio (PLMR) bands. *The Report and Order* in this proceeding modified the Commission's rules to resolve many of the technical issues which inhibited the use of spectrally efficient technologies in these frequency bands. It also stated the Commission's intent to consolidate the twenty existing radio service pools. *The Further Notice* in this proceeding proposed several methods of introducing market based incentives into the PLMR bands, including exclusivity. This *Second R&O* consolidates the radio service frequency pools, and addresses related issues such as frequency coordination, trunking, and low power frequencies.

54. We find that the potential benefits to the PLMR community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by modifying our rules to consolidate the PLMR services and increase the spectral efficiency of the PLMR bands.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

55. No comments were submitted in direct response to the IRFA. We have, however, reviewed general comments that may impact small businesses.

56. Much of the impact on small businesses arises from the central decision in this proceeding—the number of frequency pools. Commenters submitted proposals which ranged from keeping the current system in place to consolidating to two pools. This affects small businesses in the following way. A smaller number of pools provides a greater number of frequencies available for small business to use to meet their coordination needs. Additionally, by creating fewer pools, frequency coordinators will now have to compete, thus small business that use PLMR systems could expect to pay lower prices for frequency coordination and receive better service. Finally, consolidating the PLMR services provides each frequency coordinator, who currently only provides service for a narrowly defined type of user, with the ability to expand its business base.

III. Description and Estimate of the Number of Small Entities Subject to Which the Rules Apply

57. The rules adopted in this *Second Report and Order* will apply to small businesses that choose to use radios that operate in the PLMR bands below 512 MHz and to small businesses that are designated as certified frequency coordinators in these bands. There are no Commission imposed requirements, however, for any entity to use these products.

Estimates for PLMR Licensees

58. Private land mobile radio system serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area.

59. Because the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that are private land mobile radio licensees. Therefore, the Commission is unable at this time to determine the number of small businesses which could be impacted by the rules. However, the Commission's fiscal year 1994 annual report indicates that at the end of fiscal year 1994 there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.[5] Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

60. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.[6] The definition of a small governmental entity is one with a population of less than 50,000.[7] There are 85,006 governmental entities in the nation.[8] This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[9] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600 are small entities that may be affected by our rules.

Estimates for Frequency Coordinators

61. Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to spectrum frequency coordinators. Therefore, we conclude that the closest applicable definition under SBA rules is Business Associations (SIC 8611). The SBA defines a small business association as an entity with $5.0 million or less in annual receipts. There are 18 entities certified to perform frequency coordination functions under Part 90 of our rules. However, we are unable to ascertain how many of these frequency coordinators are classified as small entities under the SBA definition. The Census Bureau indicates that 97%

[3] Replacement of part 90 by part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket 92–235, *Notice of Proposed Rule Making,* 7 FCC Rcd 8105 (1992) (*Refarming NPRM*); Replacement of part 90 by part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Radio Services, PR Docket No. 92–235, *Report and Order and Further Notice of Proposed Rule Making,* 10 FCC Rcd 10076 (1995) (*Report and Order or Further NPRM*).

[4] Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[5] See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

[6] See 5 U.S.C. 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

[7] *Id.*

[8] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[9] *Id.*

of business associations have annual receipts of $4.999 million or less and would be classified as small entities. The Census Bureau category is very broad, and does not include specific figures for firms that are engaged in the coordination of spectrum frequencies. Therefore, for the purposes of this regulatory flexibility analysis, we estimate that almost all of the 18 spectrum frequency coordinators are small as defined by the SBA.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules

62. The rules adopted in this *Second R&O* do not have any general reporting or recordkeeping requirements for PLMR licensees. There is, however, one compliance requirement. Applicants for new or modified PLMR stations will be required to wait ten days prior to commencing operation pursuant to conditional authority. Such a waiting period is necessary to ensure that all in-pool frequency coordinators are notified regarding the proposed system before the applicant starts transmitting. While we want the licensing process to be as quick as possible, we believe all affected coordinators should be aware of a proposed operation before an applicant commences transmitting. Regarding this issue, many commenters identify a need for a mandatory concurrence period.[10] Other commenters argue that a mandatory concurrence period is unnecessary.[11] Rather than a mandatory concurrence period, which we believe could prolong the licensing process, thereby affecting small businesses, we believe the adopted waiting period will accomplish the same goal of providing a method for coordinators to ensure that existing radio systems will not suffer harmful interference from new or modified systems.[12]

63. Additionally, in the specific instances where licensees want to construct a centralized trunking rather than a traditional system, they must obtain concurrence from nearby affected users and forward such agreements to the applicable frequency coordinator and the Commission as an attachment to the license application form, FCC Form 600. Because of the fundamental differences between trunked and traditional systems, such action is necessary in order to avoid a licensee from causing harmful interference to other nearby licensees, many of which may be small businesses.

64. There are several reporting, recordkeeping, and compliance requirements applicable to the Commission certified PLMR frequency coordinators. These new requirements are necessary to ensure that each frequency coordinator has access to the information necessary to perform competent frequency coordinations for their customers.

(1) Because several frequency coordinators will now be able to recommend frequencies within a common frequency pool, each needs to know the recommendations of each of the other frequency coordinators. Such information is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants. Therefore, we are requiring each frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool. In this connection, we believe that the importance and need for a current and accurate accounting of frequency recommendations outweighs the burden, if any, on small coordinators. Because coordinators are already required to share information when invoking the interservice sharing rules of our current rules,[13] each should already have a system in place for such data exchange. Additionally, we believe that the greater harm could occur to small business that are PLMR licensees. Without such data exchange, these licensees' systems could be in danger of receiving harmful interference which would endanger their business operations. The Commission did not receive any specific comments regarding the one-day notification requirement. However, the Commission did receive comments regarding the need for notification.[14]

(2) In some instances, frequency coordinators need to perform engineering analyses to determine if an applicant's proposed radio system is feasible. A coordinator may need detailed information on systems coordinated by other coordinators in order to perform such an analysis. Therefore, we are requiring that each coordinator provide, upon request, within one business day, information requested by another coordinator regarding a pending coordination.

(3) To ensure that applicants have access to reliable and competent frequency coordination services regardless of which coordinator they choose to use, we have determined that some minimum technical standards to which each coordinator must adhere need to be established. We are requiring the coordinators to achieve a consensus on such standards within six months of the publication of this Second *R&O* in the **Federal Register**.

(4) In the *Report and Order*, the Commission provided frequency coordinators with the authority to designate channels for the exclusive use of low power systems. Coordinators have been reluctant to designate such channels due to uncertainty regarding consolidation. Now that the framework for the frequency pools has been established, we are providing six months from the publication of this Second *R&O* in the **Federal Register** for the frequency coordinators to achieve a consensus plan for low power channels.

V. Steps Taken by Agency to Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

65. The Commission provided the PLMR community with an opportunity to meet and develop a consensus position on this issue as an alternative to the Commission's adoption of final rules for consolidation of the PLMR radio services. Unfortunately, a consensus was not reached, therefore this *Report and Order* balances the competing interests.

66. The Commission, in this *Second R&O*, has considered comments regarding its plans to consolidate the PLMR radio services below 512 MHz and those related comments filed pursuant to proposals discussed in the *Further NPRM*. In doing so, the Commission has adopted several proposals which minimize burdens placed on small entities. First, the Commission has adopted a two pool consolidation plan which will provide more frequency options to entities than the current frequency pool structure and structures based on more than two pools. The increase in frequency choices will provide a greater likelihood that licensees, including small entities, will share frequencies with fewer systems enabling them to achieve more efficiency in their radio systems. Second, by adopting a two pool approach, we are able to eliminate the interservice sharing rules in § 90.176 of

[10] See Coalition *ex parte* filing of December 20, 1996 in which it states that a concurrence period of ten to twenty days is necessary for in-pool coordinators to object to a specific frequency recommendation. This view is supported by several other commenters. *See, e.g.,* UTC Comments to Blueprint at 13.

[11] See PCIA Comments to Blueprint at 7–8; ITA *ex parte* filing of January 6, 1997.

[12] ITA supports this ten day waiting period. *See* ITA Reply Comments to Blueprint at 11–12.

[13] See 47 CFR 90.176.

[14] See, *e.g.,* Joint Pool Comments at 10–11; UTC Comments at 12.

our rules. Currently, entities who want to use frequencies in a pool other than the one in which they are eligible must invoke these rules and usually are required to pay a frequency coordination fee to the coordinator for their pool and a fee to the coordinator for the pool in which they want to share a frequency. Because entities will now have direct access to all frequencies in their respective pool, this *Second R&O* eliminates the need for an entity to pay more than one frequency coordination fee for any radio system. Third, because this *Second R&O* provides for competitive frequency coordination in the Industrial/Business Pool, license applicants should expect a reduction in frequency coordination fees and/or an increase in the level of service. Fourth, under the adopted frequency pool structure, all frequency coordinators will be certified to coordinate frequencies in the pool in which the pool that they previously coordinated is placed. This will minimize confusion and ease the transition process from the current radio service structure to the new consolidated frequency pool structure. Fifth, in order to ensure a smooth transition to the consolidated frequency pools, we are providing a period of six months for entities to implement the rule changes adopted in the *Second R&O*. Sixth, rather than requiring the frequency coordinators to establish and maintain a common real time database, we are only requiring that they share certain information among themselves. Requiring the development of a common database would be a complex, costly, and time consuming endeavor. Seventh, while we are requiring the sharing of certain data, we are not specifying the method by which this data should be shared. Each frequency coordinator may choose any method that fulfills its requirements with respect to speed, cost, and quality. Eighth, we are providing a method by which licensees can implement a centralized trunking system. Because such systems are more efficient than traditional systems, licensees who implement centralized trunking may be able to achieve the same amount of communications as they currently do with fewer channels.

VI. Report to Congress

67. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with the *Second Report and Order*, in a report to Congress pursuant to the SBREFA.[15] A copy of this FRFA will also be published in the **Federal Register**.

[15] *See* 5. U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Parts 20, 74, 90, and 101

Communications equipment, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1, 20, 74, 90, and 101 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

2. Section 1.952 is amended by revising paragraph (b) to read as follows:

§ 1.952 How file numbers are assigned.

* * * * *

(b) File number symbols and service or class of station designators:

Amateur and Disaster Services

Y—Amateur
D—Disaster
R—Races

Aviation Services

A—Aeronautical and fixed group
AA—Aviation auxiliary group
AR—Aviation radionavigation land
AC—Civil Air Patrol

Personal Radio Service

CA—General Mobile Radio Service
ZA—General Mobile Radio Service
ZV—Interactive Video and Data Service

Marine Services

MK—Alaskan group
M—Coastal group
MA—Marine auxiliary group
MR—Marine radiodetermination land

Microwave Services

OF—Private Operational-Fixed Microwave

Radiolocation Service

RS—Radiolocation

Land Mobile Services below 800 MHz

IG—Conventional Industrial/Business Pool
PW—Conventional Public Safety Pool
YG—Trunked Industrial/Business Pool
YW—Trunked Public Safety Pool

800 MHz Services

GB—Conventional Business
GO—Conventional Industrial/Land Transportation
GP—Conventional Public Safety/Special Emergency
GX—Conventional Commercial (SMRS)
YB—Trunked Business
YO—Trunked Industrial/Land Transportation
YP—Trunked Public Safety/Special Emergency
YX—Trunked Commercial (SMRS)

900 MHz Paging Services

GS—Private carrier paging systems

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 20.3 is amended by revising paragraph (b) of the definition for Private Mobile Radio Service to read as follows:

§ 20.3 Definitions.

* * * * *

Private Mobile Radio Service. * * *

(b) Mobile radio service offered to restricted classes of eligible users. This includes entities eligible in the Public Safety Radio Pool and Radiolocation service.

* * * * *

3. Section 20.9 is amended by revising paragraph (a)(2) to read as follows:

§ 20.9 Commercial mobile radio service.

(a) * * *

(2) Stations that offer Industrial/Business Pool (§ 90.35 of this chapter) eligibles for-profit, interconnected service.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

4. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082 as amended; 47 U.S.C. 154, 303, 554.

5. Section 74.402 is amended by revising the last sentence of footnotes 3 and 5 of paragraph (a) and the Note following paragraph (b) to read as follows:

§ 74.402 Frequency assignment.

(a) * * *

[3] * * * Applications for licenses to use frequencies in this group must include statements showing what procedures will be taken to insure that interference will not be caused to stations in the Industrial/Business Pool.

* * * * *

[5] * * * In other areas, certain existing stations in the Public Safety Pool and

Industrial/Business Pool have been permitted to continue operation on these frequencies on condition that no harmful interference is caused to remote pickup broadcast stations.

* * * * *

(b) * * *

Note: These frequencies are shared with the Industrial/Business Pool.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

6. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

7. Section 90.7 is amended by adding definitions for Automobile emergency licensee, Emergency Medical Licensee, Film and video licensee, Fire Licensee, Forest products licensee, Frequency coordination, Manufacturers licensee, Motor carrier licensee, Petroleum licensee, Police licensee, Power licensee, Railroad licensee, Relay press licensee, Special Industrial licensee, Taxicab licensee, and Telephone maintenance licensee in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

Automobile emergency licensee. Persons regularly engaged in any of the following activities who operate radio stations for transmission of communications required for dispatching repair trucks, tow trucks, or other road service vehicles to disabled vehicles:

(1) The operation of a private emergency road service for disabled vehicles by associations of owners of private automobiles; or

(2) The business of providing to the general public an emergency road service for disabled vehicles.

* * * * *

Emergency Medical Licensee. Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis that operate radio stations for transmission of communications essential for the delivery or rendition of emergency medical services for the provision of basic or advanced life support.

Film and video production licensee. Persons primarily engaged in or providing direct technical support to the production, videotaping, or filming of motion pictures or television programs, such as movies, programs, news programs, special events, educational programs, or training films, regardless of whether the productions are prepared primarily for final exhibition at theatrical outlets or on television or for distribution through other mass communications outlets.

Fire licensee. Any territory, possession, state, city, county, town, or similar governmental entity, and persons or organizations charged with specific fire protection activities that operate radio stations for transmission of communications essential to official fire activities.

* * * * *

Forest products licensee. Persons primarily engaged in tree logging, tree farming, or related woods operations, including related hauling activities, if the hauling activities are performed under contract to, and exclusively for, persons engaged in woods operations or engaged in manufacturing lumber, plywood, hardboard, or pulp and paper products from wood fiber.

* * * * *

Frequency coordination. The process of obtaining the recommendation of a frequency coordinator for a frequency(ies) that will most effectively meet the applicant's needs while minimizing interference t licensees already operating within a given frequency band.

* * * * *

Manufacturers licensee. Persons primarily engaged in any of the following manufacturing activities:

(1) The mechanical or chemical transformation of substances into new products within such establishments as plants, factories, shipyards, or mills which employ, in that process, powerdriven machines and materials-handling equipment;

(2) The assembly of components of manufactured products within such establishments as plants, factories, shipyards, or mills where the new product is neither a new structure nor other fixed improvement. Establishments primarily engaged in the wholesale or retail trade, or in service activities, even though they fabricate or assemble any or all the products or commodities handled, are not included in this category; or

(3) The providing of supporting services or materials by a corporation to its parent corporation, to another subsidiary of its parent or to its own subsidiary, where such supporting services or materials are directly related to those regular activities of such parent or subsidiary which are eligible under paragraphs (1) or (2) of this definition.

* * * * *

Motor carrier licensee. Persons primarily engaged in providing a common or contract motor carrier transportation service in any of the following activities: Provided, however, that motor vehicles used as taxicabs, livery vehicles, or school buses, and motor vehicles used for sightseeing or special charter purposes, shall not be included within the meaning of this term. For purposes of this definition, an urban area is defined as being one or more contiguous, incorporated or unincorporated cities, boroughs, towns, or villages, having an aggregate population of 2,500 or more persons.

(1) The transportation of passengers between urban areas;

(2) The transportation of property between urban areas;

(3) The transportation of passengers within a single urban area; or

(4) The transportation, local distribution or collection of property within a single urban area.

* * * * *

Petroleum licensee. Persons primarily engaged in prospecting for, producing, collecting, refining, or transporting by means of pipeline, petroleum or petroleum products (including natural gas).

Police licensee. Any territory, possession, state, city, county, town, or similar governmental entity including a governmental institution authorized by law to provide its own police protection that operate radio stations for transmission of communications essential to official police activities.

Power licensee. Persons primarily engaged in any of the following activities:

(1) The generation, transmission, or distribution of electrical energy for use by the general public or by the members of a cooperative organization;

(2) The distribution of manufactured or natural gas by means of pipe line, for use by the general public or by the members of a cooperative organization, or, in a combination of that activity with the production, transmission or storage of manufactured or natural gas preparatory to such distribution;

(3) The distribution of steam by means of pipeline or, of water by means of pipeline, canal, or open ditch, for use by the general public or by the members of a cooperative organization, or in a combination of that activity with the collection, transmission, storage, or purification of water or the generation of steam preparatory to such distribution; or

(4) The providing of a supporting service by a corporation directly related to activities of its parent corporation, of another subsidiary of the same parent, or of its own subsidiary, where the party served is regularly engaged in any of the activities set forth in this definition.

* * * * *

Railroad licensee. Railroad common carriers which are regularly engaged in the transportation of passengers or property when such passengers or property are transported over all or part of their route by railroad.

Relay press licensee. Persons primarily engaged in the publication of a newspaper or in the operation of an established press association.

* * * * *

Special industrial licensee. Persons regularly engaged in any of the following activities:

(1) The operation of farms, ranches, or similar land areas, for the quantity production of crops or plants; vines or trees (excluding forestry operations); or for the keeping, grazing or feeding of livestock for animal products, animal increase, or value enhancement;

(2) Plowing, soil conditioning, seeding, fertilizing, or harvesting for agricultural activities;

(3) Spraying or dusting of insecticides, herbicides, or fungicides, in areas other than enclosed structures;

(4) Livestock breeding service;

(5) The operation of a commercial business regularly engaged in the construction of roads, bridges, sewer systems, pipelines, airfields, or water, oil, gas, or power production, collection, or distribution systems. The construction of buildings is not included in this category;

(6) The operation of mines for the recovery of solid fuels, minerals, metal, rock, sand and gravel from the earth or the sea, including the exploration for and development of mining properties;

(7) Maintaining, patrolling or repairing gas or liquid transmission pipelines, tank cars, water or waste disposal wells, industrial storage tanks, or distribution systems of public utilities;

(8) Acidizing, cementing, logging, perforating, or shooting activities, and services of a similar nature incident to the drilling of new oil or gas wells, or the maintenance of production from established wells;

(9) Supplying chemicals, mud, tools, pipe, and other materials or equipment unique to the petroleum and gas production industry, as the primary activity of the applicant if delivery, installation or application of these materials requires the use of specifically fitted conveyances;

(10) The delivery of ice or fuel to the consumer for heating, lighting, refrigeration or power generation purposes, by means other than pipelines or railroads when such products are not to be resold following their delivery; or

(11) The delivery and pouring of ready mixed concrete or hot asphalt mix.

* * * * *

Taxicab licensee. Persons regularly engaged in furnishing to the public for hire a nonscheduled passenger land transportation service (which may also include the occasional transport of small items of property) not operated over a regular route or between established terminals.

* * * * *

Telephone maintenance licensee. Communications common carriers engaged in the provision of landline local exchange telephone service, or interexchange communications service, or who provide wire-telegraph service, and radio communications common carriers authorized in the Point-to-Point Microwave Radio Service under part 21 of this chapter. Resellers that do not own or control transmission facilities is not included in this category.

* * * * *

8. Section 90.17 is amended by adding new paragraphs (a)(1) and (a)(2) and a new last sentence to paragraph (a) read as follows:

§ 90.17 Local Government Radio Service.

(a) * * * Additionally, the following non-governmental entities are eligible to hold authorizations in the Local Government Radio Service, *provided* that their applications are accompanied by a statement from the governmental entity having legal jurisdiction over the area to be served, supporting the request:

(1) Persons or organizations charged with specific fire protection activities for communications essential to the official fire activities of the licensee; or

(2) Persons or organizations charged with specific forestry-conservation activities for communications essential to the official forestry-conservation activities of the licensee.

* * * * *

Subpart B is revised to read as follows:

Subpart B—Public Safety Radio Pool

Sec.
90.15 Scope.
90.16 Public Safety National Plan.
90.20 Public Safety Pool.
90.22 Paging operations.

Subpart B—Public Safety Radio Pool

§ 90.15 Scope.

The Public Safety Radio Pool covers the licensing of the radio communications of governmental entities and the following category of activities: Medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities, and emergency repair of public communications facilities. Entities not meeting these eligibility criteria may also be licensed in the Public Safety Radio Pool solely to provide service to eligibles on one-way paging-only frequencies below 800 MHz, *i.e.*, those frequencies with the assignment limitations appearing at § 90.20(d)(13) or (d)(60). Private carrier systems licensed on other channels prior to June 1, 1990, may continue to provide radio communications service to eligibles. Rules as to eligibility for licensing, frequencies available, permissible communications and classes and number of stations, and any special requirements are set forth in the following sections.

§ 90.16 Public Safety National Plan.

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Pool (formally Public Safety Radio Services and the Special Emergency Radio Service). The National Plan is contained in the Report and Order in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 821–824 MHz and the 866–869 MHz bands. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the 821–824 MHz and 866–869 MHz bands until a regional plan for the area has been accepted by the Commission.

§ 90.20 Public Safety Pool.

(a) *Eligibility*. The following are eligible to hold authorizations in the Public Safety Pool.

(1) Any territory, possession, state, city, county, town or similar governmental entity is eligible to hold authorizations in the Public Safety Pool to operate radio stations for transmission of communications essential to official activities of the licensee, including:

(i) A district and an authority, but not including a school district or authority or a park district or authority except as provided for in § 90.242;

(ii) A governmental institution authorized by law to provide its own police protection;

(iii) Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis are eligible to hold authorization to operate stations for transmission of

communications essential for the delivery or rendition of emergency medical services for the provision of basic or advanced life support. Applications submitted by persons or organizations (governmental or otherwise) other than the governmental body having jurisdiction over the state's emergency medical service plans must be accompanied by a statement prepared by the governmental body having jurisdiction over the state's emergency medical services plan indicating that the applicant is included in the state's emergency plan or otherwise supporting the application;

(iv) Governmental entities and governmental agencies for their own medical activities; and

(v) Governmental entities and governmental agencies for providing medical services communications to other eligible persons through direct participation in and direct operational control of the system, such as through central dispatch service.

(2) Persons or organizations other than governmental entities are eligible to hold authorizations in the Public Safety Pool to operate radio stations for transmission of communications, as listed below. When requesting frequencies not designated by a ''PS'' in the coordinator column of the frequency table in paragraph (c)(3) of this section, applications must be accompanied by a statement from the governmental entity having legal jurisdiction over the area to be served, supporting the request:

(i) Persons or organizations charged with specific fire protection activities;

(ii) Persons or organizations charged with specific forestry-conservation activities;

(iii) Persons or organizations, listed below, engaged in the delivery or rendition of medical services to the public and on a secondary basis, for transmission of messages related to the efficient administration of organizations and facilities engaged in medical services operations:

(A) Hospital establishments that offer services, facilities, and beds for use beyond 24 hours in rendering medical treatment;

(B) Institutions and organizations regularly engaged in providing medical services through clinics, public health facilities, and similar establishments;

(C) Ambulance companies regularly engaged in providing medical ambulance services;

(D) Rescue organizations for the limited purpose of participation in providing medical services;

(E) Associations comprised of two or more of the organizations eligible under paragraph (a)(2)(iii) (A), (B), (C), and (D) of this section, for the purpose of active participation in and direct operational control of the medical services communication activities of such organizations; or

(F) Physicians, schools of medicine, oral surgeons, and associations of physicians or oral surgeons;

(iv) Persons or organizations operating a rescue squad for transmission of messages pertaining to the safety of life or property and urgent messages necessary for the rendition of an efficient emergency rescue service.

(A) Each rescue squad will normally be authorized to operate one base station, and a number of mobile units (excluding hand carried mobile units) not exceeding the number of vehicles actually used in emergency rescue operations.

(B) In addition, each rescue squad will be authorized to operate a number of hand carried mobile units not exceeding two such units for each radio equipped vehicle actually used in emergency rescue operations.

(v) Persons with Disabilities. The initial application from a person claiming eligibility under this paragraph shall be accompanied by a statement from a physician attesting to the condition of the applicant or the applicant's child (or ward in case of guardianship).

(A) Any person having a hearing deficiency such that average hearing threshold levels are 90 dB above ANSI (American National Standards Institute) 1969 or ISO (International Standards Organization) 1964 levels and such other persons who submit medical certification of similar hearing deficiency.

(B) Any person having visual acuity corrected to no better than 20/200 in the better eye or having a field of vision of less than 20 degrees.

(C) Any person, who, through loss of limbs or motor function, is confined to a wheelchair, or is non-ambulatory.

(D) Any person actively awaiting an organ transplant.

(E) Parents or guardians of persons under 18 years eligible under paragraphs (a)(2)(v)(A), (a)(2)(v)(B), (a)(2)(v)(C) of this section, or institutions devoted to the care or training of those persons.

(vi) A veterinarian, veterinary clinic, or a school of veterinary medicine for the transmission of messages pertaining to the care and treatment of animals. Each licensee may be authorized to operate one base station and two mobile units. Additional base stations or mobile units will be authorized only on a showing of need.

(vii) Organizations established for disaster relief purposes having an emergency radio communications plan for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of the emergency situation during periods of actual or impending emergency, or disaster, and until substantially normal conditions are restored. In addition, the stations may be used for training exercises, incidental to the emergency communications plan, and for operational communications of the disaster relief organization or its chapter affiliates. The initial application from a disaster relief organization shall be accompanied by a copy of the charter or other authority under which the organization was established and a copy of its communications plan. The plan shall fully describe the operation of the radio facilities and describe the method of integration into other communications facilities which normally would be available to assist in the alleviation of the emergency condition.

(viii) Persons or organizations operating school buses on a regular basis over regular routes for the transmission of messages pertaining to either the efficient operation of the school bus service or the safety or general welfare of the students they are engaged in transporting. Each school bus operator may be authorized to operate one base station and a number of mobile units not in excess of the total of the number of buses and maintenance vehicles regularly engaged in the school bus operation. Additional base stations or mobile units will be authorized only in exceptional circumstances when the applicant can show a specific need.

(ix) Persons or organizations operating beach patrols having responsibility for life-saving activities for the transmission of messages required for the safety of life or property.

(x) Persons or organizations maintaining establishment in isolated areas where public communications facilities are not available and where the use of radio is the only feasible means of establishing communication with a center of population, or other point from which emergency assistance might be obtained if needed, for the transmission of messages only during an actual or impending emergency endangering life, health or property for the transmission of essential communications arising from the emergency. The transmission of routine or non-emergency communications is strictly prohibited.

(A) Special eligibility showing. The initial application requesting a station

authorization for an establishment in an isolated area shall be accompanied by a statement describing the status of public communication facilities in the area of the applicant's establishment; the results of any attempts the applicant may have made to obtain public communication service, and; in the event radio communications service is to be furnished under paragraph (a)(2)(x)(C)(*2*) of this section, a copy of the agreement involved must be submitted.

(B) Class and number of stations available. Persons or organizations in this category may be authorized to operate not more than one fixed station at any isolated establishment and not more than one fixed station in a center of population.

(C) Communication service rendered and received.

(*1*) The licensee of a station at any establishment in an isolated area shall make the communication facilities of such station available at no charge to any person desiring the transmission of any communication permitted by paragraph (a) of this section.

(*2*) For the purpose of providing the communications link desired the licensee of a station at an establishment in an isolated area either may be the licensee of a similar station at another location or may obtain communication service under a mutual agreement from the licensee of any station in the Public Safety Pool or any other station which is authorized to communicate with the fixed station.

(xi) A communications common carrier operating communications circuits that normally carry essential communication of such a nature that their disruption would endanger life or public property is eligible to hold authorizations for standby radio facilities for the transmission of messages only during periods when the normal circuits are inoperative due to circumstances beyond the control of the user. During such periods the radio facilities may be used to transmit any communication which would be carried by the regular circuit. Initial applications for authorization to operate a standby radio facility must include a statement describing radio communication facilities desired, the proposed method of operation, a description of the messages normally being carried, and an explanation of how their disruption will endanger life or public property.

(xii) Communications common carriers for radio facilities to be used in effecting expeditious repairs to interruption of public communications facilities where such interruptions have resulted in disabling intercity circuits or service to a multiplicity of subscribers in a general area. Stations authorized under this section may be used only when no other means of communication is readily available, for the transmission of messages relating to the safety of life and property and messages which are necessary for the efficient restoration of the public communication facilities which have been disrupted.

(xiii) Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis are eligible to hold authorization to operate stations for transmission of communications essential for the delivery or rendition of emergency medical services for the provision of basic or advanced life support. Applications submitted by persons or organizations (governmental or otherwise) other than the governmental body having jurisdiction over the state's emergency medical service plans must be accompanied by a statement prepared by the governmental body having jurisdiction over the state's emergency medical services plan indicating that the applicant is included in the state's emergency plan or otherwise supporting the application.

(b) *International police radiocommunication.* Police licensees which are located in close proximity to the borders of the United States may be authorized to communicate internationally. Request for such authority shall be written and signed and submitted in duplicate. The request shall include information as to the station with which communication will be conducted, and the frequency, power, emission, etc., that will be used. If authorized, such international communication must be conducted in accordance with Article 5 of the Inter-American Radio Agreement, Washington, DC, 1949, which reads as follows:

Article 5. *Police radio stations.* When the American countries authorize their police radio stations to exchange emergency information by radio with similar stations of another country, the following rules shall be applied.

(a) Only police radio stations located close to the boundaries of contiguous countries shall be allowed to exchange this information.

(b) In general, only important police messages shall be handled, such as those which would lose their value, because of slowness and time limitations if sent on other communication systems.

(c) Frequencies used for radiotelephone communications with mobile police units shall not be used for radiotelegraph communications.

(d) Radiotelephone communications shall be conducted only on frequencies assigned for radiotelephony.

(e) Radiotelegraph communications shall be conducted on the following frequencies: 2804 kHz calling, 2808 kHz working, 2812 kHz working, 5195 kHz day calling, 5185 kHz day working, 5140 kHz day working.

(f) The characteristics of police radio stations authorized to exchange information shall be notified to the International Telecommunication Union, Geneva, Switzerland.

(g) The abbreviations contained in Appendix 9 of the Atlantic City Radio Regulations shall be used to the greatest possible extent. Service indications are as follows: ''P'', priority, for messages that are to be sent immediately, regardless of the number of other messages on file. If no service indication is given, the messages are to be transmitted in the order of receipt.

(h) The message shall contain the preamble, address, text and signature, as follows:

Preamble. The preamble of the message shall consist of the following: The serial number preceded by the letters ''NR'', service indications, as appropriate; the group count according to standard cable count system; the letters ''CK'', followed by numerals indicating the number of words contained in the text of the message: Office and country of origin (not abbreviations): Day, month, and hour of filing;

Address. The address must be as complete as possible and shall include the name of the addressee with any supplementary particulars necessary for immediate delivery of the message;

Text. The text may be either in plain language or code;

Signature. The signature shall include the name and title of the person originating the message.

(c) Public Safety frequencies.

(1) The following table indicates frequencies available for assignment to Public Safety stations, together with the class of station(s) to which they are normally assigned, the specific assignment limitations which are explained in paragraph (d) of this section, and the certified frequency coordinator for each frequency:

(2)(i) The letter symbol(s) listed in the Coordinator column of the frequency table in paragraph (c)(3) of this section specifies the frequency coordinator(s) for each frequency as follows:

PF—Fire Coordinator
PH—Highway Maintenance Coordinator
PM—Emergency Medical Coordinator
PO—Forestry-Conservation Coordinator
PP—Police Coordinator
PS—Special Emergency Coordinator
PX—Any Public Safety Coordinator, except the Special Emergency Coordinator

(ii) Frequencies without any coordinator specified may be coordinated by any coordinator certified in the Public Safety Pool.

(3) Frequencies.

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz:			
530		1	PX
1610	Base (T.I.S.)	1	PX
1630	Base or mobile		PF
1722	do	2, 3	PP
1730	do	2, 3	PP
2212	do	4	PO
2226	do	4	PO
2236	do	4	PO
2244	do	4	PO
2366	do	2, 4	PP
2382	do	2	PP
2390	do	2, 4	PP
2406	do	2	PP
2430	do	2	PP
2442	do	2	PP
2450	do	2	PP
2458	do	2	PP
2482	do	2	PP
2490	do	2, 3	PP
2726	do	5	PX, PS
3201	do		PS
2000 to 3000	Fixed	75	PS
2000 to 10,000	Fixed, base, or mobile	6	PX
Megahertz:			
30.86	Base or mobile	7	PO
30.90	do	7	PO
30.94	do	7	PO
30.98	do	7	PO
31.02	do	7	PO
31.06	do	7, 8, 9	PO
31.10	do	7, 8, 9	PO
31.14	do	7, 8, 9	PO
31.18	do	8, 9	PO
31.22	do	8, 9	PO
31.26	do	8, 9	PO
31.30	do	8, 9	PO
31.34	do	8, 9	PO
31.38	do	8, 9	PO
31.42	do	8, 9	PO
31.46	do	8, 9	PO
31.50	do	8, 9	PO
31.54	do	8, 9	PO
31.58	do	8, 9	PO
31.62	do	8, 9	PO
31.66	do	8, 9	PO
31.70	do	8, 9	PO
31.74	do	8, 9	PO
31.78	do	8, 9	PO
31.82	do	8, 9	PO
31.86	do	8, 9	PO
31.90	do	8, 9	PO
31.94	do	8, 9	PO
31.98	do	8, 9	PO
33.02	do	10	PH, PS
33.04	do		PS
33.06	do	10	PH, PS
33.08	do		PS
33.10	do	10	PH, PS
33.42	Mobile or fixed	11	PF
33.44	Base or mobile		PF
33.46	Mobile		PF
33.48	Base or mobile		PF
33.50	Mobile		PF
33.52	Base or mobile		PF
33.54	Mobile		PF
33.56	Base or mobile		PF
33.58	Mobile		PF
33.60	Base or mobile		PF
33.62	Mobile		PF
33.64	Base or mobile		PF
33.66	Mobile		PF

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
33.68	Base or mobile		PF
33.70	.....do		PF
33.72	.....do		PF
33.74	.....do		PF
33.76	.....do		PF
33.78	.....do		PF
33.80	.....do		PF
33.82	.....do		PF
33.84	.....do		PF
33.86	.....do		PF
33.88	.....do		PF
33.90	.....do		PF
33.92	.....do		PF
33.94	.....do		PF
33.96	.....do		PF
33.98	.....do		PF
35.02	Mobile	12	PS
35.64	Base	13	PS
35.68	.....do	13	PS
37.02	Mobile		PP
37.04	Base or mobile		PP
37.06	.....do		PP
37.08	.....do		PP
37.10	.....do		PX
37.12	.....do		PP
37.14	.....do		PP
37.16	.....do		PP
37.18	.....do		PX
37.20	.....do		PP
37.22	.....do		PP
37.24	.....do		PP
37.26	.....do		PX
37.28	.....do		PP
37.30	.....do		PP
37.32	.....do		PP
37.34	Mobile		PP
37.36	Base or mobile		PP
37.38	Mobile		PP
37.40	Base or mobile		PP
37.42	Mobile		PP
37.90	Base or mobile	10	PH, PS
37.92	.....do		PH
37.94	.....do	10	PH, PS
37.96	.....do		PH
37.98	.....do	10	PH, PS
39.02	.....do		PP
39.04	.....do		PP
39.06	.....do	14	PX
39.08	.....do		PP
39.10	.....do		PX
39.12	.....do		PP
39.14	.....do		PP
39.16	.....do		PP
39.18	.....do		PX
39.20	.....do		PP
39.22	.....do		PP
39.24	.....do		PP
39.26	Mobile		PP
39.28	Base or mobile		PP
39.30	Mobile		PP
39.32	Base or mobile		PP
39.34	Mobile		PP
39.36	Base or mobile		PP
39.38	Mobile		PP
39.40	Base or mobile		PP
39.42	.....do		PP
39.44	.....do		PP
39.46	.....do	15	PP
39.48	.....do		PP
39.50	.....do		PX
39.52	.....do		PP
39.54	.....do		PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
39.56	do		PP
39.58	do		PX
39.60	do		PP
39.62	do		PP
39.64	do		PP
39.66	Mobile		PP
39.68	Base or mobile		PP
39.70	Mobile		PP
39.72	Base or mobile		PP
39.74	Mobile		PP
39.76	Base or mobile		PP
39.78	Mobile		PP
39.80	Base or mobile		PP
39.82	do		PX
39.84	do		PP
39.86	do		PP
39.88	do		PP
39.90	do		PX
39.92	do		PP
39.94	do		PP
39.96	do		PP
39.98	do		PX
42.02	do	2, 3, 16	PP
42.04	do	2, 3, 16	PP
42.06	do	2, 3, 16	PP
42.08	do	2, 3, 16	PP
42.10	do	2, 3, 16	PP
42.12	do	2, 3, 16	PP
42.14	do	2, 3, 16	PP
42.16	do	2, 3, 16	PP
42.18	Mobile	2, 16	PP
42.20	do	2, 16	PP
42.22	do	2, 16	PP
42.24	do	2, 16	PP
42.26	do	2, 16	PP
42.28	do	2, 16	PP
42.30	do	2, 16	PP
42.32	Base or mobile	2, 3, 16	PP
42.34	do	2, 3, 16	PP
42.36	do	2, 3, 16	PP
42.38	do	2, 3, 16	PP
42.40	do	2, 3, 16, 27	PP
42.42	do	2, 3, 16	PP
42.44	do	2, 3, 16	PP
42.46	do	2, 3, 16	PP
42.48	do	2, 3, 16	PP
42.50	do	2, 3, 16	PP
42.52	do	2, 3, 16	PP
42.54	do	2, 3, 16	PP
42.56	do	2, 3, 16	PP
42.58	do	2, 3, 16	PP
42.60	do	2, 3, 16	PP
42.62	do	2, 3, 16	PP
42.64	do	2, 3, 16	PP
42.66	Mobile	2, 16	PP
42.68	do	2, 16	PP
42.70	do	2, 16	PP
42.72	do	2, 16	PP
42.74	do	2, 16	PP
42.76	do	2, 16	PP
42.78	do	2, 16	PP
42.80	Base or mobile	13	PP
42.82	do	2, 3, 16	PP
42.84	do	2, 3, 16	PP
42.86	do	2, 3, 16	PP
42.88	do	2, 3, 16	PP
42.90	do	2, 3, 16	PP
42.92	do	2, 3, 16	PP
42.94	do	2, 3, 16	PP
43.64	Base	13, 18	PS
43.68	do	13	PS
44.62	Base or mobile	2, 3, 16	PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
44.64	do		PO
44.66	do	2, 3, 16	PP
44.68	do		PO
44.70	do	2, 3, 16	PP
44.72	do		PO
44.74	do	2, 3, 16	PP
44.76	do		PO
44.78	Mobile	2, 16	PP
44.80	Base or mobile		PO
44.82	Mobile	2, 16	PP
44.84	Base or mobile		PO
44.86	Mobile	2, 16	PP
44.88	Base or mobile		PO
44.90	Mobile	2, 16	PP
44.92	Base or mobile		PO
44.94	do	2, 3, 16	PP
44.96	do		PO
44.98	do	2, 3, 16	PP
45.00	do		PO
45.02	do	2, 3, 16	PP
45.04	do		PO
45.06	do	2, 3, 16	PP
45.08	do		PX
45.10	do		PP
45.12	do		PX
45.14	do		PP
45.16	do		PX
45.18	do		PP
45.20	do		PX
45.22	do		PP
45.24	do		PX
45.26	Mobile		PP
45.28	Base or mobile		PX
45.30	Mobile		PP
45.32	Base or mobile		PX
45.34	Mobile		PP
45.36	Base or mobile		PX
45.38	Mobile		PP
45.40	Base or mobile		PX
45.42	do		PP
45.44	do		PX
45.46	do		PP
45.48	do		PX
45.50	do		PP
45.52	do		PX
45.54	do		PP
45.56	do		PX
45.58	do		PP
45.60	do		PX
45.62	do		PP
45.64	do		PX
45.66	do		PP
45.68	do		PH
45.70	do		PP
45.72	do		PH
45.74	Mobile		PP
45.76	Base or mobile		PH
45.78	Mobile		PP
45.80	Base or mobile		PH
45.82	Mobile		PP
45.84	Base or mobile		PH
45.86	do	15	PP
45.88	do	19	PF
45.90	do	20	PP
45.92	do	10	PS
45.94	do		PP
45.96	do	10	PS
45.98	do		PP
46.00	do	10	PS
46.02	do		PP
46.04	do	10	PS
46.06	do		PF

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
46.08	.....do		PF
46.10	.....do		PF
46.12	.....do		PF
46.14	.....do		PF
46.16	.....do		PF
46.18	.....do		PF
46.20	.....do		PF
46.22	Mobile		PF
46.24	.....do		PF
46.26	.....do		PF
46.28	.....do		PF
46.30	Mobile or fixed	11	PF
46.32	Mobile		PF
46.34	.....do		PF
46.36	Base or mobile		PF
46.38	.....do		PF
46.40	.....do		PF
46.42	.....do		PF
46.44	.....do		PF
46.46	.....do		PF
46.48	.....do		PF
46.50	.....do		PF
46.52	.....do		PX
46.54	.....do		PX
46.56	.....do		PX
46.58	.....do		PX
47.02	.....do	21, 22	PH
47.04	.....do	21, 22	PH
47.06	.....do	21, 22	PH
47.08	.....do	21, 22	PH
47.10	.....do	21, 22	PH
47.12	.....do	21, 22	PH
47.14	.....do	21, 22	PH
47.16	.....do	21, 22	PH
47.18	.....do	21, 22	PH
47.20	.....do	21, 22	PH
47.22	.....do	21, 22	PH
47.24	.....do	21, 22	PH
47.26	.....do	21, 22	PH
47.28	.....do	21, 22	PH
47.30	.....do	21, 22	PH
47.32	.....do	21, 22	PH
47.34	.....do	21, 22	PH
47.36	.....do	21, 22	PH
47.38	.....do	21, 22	PH
47.40	.....do	21, 22	PH
47.42	.....do	10, 23	PS
47.46	.....do	10	PS
47.50	.....do	10	PS
47.54	.....do	10	PS
47.58	.....do	10	PS
47.62	.....do	10	PS
47.66	.....do	10	PS
72.00 to 76.00	Operational fixed	24	
72.44	Mobile	25	PF
72.48	.....do	25	PF
72.52	.....do	25	PF
72.56	.....do	25	PF
72.6	.....do	25	PF
75.44	.....do	25	PF
75.48	.....do	25	PF
75.52	.....do	25	PF
75.56	.....do	25	PF
75.6	.....do	25	PF
150 to 170	Base or mobile	26	
150.775	Mobile		PM
150.7825	.....do	27	PM
150.790	.....do		PM
150.7975	.....do		PM
150.805	.....do		PM
150.995	Base or mobile	28	PH
151.0025	.....do	27, 28	PH

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
151.010	do	28	PH
151.0175	do	27, 28	PH
151.025	do	28	PH
151.0325	do	27, 28	PH
151.040	do	28	PH
151.0475	do	27, 28	PH
151.055	do	28	PH
151.070	do	28, 30	PH
151.085	do	28	PH
151.0925	do	27, 28	PH
151.100	do	28	PH
151.1075	do	27, 28	PH
151.115	do	28	PH
151.1225	do	27, 28	PH
151.130	do	28	PH
151.1375	do	27, 28	PH
151.145	do	28	PO
151.1525	do	27, 28	PO
151.160	do	28	PO
151.1675	do	27, 28	PO
151.175	do	28	PO
151.190	do	28, 30	PO
151.205	do	28	PO
151.2125	do	27, 28	PO
151.220	do	28	PO
151.2275	do	27, 28	PO
151.235	do	28	PO
151.2425	do	27, 28	PO
151.250	do	28	PO
151.2575	do	27, 28	PO
151.265	do	28	PO
151.2725	do	27, 28	PO
151.280	do	28	PO
151.2875	do	27, 28	PO
151.295	do	28	PO
151.310	do	28, 30	PO
151.325	do	28	PO
151.3325	do	27, 28	PO
151.340	do	28	PO
151.3475	do	27, 28	PO
151.355	do	28	PO
151.3625	do	27, 28	PO
151.370	do	28	PO
151.3775	do	27, 28	PO
151.385	do	28	PO
151.3925	do	27, 28	PO
151.400	do	28	PO
151.4075	do	27, 28	PO
151.415	do	28	PO
151.4225	do	27, 28	PO
151.430	do	28	PO
151.4375	do	27, 28	PO
151.445	do	28	PO
151.4525	do	27, 28	PO
151.460	do	28	PO
151.4675	do	27, 28	PO
151.475	do	28	PO
151.4825	do	27, 28	PO
151.490	do	7, 28	PO
151.4975	do	7, 27, 28	PO
152.0075	Base	13, 19, 30	PS
153.740	Mobile		PX
153.7475	do	27	PX
153.755	do		PX
153.7625	do	27	PX
153.770	do		PF
153.7775	do	27	PF
153.785	do		PX
153.7925	do	27	PX
153.800	do		PX
153.8075	do	27	PX
153.815	do		PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
153.8225	do	27	PX
153.830	do	31	PF
153.8375	do	27, 31	PF
153.845	do		PX
153.8525	do	27	PX
153.860	do		PX
153.8675	do	27	PX
153.875	do		PX
153.8825	do	27	PX
153.890	do		PF
153.8975	do	27	PF
153.905	do		PX
153.9125	do	27	PX
153.920	do		PX
153.9275	do	27	PX
153.935	do		PX
153.9425	do	27	PX
153.950	do		PF
153.9575	do	27	PF
153.965	do		PX
153.9725	do	27	PX
153.980	do		PX
153.9875	do	27	PX
153.995	do		PX
154.0025	do	27	PX
154.010	do		PF
154.0175	do	27	PF
154.025	Base or mobile		PX
154.0325	do	27	PX
154.040	do	28	PX
154.0475	do	27, 28	PX
154.055	do	28	PX
154.0625	do	27, 28	PX
154.070	Mobile	28	PF
154.0775	do	27, 28	PF
154.085	Base or mobile	28	PX
154.0925	do	27, 28	PX
154.100	do	28	PX
154.1075	do	27, 28	PX
154.115	do	28	PX
154.1225	do	27, 28	PX
154.130	do	28	PF
154.1375	do	27, 28	PF
154.145	do	28	PF
154.1525	do	27, 28	PF
154.160	do	28	PF
154.1675	do	27, 28	PF
154.175	do	28	PF
154.1825	do	27, 28	PF
154.190	do	28	PF
154.1975	do	27, 28	PF
154.205	do	28	PF
154.2125	do	27, 28	PF
154.220	do	28	PF
154.2275	do	27, 28	PF
154.235	do	28	PF
154.2425	do	27, 28	PF
154.250	do	28	PF
154.2575	do	27, 28	PF
154.265	do	19, 28	PF
154.2725	do	19, 27, 28	PF
154.280	do	19, 28	PF
154.2875	do	19, 27, 28	PF
154.295	do	19, 28	PF
154.3025	do	19, 27, 28	PF
154.310	do	28	PF
154.3175	do	27, 28	PF
154.325	do	28	PF
154.3325	do	27, 28	PF
154.340	do	28	PF
154.3475	do	27, 28	PF
154.355	do	28	PF

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
154.3625	do	27, 28	PF
154.370	do	28	PF
154.3775	do	27, 28	PF
154.385	do	28	PF
154.3925	do	27, 28	PF
154.400	do	28	PF
154.4075	do	27, 28	PF
154.415	do	28	PF
154.4225	do	27, 28	PF
154.430	do	28	PF
154.4375	do	27, 28	PF
154.445	do	28	PF
154.4525	do	27, 28	PF
154.45625	Fixed or mobile	32, 33, 34, 35	PX
154.46375	do	33, 34, 35, 36, 37	PX
154.47125	do	33, 34, 35, 36	PX
154.47875	do	33, 34, 35, 37	PX
154.650	Mobile		PP
154.6575	do	27	PP
154.665	Base or mobile	16	PP
154.6725	do	16, 27	PP
154.680	do	16	PP
154.6875	do	16, 27	PP
154.695	do	16	PP
154.7025	do	16, 27	PP
154.710	Mobile		PP
154.7175	do	27	PP
154.725	Base or mobile		PP
154.7325	do	27	PP
154.740	do		PP
154.7475	do	27	PP
154.755	do		PP
154.7625	do	27	PP
154.770	Mobile		PP
154.7775	do	27	PP
154.785	Base or mobile		PP
154.7925	do	27	PP
154.800	do		PP
154.8075	do	27	PP
154.815	do		PP
154.8225	do	27	PP
154.830	Mobile		PP
154.8375	do	27	PP
154.845	Base or mobile		PP
154.8525	do	27	PP
154.860	do		PP
154.8675	do	27	PP
154.875	do		PP
154.8825	do	27	PP
154.890	Mobile		PP
154.8975	do	27	PP
154.905	Base or mobile	16	PP
154.9125	do	16, 27	PP
154.920	do	16	PP
154.9275	do	16, 27	PP
154.935	do	16	PP
154.9425	do	16, 27	PP
154.950	Mobile		PP
154.9575	do	27	PP
154.965	Base or mobile		PX
154.9725	do	27	PX
154.980	do		PX
154.9875	do	27	PX
154.995	do		PX
155.0025	do	27	PX
155.010	do		PP
155.0175	do	27	PP
155.025	do		PX
155.0325	do	27	PX
155.040	do		PX
155.0475	do	27	PX
155.055	do		PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
155.0625	do	27	PX
155.070	do		PP
155.0775	do	27	PP
155.085	do		PX
155.0925	do	27	PX
155.100	do		PX
155.1075	do	27	PX
155.115	do		PX
155.1225	do	27	PX
155.130	do		PP
155.1375	do	27	PP
155.145	do		PX
155.1525	do	27	PX
155.160	do	10	PS
155.1675	do	10, 27	PS
155.175	do	10	PS
155.1825	do	10, 27	PS
155.190	do		PP
155.1975	do	27	PP
155.205	do	10	PS
155.2125	do	10, 27	PS
155.220	do	10	PS
155.2275	do	10, 27	PS
155.235	do	10	PS
155.2425	do	10, 27	PS
155.250	do		PP
155.2575	do	27	PP
155.265	do	10	PS
155.2725	do	10, 27	PS
155.280	do	10	PS
155.2875	do	10, 27	PS
155.295	do	10	PS
155.3025	do	10, 27	PS
155.310	do		PP
155.3175	do	27	PP
155.325	do	38, 39	PM
155.3325	do	27, 38, 39	PM
155.340	do	39, 40	PM
155.3475	do	27, 39, 40	PM
155.355	do	38, 39	PM
155.3625	do	27, 38, 39	PM
155.370	do		PP
155.3775	do	27	PP
155.385	do	38, 39	PM
155.3925	do	27, 38, 39	PM
155.400	do	38, 39	PM
155.4075	do	27, 38, 39	PM
155.415	do		PP
155.4225	do	27	PP
155.430	do		PP
155.4375	do	27	PP
155.445	do	16	PP
155.4525	do	16, 27	PP
155.460	do	16	PP
155.4675	do	16, 27	PP
155.475	do	41	PP
155.4825	do	27, 41	PP
155.490	do		PP
155.4975	do	27	PP
155.505	do	16	PP
155.5125	do	16, 27	PP
155.520	do		PP
155.5275	do	27	PP
155.535	do		PP
155.5425	do	27	PP
155.550	do		PP
155.5575	do	27	PP
155.565	do		PP
155.5725	do	27	PP
155.580	do		PP
155.5875	do	27	PP
155.595	do		PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
155.6025	do	27	PP
155.610	do		PP
155.6175	do	27	PP
155.625	do		PP
155.6325	do	27	PP
155.640	do		PP
155.6475	do	27	PP
155.655	do		PP
155.6625	do	27	PP
155.670	do		PP
155.6775	do	27	PP
155.685	do		PP
155.6925	do	27	PP
155.700	do		PP
155.7075	do	27	PP
155.715	do		PX
155.7225	do	27	PX
155.730	do		PP
155.7375	do	27	PP
155.745	do		PX
155.7525	do	27	PX
155.760	do		PX
155.7675	do	27	PX
155.775	do		PX
155.7825	do	27	PX
155.790	do		PP
155.7975	do	27	PP
155.805	do		PX
155.8125	do	27	PX
155.820	do		PX
155.8275	do	27	PX
155.835	do		PX
155.8425	do	27	PX
155.850	Mobile		PP
155.8575	do	27	PP
155.865	Base or mobile		PX
155.8725	do	27	PX
155.880	do		PX
155.8875	do	27	PX
155.895	do		PX
155.9025	do	27	PX
155.910	Mobile		PP
155.9175	do	27	PP
155.925	Base or mobile		PX
155.9325	do	27	PX
155.940	do		PX
155.9475	do	27	PX
155.955	do		PX
155.9625	do	27	PX
155.970	Mobile		PP
155.9775	do	27	PP
155.985	do		PX
155.9925	do	27	PX
156.000	do		PX
156.0075	do	27	PX
156.015	do		PX
156.0225	do	27	PX
156.030	do		PP
156.0375	do	27	PP
156.045	do	42	PH
156.0525	do	27, 42	PH
156.060	do	42	PH
156.0675	do	27, 42	PH
156.075	do		PH
156.0825	do	27	PH
156.090	do		PP
156.0975	do	27	PP
156.105	Base or mobile		PH
156.1125	do	27	PH
156.120	do		PH
156.1275	do	27	PH
156.135	do		PH

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
156.1425	.....do	27	PH
156.150	Mobile		PP
156.1575	.....do	27	PP
156.165	Base or mobile	42, 43	PH
156.1725	.....do	27, 42, 43	PH
156.180	.....do	42, 43	PH
156.1875	.....do	27, 42, 43	PH
156.195	.....do	43	PH
156.2025	.....do	27, 43	PH
156.210	.....do		PP
156.2175	.....do	27	PP
156.225	.....do	43	PH
156.2325	.....do	27, 43	PH
156.240	.....do	43	PH
156.2475	.....do	43, 44	PH
157.450	.....do	13, 45, 30	PS
158.7225	.....do	44	PP
158.730	.....do		PP
158.7375	.....do	27	PP
158.745	Base and mobile		PX
158.7525	.....do	27	PX
158.760	.....do		PX
158.7675	.....do	27	PX
158.775	.....do		PX
158.7825	.....do	27	PX
158.790	Base or mobile		PP
158.7975	.....do	27	PP
158.805	Base and mobile		PX
158.8125	.....do	27	PX
158.820	.....do		PX
158.8275	.....do	27	PX
158.835	.....do		PX
158.8425	.....do	27	PX
158.850	Base or mobile		PP
158.8575	.....do	27	PP
158.865	Mobile		PX
158.8725	.....do	27	PX
158.880	.....do		PX
158.8875	.....do	27	PX
158.895	.....do		PX
158.9025	.....do	27	PX
158.910	.....do		PP
158.9175	.....do	27	PP
158.925	.....do		PX
158.9325	.....do	27	PX
158.940	.....do		PX
158.9475	.....do	27	PX
158.955	.....do		PX
158.9625	.....do	27	PX
158.970	.....do		PP
158.9775	.....do	27	PP
158.985	.....do	43	PH
158.9925	.....do	27, 43	PH
159.000	.....do	43	PH
159.0075	.....do	27, 43	PH
159.015	.....do	43	PH
159.0225	.....do	27, 43	PH
159.030	.....do		PP
159.0375	.....do	27	PP
159.045	.....do	43	PH
159.0525	.....do	27, 43	PH
159.060	.....do	43	PH
159.0675	.....do	27, 43	PH
159.075	.....do	43	PH
159.0825	.....do	27, 43	PH
159.090	Base or mobile		PP
159.0975	.....do	27	PP
159.105	.....do	43	PH
159.1125	.....do	27, 43	PH
159.120	.....do	43	PH
159.1275	.....do	27, 43	PH
159.135	.....do	43	PH

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
159.1425	do	27, 43	PH
159.150	do		PP
159.1575	do	27	PP
159.165	do	43	PH
159.1725	do	27, 43	PH
159.180	do		PH
159.1875	do	27	PH
159.195	do		PH
159.2025	do	27	PH
159.210	do		PP
159.2175	do	27	PP
159.225	do		PO
159.2325	do	27	PO
159.240	do	46	PO
159.2475	do	27, 46	PO
159.255	do	46	PO
159.2625	do	27, 46	PO
159.270	do	46	PO
159.2775	do	27, 46	PO
159.285	do	46	PO
159.2925	do	27, 46	PO
159.300	do	46	PO
159.3075	do	27, 46	PO
159.315	do	46	PO
159.3225	do	27, 46	PO
159.330	do	46	PO
159.3375	do	27, 46	PO
159.345	do	46	PO
159.3525	do	27, 46	PO
159.360	do	46	PO
159.3675	do	27, 46	PO
159.375	do	46	PO
159.3825	do	27, 46	PO
159.390	do	46	PO
159.3975	do	27, 46	PO
159.405	do	46	PO
159.4125	do	27, 46	PO
159.420	do	46	PO
159.4275	do	27, 46	PO
159.435	do	46	PO
159.4425	do	27, 46	PO
159.450	do		PO
159.4575	do	27	PO
159.465	do		PO
159.4725	do	27	PO
163.250	do	13, 30	PS
166.250	do	47	PF
169 to 172	Mobile	48	
170.150	Base or mobile	47	PF
170.425	do	9, 49, 50	PO
170.475	do	9, 49, 51	PO
170.575	do	9, 49, 50	PO
171.425	do	9, 49, 51	PO
171.475	do	9, 50, 52	PO
171.575	do	9, 49, 51	PO
172.225	do	9, 49, 50	PO
172.275	do	9, 51, 52	PO
172.375	do	9, 49, 50	PO
173.075	do	53	PP
173.20375	Fixed or mobile	33, 34, 35, 36	PX
173.210	do	34, 35, 36, 54	PX
173.2375	do	32, 33, 34, 35	PX
173.2625	do	32, 33, 34, 35	PX
173.2875	do	32, 33, 34, 35	PX
173.3125	do	32, 33, 34, 35	PX
173.3375	do	32, 33, 34, 35	PX
173.3625	do	32, 33, 34, 35	PX
173.390	do	34, 35, 36, 54	PX
173.39625	do	33, 34, 35, 36	PX
220 to 222	Base and mobile	55	
220.8025	Base	55	PP, PS
220.8075	do	55	PP, PS

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
220.8125	.....do	55	PP, PS
220.8175	.....do	55	PP, PS
220.8225	.....do	55	PP, PS
220.8275	.....do	55	PP, PS
220.8325	.....do	55	PP, PS
220.8375	.....do	55	PP, PS
220.8425	.....do	55	PP, PS
220.8475	.....do	55	PP, PS
220.9025	.....do	55	PM
220.9075	.....do	55	PM
220.9125	.....do	55	PM
220.9175	.....do	55	PM
220.9225	.....do	55	PM
221.8025	Mobile	55	PP, PS
221.8075	.....do	55	PP, PS
221.8125	.....do	55	PP, PS
221.8175	.....do	55	PP, PS
221.8225	.....do	55	PP, PS
221.8275	.....do	55	PP, PS
221.8325	.....do	55	PP, PS
221.8375	.....do	55	PP, PS
221.8425	.....do	55	PP, PS
221.8475	.....do	55	PP, PS
221.9025	.....do	55	PM
221.9075	.....do	55	PM
221.9125	.....do	55	PM
221.9175	.....do	55	PM
221.9225	.....do	55	PM
450 to 470	Fixed, base, or mobile	26, 56	
453.0125	Mobile	57	PX
453.025	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PX, PS
453.03125	Base or mobile	44, 59, 60, 61, 62	PM, PS
453.0375	.....do	27, 59, 60, 61, 62	PX
453.04375	.....do	44, 59, 60, 61, 62	PM
453.050	.....do		PX
453.05625	.....do	44	PX
453.0625	.....do	27	PX
453.06875	.....do	44	PX
453.075	Central control, fixed, base, or mobile	58, 59, 60, 61, 62	PX, PS
453.08125	Base or mobile	44, 59, 60, 61, 62	PM
453.0875	.....do	27, 59, 60, 61, 62	PX
453.09375	.....do	44, 59, 60, 61, 62	PM
453.100	.....do		PX
453.10625	.....do	44	PX
453.1125	.....do	27	PX
453.11875	.....do	44	PX
453.125	Central control, fixed, base, or mobile	58, 59, 60, 61, 62	PX, PS
453.13125	Base or mobile	44, 59, 60, 61, 62	PM
453.1375	.....do	27, 59, 60, 61, 62	PX
453.14375	.....do	44, 59, 60, 61, 62	PM
453.150	.....do		PX
453.15625	.....do	44	PX
453.1625	.....do	27	PX
453.16875	.....do	44	PX
453.175	Central control, fixed, base, or mobile	58, 59, 60, 61, 62	PX, PS
453.18125	Base or mobile	44, 59, 60, 61, 62	PM
453.1875	.....do	27, 59, 60, 61, 62	PX
453.19375	.....do	44, 59, 60, 61, 62	PM
453.200	.....do		PX
453.20625	.....do	44	PX
453.2125	.....do	27	PX
453.21875	.....do	44	PX
453.225	.....do		PX
453.23125	.....do	44	PX
453.2375	.....do	27	PX
453.24375	.....do	44	PX
453.250	.....do		PX
453.25625	.....do	44	PX
453.2625	.....do	27	PX
453.26875	.....do	44	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
453.275	do		PX
453.28125	do	44	PX
453.2875	do	27	PX
453.29375	do	44	PX
453.300	do		PX
453.30625	do	44	PX
453.3125	do	27	PX
453.31875	do	44	PX
453.325	do		PX
453.33125	do	44	PX
453.3375	do	27	PX
453.34375	do	44	PX
453.350	do		PX
453.35625	do	44	PX
453.3625	do	27	PX
453.36875	do	44	PX
453.375	do		PX
453.38125	do	44	PX
453.3875	do	27	PX
453.39375	do	44	PX
453.400	do		PX
453.40625	do	44	PX
453.4125	do	27	PX
453.41875	do	44	PX
453.425	do		PX
453.43125	do	44	PX
453.4375	do	27	PX
453.44375	do	44	PX
453.450	do		PX
453.45625	do	44	PX
453.4625	do	27	PX
453.46875	do	44	PX
453.475	do		PX
453.48125	do	44	PX
453.4875	do	27	PX
453.49375	do	44	PX
453.500	do		PX
453.50625	do	44	PX
453.5125	do	27	PX
453.51875	do	44	PX
453.525	do		PX
453.53125	do	44	PX
453.5375	do	27	PX
453.54375	do	44	PX
453.550	do		PX
453.55625	do	44	PX
453.5625	do	27	PX
453.56875	do	44	PX
453.575	do		PX
453.58125	do	44	PX
453.5875	do	27	PX
453.59375	do	44	PX
453.600	do		PX
453.60625	do	44	PX
453.6125	do	27	PX
453.61875	do	44	PX
453.625	do		PX
453.63125	do	44	PX
453.6375	do	27	PX
453.64375	do	44	PX
453.650	do		PX
453.65625	do	44	PX
453.6625	do	27	PX
453.66875	do	44	PX
453.675	do		PX
453.68125	do	44	PX
453.6875	do	27	PX
453.69375	do	44	PX
453.700	do		PX
453.70625	do	44	PX
453.7125	do	27	PX
453.71875	do	44	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
453.725	do		PX
453.73125	do	44	PX
453.7375	do	27	PX
453.74375	do	44	PX
453.750	do		PX
453.75625	do	44	PX
453.7625	do	27	PX
453.76875	do	44	PX
453.775	do		PX
453.78125	do	44	PX
453.7875	do	27	PX
453.79375	do	44	PX
453.800	do		PX
453.80625	do	44	PX
453.8125	do	27	PX
453.81875	do	44	PX
453.825	do		PX
453.83125	do	44	PX
453.8375	do	27	PX
453.84375	do	44	PX
453.850	do		PX
453.85625	do	44	PX
453.8625	do	27	PX
453.86875	do	44	PX
453.875	do		PX
453.88125	do	44	PX
453.8875	do	27	PX
453.89375	do	44	PX
453.900	do		PX
453.90625	do	44	PX
453.9125	do	27	PX
453.91875	do	44	PX
453.925	do		PX
453.93125	do	44	PX
453.9375	do	27	PX
453.94375	do	44	PX
453.950	do		PX
453.95625	do	44	PX
453.9625	do	27	PX
453.96875	do	44	PX
453.975	do		PX
453.98125	do	44	PX
453.9875	do	27	PX
453.99375	do	44	PX
458.0125	Mobile	57	PS
458.025	Radio call boxes, fixed, or mobile	58, 59, 61, 62, 63	PX
458.03125	Mobile	44, 59, 61, 62	PM
458.0375	do	27, 59, 61, 62	PX
458.04375	do	44, 59, 61, 62	PM
458.050	do		PX
458.05625	do	44	PX
458.0625	do	27	PX
458.06875	do	44	PX
458.075	Radio call boxes, fixed, or mobile	58, 59, 61, 62, 63	PX
458.08125	Mobile	44, 59, 61, 62	PM
458.0875	do	27, 59, 61, 62	PX
458.09375	do	44, 59, 61, 62	PM
458.100	do		PX
458.10625	do	44	PX
458.1125	do	27	PX
458.11875	do	44	PX
458.125	Radio call boxes, fixed, or mobile	58, 59, 61, 62, 63	PX
458.13125	Mobile	44, 59, 61, 62	PM
458.1375	do	27, 59, 61, 62	PX
458.14375	do	44, 59, 61, 62	PM
458.150	do		PX
458.15625	do	44	PX
458.1625	do	27	PX
458.16875	do	44	PX
458.175	Radio call boxes, fixed, or mobile	58, 59, 61, 62, 63	PX
458.18125	Mobile	44, 59, 61, 62	PM
458.1875	do	27, 59, 61, 62	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
458.19375	do	44, 59, 61, 62	PM
458.200	do		PX
458.20625	do	44	PX
458.2125	do	27	PX
458.21875	do	44	PX
458.225	do		PX
458.23125	do	44	PX
458.2375	do	27	PX
458.24375	do	44	PX
458.250	do		PX
458.25625	do	44	PX
458.2625	do	27	PX
458.26875	do	44	PX
458.275	do		PX
458.28125	do	44	PX
458.2875	do	27	PX
458.29375	do	44	PX
458.300	do		PX
458.30625	do	44	PX
458.3125	do	27	PX
458.31875	do	44	PX
458.325	do		PX
458.33125	do	44	PX
458.3375	do	27	PX
458.34375	do	44	PX
458.350	do		PX
458.35625	do	44	PX
458.3625	do	27	PX
458.36875	do	44	PX
458.375	do		PX
458.38125	do	44	PX
458.3875	do	27	PX
458.39375	do	44	PX
458.400	do		PX
458.40625	do	44	PX
458.4125	do	27	PX
458.41875	do	44	PX
458.425	do		PX
458.43125	do	44	PX
458.4375	do	27	PX
458.44375	do	44	PX
458.450	do		PX
458.45625	do	44	PX
458.4625	do	27	PX
458.46875	do	44	PX
458.475	do		PX
458.48125	do	44	PX
458.4875	do	27	PX
458.49375	do	44	PX
458.500	do		PX
458.50625	do	44	PX
458.5125	do	27	PX
458.51875	do	44	PX
458.525	do		PX
458.53125	do	44	PX
458.5375	do	27	PX
458.54375	do	44	PX
458.550	do		PX
458.55625	do	44	PX
458.5625	do	27	PX
458.56875	do	44	PX
458.575	do		PX
458.58125	do	44	PX
458.5875	do	27	PX
458.59375	do	44	PX
458.600	do		PX
458.60625	do	44	PX
458.6125	do	27	PX
458.61875	do	44	PX
458.625	do		PX
458.63125	do	44	PX
458.6375	do	27	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
458.64375	do	44	PX
458.650	do		PX
458.65625	do	44	PX
458.6625	do	27	PX
458.66875	do	44	PX
458.675	do		PX
458.68125	do	44	PX
458.6875	do	27	PX
458.69375	do	44	PX
458.700	do		PX
458.70625	do	44	PX
458.7125	do	27	PX
458.71875	do	44	PX
458.725	do		PX
458.73125	do	44	PX
458.7375	do	27	PX
458.74375	do	44	PX
458.750	do		PX
458.75625	do	44	PX
458.7625	do	27	PX
458.76875	do	44	PX
458.775	do		PX
458.78125	do	44	PX
458.7875	do	27	PX
458.79375	do	44	PX
458.800	do		PX
458.80625	do	44	PX
458.8125	do	27	PX
458.81875	do	44	PX
458.825	do		PX
458.83125	do	44	PX
458.8375	do	27	PX
458.84375	do	44	PX
458.850	do		PX
458.85625	do	44	PX
458.8625	do	27	PX
458.86875	do	44	PX
458.875	do		PX
458.88125	do	44	PX
458.8875	do	27	PX
458.89375	do	44	PX
458.900	do		PX
458.90625	do	44	PX
458.9125	do	27	PX
458.91875	do	44	PX
458.925	do		PX
458.93125	do	44	PX
458.9375	do	27	PX
458.94375	do	44	PX
458.950	do		PX
458.95625	do	44	PX
458.9625	do	27	PX
458.96875	do	44	PX
458.975	do		PX
458.98125	do	44	PX
458.9875	do	27	PX
458.99375	do	44	PX
460.0125	do	27, 64	PP
460.01875	Base or mobile	44	PP
460.025	do		PP
460.03125	do	44	PP
460.0375	do	27	PP
460.04375	do	44	PP
460.050	do		PP
460.05626	do	44	PP
460.0625	do	27	PP
460.06875	do	44	PP
460.075	do		PP
460.08125	do	44	PP
460.0875	do	27	PP
460.09375	do	44	PP
460.100	do		PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
460.10625	do	44	PP
460.1125	do	27	PP
460.11875	do	44	PP
460.125	do		PP
460.13125	do	44	PP
460.1375	do	27	PP
460.14375	do	44	PP
460.150	do		PP
460.15625	do	44	PP
460.1625	do	27	PP
460.16875	do	44	PP
460.175	do		PP
460.18125	do	44	PP
460.1875	do	27	PP
460.19375	do	44	PP
460.200	do		PP
460.20625	do	44	PP
460.2125	do	27	PP
460.21875	do	44	PP
460.225	do		PP
460.23125	do	44	PP
460.2375	do	27	PP
460.24375	do	44	PP
460.250	do		PP
460.25625	do	44	PP
460.2625	do	27	PP
460.26875	do	44	PP
460.275	do		PP
460.28125	do	44	PP
460.2875	do	27	PP
460.29375	do	44	PP
460.300	do		PP
460.30625	do	44	PP
460.3125	do	27	PP
460.31875	do	44	PP
460.325	do		PP
460.33125	do	44	PP
460.3375	do	27	PP
460.34375	do	44	PP
460.350	do		PP
460.35625	do	44	PP
460.3625	do	27	PP
460.36875	do	44	PP
460.375	do		PP
460.38125	do	44	PP
460.3875	do	27	PP
460.39375	do	44	PP
460.400	do		PP
460.40625	do	44	PP
460.4125	do	27	PP
460.41875	do	44	PP
460.425	do		PP
460.43125	do	44	PP
460.4375	do	27	PP
460.44375	do	44	PP
460.450	do		PP
460.45625	do	44	PP
460.4625	do	27	PP
460.46875	do	44	PP
460.475	do		PP
460.48125	do	44	PP
460.4875	do	27	PP
460.49375	do	44	PP
460.500	do		PP
460.50625	do	44	PP
460.5125	do	27	PP
460.51875	do	44	PP
460.525	do		PP, PF, PM
460.53125	do	44	PP, PF, PM
460.5375	do	27	PP, PF, PM
460.54375	do	44	PP, PF, PM
460.550	do		PP, PF, PM

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
460.55625	do	44	PP, PF, PM
460.5625	do	27	PP, PF, PM
460.56875	do	44	PP, PF, PM
460.575	do		PF
460.58125	do	44	PF
460.5875	do	27	PF
460.59375	do	44	PF
460.600	do		PF
460.60625	do	44	PF
460.6125	do	27	PF
460.61875	do	44	PF
460.625	do		PF
460.63125	do	44	PF
460.6375	do	27	PF
460.64375	do	44	PF
462.9375	Mobile	57	PS
462.950	Base or mobile	38, 65	PM
462.95625	do	38, 44, 65	PM
462.9625	do	27, 38, 65	PM
462.96875	do	38, 44, 65	PM
462.975	do	38, 65	PM
462.98125	do	38, 44, 65	PM
462.9875	do	27, 38, 65	PM
462.99375	do	38, 44, 65	PM
463.000	do	59, 66, 67	PM
463.00625	do	44, 59, 66, 67	PM
463.0125	do	27, 59, 66, 67	PM
463.01875	do	44, 59, 66, 67	PM
463.025	do	59, 66, 67	PM
463.03125	do	44, 59, 66, 67	PM
463.0375	do	27, 59, 66, 67	PM
463.04375	do	44, 59, 66, 67	PM
463.050	do	59, 66, 67	PM
463.05625	do	44, 59, 66, 67	PM
463.0625	do	27, 59, 66, 67	PM
463.06875	do	44, 59, 66, 67	PM
463.075	do	59, 66, 76	PM
463.08125	do	44, 59, 66, 76	PM
463.0875	do	27, 59, 66, 76	PM
463.09375	do	44, 59, 66, 76	PM
463.100	do	59, 66, 76	PM
463.10625	do	44, 59, 66, 76	PM
463.1125	do	27, 59, 66, 76	PM
463.11875	do	44, 59, 66, 76	PM
463.125	do	59, 66, 76	PM
463.13125	do	44, 59, 66, 76	PM
463.1375	do	27, 59, 66, 76	PM
463.14375	do	44, 59, 66, 76	PM
463.150	do	59, 66, 76	PM
463.15625	do	44, 59, 66, 76	PM
463.1625	do	27, 59, 66, 76	PM
463.16875	do	44, 59, 66, 76	PM
463.175	do	59, 66, 76	PM
463.18125	do	44, 59, 66, 76	PM
463.1875	do	27, 59, 66, 76	PM
463.19375	do	44, 59, 66, 76	PM
465.0125	Mobile	57	PP
465.025	do		PP
465.03125	do	44	PP
465.0375	do	27	PP
465.04375	do	44	PP
465.050	do		PP
465.05625	do	44	PP
465.0625	do	27	PP
465.06875	do	44	PP
465.075	do		PP
465.08125	do	44	PP
465.0875	do	27	PP
465.09375	do	44	PP
465.100	do		PP
465.10625	do	44	PP
465.1125	do	27	PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
465.11875	do	44	PP
465.125	do		PP
465.13125	do	44	PP
465.1375	do	27	PP
465.14375	do	44	PP
465.150	do		PP
465.15625	do	44	PP
465.1625	do	27	PP
465.16875	do	44	PP
465.175	do		PP
465.18125	do	44	PP
465.1875	do	27	PP
465.19375	do	44	PP
465.200	do		PP
465.20625	do	44	PP
465.2125	do	27	PP
465.21875	do	44	PP
465.225	do		PP
465.23125	do	44	PP
465.2375	do	27	PP
465.24375	do	44	PP
465.250	do		PP
465.25625	do	44	PP
465.2625	do	27	PP
465.26875	do	44	PP
465.275	do		PP
465.28125	do	44	PP
465.2875	do	27	PP
465.29375	do	44	PP
465.300	do		PP
465.30625	do	44	PP
465.3125	do	27	PP
465.31875	do	44	PP
465.325	do		PP
465.33125	do	44	PP
465.3375	do	27	PP
465.34375	do	44	PP
465.350	do		PP
465.35625	do	44	PP
465.3625	do	27	PP
465.36875	do	44	PP
465.375	do		PP
465.38125	do	44	PP
465.3875	do	27	PP
465.39375	do	44	PP
465.400	do		PP
465.40625	do	44	PP
465.4125	do	27	PP
465.41875	do	44	PP
465.425	do		PP
465.43125	do	44	PP
465.4375	do	27	PP
465.44375	do	44	PP
465.450	do		PP
465.45625	do	44	PP
465.4625	do	27	PP
465.46875	do	44	PP
465.475	do		PP
465.48125	do	44	PP
465.4875	do	27	PP
465.49375	do	44	PP
465.500	do		PP
465.50625	do	44	PP
465.5125	do	27	PP
465.51875	do	44	PP
465.525	do		PP, PF, PM
465.53125	do	44	PP, PF, PM
465.5375	do	27	PP, PF, PM
465.54375	do	44	PP, PF, PM
465.550	Base or mobile		PP, PF, PM
465.55625	do	44	PP, PF, PM
465.5625	do	27	PP, PF, PM

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
465.56875	.....do	44	PP, PF, PM
465.575	Mobile		PF
465.58125	.....do	44	PF
465.5875	.....do	27	PF
465.59375	.....do	44	PF
465.600	.....do		PF
465.60625	.....do	44	PF
465.6125	.....do	27	PF
465.61875	.....do	44	PF
465.625	.....do		PF
465.63125	.....do	44	PF
465.6375	.....do	27	PF
465.64375	.....do	44	PF
467.9375	.....do	57	PS
467.950	.....do	38, 65	PM
467.95625	.....do	38, 44, 65	PM
467.9625	.....do	27, 38, 65	PM
467.96875	.....do	38, 44, 65	PM
467.975	.....do	38, 65	PM
467.98125	.....do	38, 44, 65	PM
467.9875	.....do	27, 38, 65	PM
467.99375	.....do	38, 44, 65	PM
468.000	.....do	59, 66, 67	PM
468.00625	.....do	44, 59, 66, 67	PM
468.0125	.....do	27, 59, 66, 67	PM
468.01875	.....do	44, 59, 66, 67	PM
468.025	.....do	59, 66, 67	PM
468.03125	.....do	44, 59, 66, 67	PM
468.0375	.....do	27, 59, 66, 67	PM
468.04375	.....do	44, 59, 66, 67	PM
468.050	.....do	59, 66, 67	PM
468.05625	.....do	44, 59, 66, 67	PM
468.0625	.....do	27, 59, 66, 67	PM
468.06875	.....do	44, 59, 66, 67	PM
468.075	.....do	59, 66, 76	PM
468.08125	.....do	44, 59, 66, 76	PM
468.0875	.....do	27, 59, 66, 76	PM
468.09375	.....do	44, 59, 66, 76	PM
468.100	.....do	59, 66, 76	PM
468.10625	.....do	44, 59, 66, 76	PM
468.1125	.....do	27, 59, 66, 76	PM
468.11875	.....do	44, 59, 66, 76	PM
468.125	.....do	59, 66, 76	PM
468.13125	.....do	44, 59, 66, 76	PM
468.1375	.....do	27, 59, 66, 76	PM
468.14375	.....do	44, 59, 66, 76	PM
468.150	.....do	59, 66, 76	PM
468.15625	.....do	44, 59, 66, 76	PM
468.1625	.....do	27, 59, 66, 76	PM
468.16875	.....do	44, 59, 66, 76	PM
468.175	.....do	59, 66, 76	PM
468.18125	.....do	44, 59, 66, 76	PM
468.1875	.....do	27, 59, 66, 76	PM
468.19375	.....do	44, 59, 66, 76	PM
470 to 512	Base or mobile	68	PX
806 to 824	Mobile	69.	
851 to 859	Base or mobile	69.	
928 and above	Operational fixed	70.	
929 to 930	Base only	71.	
1,427 to 1,435	Operational fixed, base, or mobile	72.	
2,450 to 2,500	Base or mobile	73.	
10,550 to 10,680	.....do	74.	

(d) Explanation of assignment limitations appearing in the frequency table of paragraph (c)(3) of this section:

(1) This frequency is available for use by Travelers' Information Stations in accordance with § 90.242.

(2) The frequency is available for assignment only in accordance with a geographical assignment plan.

(3) Base stations operating on this frequency and rendering service to state police mobile units may be authorized to use a maximum output power in excess of the maximum indicated in § 90.205 but not in excess of 7500 watts: Provided, That such operation is secondary to other stations.

(4) The use of this frequency is on a secondary basis to any Canadian station.

(5) In addition to base and mobile stations, this frequency may be assigned to fixed stations on a secondary basis to base or mobile stations. Upon a showing of need, the use of a second frequency in the band 2505–3500 kHz may be made available to governmental entities through appropriate arrangements with Federal Government agencies for restricted area use on a shared basis with maximum power output, emission, and hours of operation determined on the basis of the technical conditions involved in using the selected frequency in the particular area.

(6) Only the central governments of the fifty individual States, the District of Columbia, and the insular areas of the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the unincorporated territories of American Samoa, Guam and the United States Virgin Islands are eligible to be licensed to use this spectrum, and then only for disaster communications purposes. Licensees may not use this spectrum to provide operational communications circuits. See also, § 90.264.

(7) This frequency is shared with the Industrial/Business Pool.

(8) This frequency is available for assignment only in accordance with a geographical assignment plan. This frequency may be used for conservation activities on a secondary basis to any station using the frequency for forest fire prevention, detection, and suppression.

(9) This frequency is reserved primarily for assignment to state licensees. Assignments to other licensees will be made only where the frequency is required for coordinated operation with the State system to which the frequency is assigned. Any request for such assignment must be supported by a statement from the State system concerned, indicating that the assignment is necessary for coordination of activities.

(10) A licensee regularly conducting two-way communication operations on this frequency may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(11) The maximum output power of any transmitter authorized to operate on this frequency shall not exceed 10 watts.

(12) This frequency is available in this service only to persons eligible under the provisions of paragraph (a)(2)(v) of this section for operation of transmitters having a maximum power output of three watts using A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D emission. This frequency is also available in the Industrial/Business Pool on a co-equal basis with the Public Safety licensees.

(13) This frequency will be assigned only for one-way paging communications to mobile receivers. Transmissions for the purpose of activating or controlling remote objects on this frequency are not authorized.

(14) The maximum output power of any transmitter authorized to operate on this frequency, after June 1, 1956, shall not exceed two watts. Licensees holding a valid authorization as of June 1, 1956, for base or mobile station operation on this frequency, with a power in excess of two watts, may continue to be authorized for such operation without regard to this power limitation.

(15) This frequency is reserved for assignment to stations for intersystem operations only: Provided, however, That licensees holding a valid authorization to use this frequency for local base or mobile operations as of June 1, 1956, may continue to be authorized for such use.

(16) This frequency is reserved primarily for assignment to state police licensees. Assignments to other police licensees will be made only where the frequency is required for coordinated operation with the state police system to which the frequency is assigned. Any request for such assignment must be supported by a statement from the state police system concerned indicating that the assignment is necessary for coordination of police activities.

(17) In the State of Alaska only, the frequency 42.40 MHz is available for assignment on a primary basis to stations in the Common Carrier Rural Radio Service utilizing meteor burst communications. The frequency may be used by private radio stations for meteor burst communications on a secondary, noninterference basis. Usage shall be in accordance with part 22 of this chapter or part 90. Stations utilizing meteor burst communications shall not cause harmful interference to stations of other radio services operating in accordance with the allocation table.

(18) No new licenses will be granted for one-way paging under § 90.487 for use on this frequency after August 1, 1980. This frequency is available to persons eligible for station licenses under the provisions of paragraph (a)(2)(v) of this section on a co-equal basis with one-way paging users under § 90.487 prior to August 1, 1985, and on a primary basis after August 1, 1985. Only A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D emissions and power not exceeding 10 watts will be authorized. Antennas having gain greater than 0 dBd will not be authorized. Transmissions shall not exceed two seconds duration.

(19) This frequency is reserved for assignment to stations in this service for intersystem operations only and these operations must be primarily base-mobile communications.

(20) In the State of Alaska only, the frequency 45.90 MHz is available for assignment on a primary basis to private land mobile radio stations utilizing meteor burst communications. The frequency may be used by common carrier stations for meteor burst communications on a secondary, noninterference basis. Usage shall be in accordance with part 22 of this chapter and part 90. Stations utilizing meteor burst communications shall not cause harmful interference to stations of other radio services operating in accordance with the allocation table.

(21) This frequency will be assigned only in accordance with a geographical assignment plan and is reserved primarily for assignment to Highway maintenance systems operated by states. The use of this frequency by other Highway maintenance licensees will be authorized only where such use is necessary to coordinate activities with the particular state to which the frequency is assigned. Any request for such use must be supported by a statement from the state concerned.

(22) Notwithstanding the provisions of paragraph (d)(21) of this section, this frequency may be used by any licensees in the Public Safety Pool without a separate license for the purpose of operating self-powered vehicle detectors for traffic control and safety purposes, on a secondary basis, in accordance with § 90.269.

(23) Thus frequency is reserved for assignment only to national organizations eligible for disaster relief operations under paragraph (a)(2)(vii) of this section.

(24) Assignment and use of frequencies in the band 72–76 MHz are governed by § 90.257 for operational-fixed stations and by § 90.241 for emergency call box operations. Specific frequencies are listed at § 90.257(a)(1).

(25) This frequency is available to Public Safety Pool licensees for fire call box operations on a shared basis in Industrial/Business Pool. All communications on this frequency must be conducted with persons or organizations charged with specific fire protection responsibility. All operations on this frequency are subject to the provisions of § 90.257(b).

(26) Assignment of frequencies in this band are subject to the provisions of § 90.173. Licensees as of August 18, 1995 who operate systems in the 150–

170 MHz band that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

(27) This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz. In the 450–470 MHz band, secondary telemetry operations pursuant to § 90.238(e) will be authorized on this frequency.

(28) This frequency is not available for assignment in this service in Puerto Rico or the Virgin Islands.

(29) This frequency is removed by 22.5 kHz from frequencies assigned to other radio services. Utilization of this frequency may result in, as well as be subject to, interference under certain operating conditions. In considering the use of this frequency, adjacent channel operations should be taken into consideration. If interference occurs, the licensee may be required to take the necessary steps to resolve the problem. See § 90.173(b).

(30) This frequency will be authorized a channel bandwidth of 25 kHz.

(31) The maximum output power of any transmitter authorized to operate on this frequency shall not exceed 100 watts. Stations authorized prior to July 15, 1992 for fixed operations will be permitted to continue such operations, but at a maximum transmitter power output of 10 watts.

(32) The maximum effective radiated power (ERP) may not exceed 20 watts for fixed stations and 2 watts for mobile stations. The height of the antenna system may not exceed 15.24 meters (50 ft.) above ground. All such operation is on a secondary basis to adjacent channel land mobile operations.

(33) For FM transmitters, the sum of the highest modulating frequency in Hertz and the amount of the frequency deviation or swing in Hertz may not exceed 2800 Hz and the maximum deviation may not exceed 2.5 kHz. For AM transmitters, the highest modulation frequency may not exceed 2000 Hz. The carrier frequency must be maintained within .0005 percent of the center of the frequency band, and the authorized bandwidth may not exceed 6 kHz.

(34) This frequency is available on a shared basis with the Industrial/Business Pool for remote control and telemetry operations.

(35) Operational fixed stations must employ directional antennas having a front-to-back ratio of at least 20 dB. Omnidirectional antennas having unity gain may be employed for stations communicating with at least three receiving locations separated by 160 degrees of azimuth.

(36) The maximum power output of the transmitter may not exceed 50 watts for fixed stations and 1 watt for mobile stations. A1A, A1D, A2B, A2D, F1B, F1D, F2D, G1B, G1D, G2B, or G2D emission may be authorized.

(37) Use of this frequency is limited to stations located at least 120.7 km (75 miles) from the center of any urbanized area of 200,000 or more population (U.S. Census of Population 1970). Operation is on a secondary basis to licensees of the Industrial/Business Pool.

(38) A licensee regularly conducting two-way communications operations on this frequency may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(39) In addition to other authorized uses, the use of F1B, F1D, F2B or F2D emission is permitted on this frequency for the operation of biomedical telemetry systems except in the following geographic locations:

(i) New York, N.Y.-Northeastern New Jersey; Los Angeles-Long Beach, Calif.; Chicago, Ill.-Northwestern Indiana; Philadelphia, Pa.-N.J.; Detroit, Mich.; San Francisco-Oakland, Calif.; Boston, Mass.; Washington, D.C.-Md.-Va.; Cleveland, Ohio; St. Louis, Mo.-Ill.; Pittsburgh, Pa.; Minneapolis-St. Paul, Minn.; Houston, Tex.; Baltimore, Md.; Dallas, Tex.; Milwaukee, Wis.; Seattle-Everett, Wash.; Miami, Fla.; San Diego, Calif.; Atlanta, Ga.; Cincinnati, Ohio-Ky.; Kansas City, Mo.-Kans.; Buffalo, N.Y.; Denver, Colo.; San Jose, Calif.; New Orleans, La.; Phoenix, Ariz.; Portland, Oreg.-Wash.; Indianapolis, Ind.; Providence-Pawtucket-Warwick, R.I.-Mass.; Columbus, Ohio; San Antonio, Tex.; Louisville, Ky.-Ind.; Dayton, Ohio; Forth Worth, Tex.; Norfolk-Portsmouth, Va.; Memphis, Tenn.-Miss.; Sacramento, Calif.; Fort Lauderdale-Hollywood, Fla.; Rochester, N.Y.; Tampa-St. Petersburg, Fla;

(ii) The continuous carrier mode of operation may be used for telemetry transmissions on this frequency for periods up to two-minutes duration; following which there must be a break in the carrier for at least a one-minute period; and

(iii) Geographical coordinates for the above-listed urbanized areas may be found at Table 1 of § 90.635.

(40) This frequency may be designated by common consent as an intersystem mutual assistance frequency under an area-wide medical communications plan.

(41) This frequency is available nationwide for use in police emergency communications networks operated under statewide law enforcement emergency communications plans.

(42) This frequency may not be assigned within 161 km (100 miles) of New Orleans (coordinates 29°56′53″ N and 90°04′10″ W).

(43) This frequency is reserved for assignment for use in highway maintenance systems operated by licenses other than States.

(44) This frequency will be assigned with an authorized bandwidth not to exceed 6 kHz.

(45) Operations on this frequency are limited to 30 watts transmitter output power.

(46) This frequency is shared with the Industrial/Business Pool in Puerto Rico and the Virgin Islands.

(47) This frequency may be assigned to stations in the Public Safety Pool, only at points within 240 km. (150 mi.) of New York, N.Y.

(48) Frequencies in this band will be assigned for low power wireless microphones in accordance with the provisions of § 90.265.

(49) This frequency will be assigned only to licensees directly responsible for the prevention, detection, and suppression of forest fires, on a secondary basis to any U.S. Government station.

(50) This frequency will be assigned for use only in areas west of the Mississippi River.

(51) This frequency will be assigned for use only in areas east of the Mississippi.

(52) In addition to agencies responsible for forest fire prevention, detection, and suppression, this frequency may be assigned to conservation agencies which do not have forest fire responsibilities on a secondary basis to any U.S. Government stations, *Provided,* That such assignment is necessary to permit mobile relay operation by such agencies.

(53) This frequency is subject to the provisions of paragraph (e)(6) of this section.

(54) For FM transmitters, the sum of the highest modulating frequency in hertz and the amount of the frequency deviation or swing in hertz may not exceed 1700 Hz and the maximum deviation may not exceed 1.2 kHz. For AM transmitters, the highest modulating frequency may not exceed 1200 Hz. The carrier frequency must be maintained within .0005 percent of the center of the frequency band, and the authorized bandwidth may not exceed 3 kHz.

(55) Subpart T of this part contains rules for assignment of frequencies in the 220–222 MHz band.

(56) The frequencies available for use at fixed stations in this band and the requirements for assignment are set forth in § 90.261. Operation on these

frequencies is secondary to stations in the Industrial/Business Pool where they are assigned for land mobile operations.

(57) This frequency is available for systems first licensed prior to August 18, 1995. No new systems will be authorized after August 18, 1995, but prior authorized systems may be modified, expanded, and renewed.

(58) This frequency is available for systems first licensed prior to March 31, 1980, for radio call box communications related to safety on highways in accordance with the provisions of § 90.241(c). No new systems will be authorized of this nature, but systems authorized prior to March 31, 1980 may be modified, expanded, and renewed.

(59) The continuous carrier mode of operation may be used for telemetry transmission on this frequency.

(60) Paging licensees as of March 20, 1991, may continue to operate on a primary basis until January 14, 1998.

(61) Highway radio call box operations first licensed prior to March 31, 1980 on this frequency may continue to operate in accordance with paragraph (d)(58) of this section.

(62) This frequency is also authorized for use for operations in biomedical telemetry stations. FIB, FID, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized for bio-medical transmissions.

(63) Available for medical services mobile operations in the Public Safety Pool in accordance with paragraph (d)(61) of this section.

(64) Use of this frequency is on a secondary basis and subject to the provisions of § 90.267 (a)(3), (a)(4), (a)(5), and (a)(7).

(65) This frequency is primarily authorized for use in the dispatch of medical care vehicles and personnel for the rendition or delivery of medical services. This frequency may also be assigned for intra-system and inter-system mutual assistance purposes. For uniformity in usage these frequency pairs may be referred to by channel name as follows:

Frequencies base and mobile (megahertz)	Mobile only (MHz)	Channel name
462.950	467.950	MED–9
462.95625	467.95625	MED–91
462.9625	467.9625	MED–92
462.96875	467.96875	MED–93
462.975	467.975	MED–10
462.98125	467.98125	MED–101
462.9875	467.9875	MED–102
462.99375	467.99375	MED–103

(66) For applications for new radio systems, the thirty-two frequency pairs listed in paragraph (d)(66)(i) of this section will be assigned in a block for shared operation under § 90.20(a)(1)(iii) or § 90.20(a)(2)(xiii) subject to the following:

(i) For uniformity in usage, these frequency pairs may be referred to by channel name as follows:

Frequencies base and mobile (megahertz)	Mobile only (MHz)	Channel name
463.000	468.000	MED–1
463.00625	468.00625	MED–11
463.0125	468.0125	MED–12
463.01875	468.01875	MED–13
463.025	468.025	MED–2
463.03125	468.03125	MED–21
463.0375	468.0375	MED–22
463.04375	468.04375	MED–23
463.050	468.050	MED–3
463.05625	468.05625	MED–31
463.0625	468.0625	MED–32
463.06875	468.06875	MED–33
46.075	46.075	MED–4
463.08125	468.08125	MED–41
463.0875	468.0875	MED–42
463.09375	468.09375	MED–43
463.100	468.100	MED–5
463.10625	468.10625	MED–51
463.1125	468.1125	MED–52
463.11875	468.11875	MED–53
463.125	468.125	MED–6
463.13125	468.13125	MED–61
463.1375	468.1375	MED–62
463.14375	468.14375	MED–63
463.150	468.150	MED–7
463.15625	468.15625	MED–71
463.1625	468.1625	MED–72
463.16875	468.16875	MED–73
463.175	468.175	MED–8
463.18125	468.18125	MED–81
463.1875	468.1875	MED–82
463.19375	468.19375	MED–83

(ii) Except as provided in paragraphs (d)(66) (iii) and (iv) of this section, mobile or portable stations must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of these MED frequency pairs with transmitters operated on the 468 MHz frequencies.

(iii) Portable (hand-held) units operated with a maximum output power of 2.5 watts are exempted from the multi-channel equipment requirements specified in paragraph (d)(66)(ii) of this section.

(iv) Stations located in areas above line A, as defined in § 90.7 will be required to meet multi-channel equipment requirements only for those frequencies up to the number specified in paragraph (d)(66)(ii) of this section that have been assigned and coordinated with Canada in accordance with the applicable U.S.-Canada agreement.

(67) This frequency is authorized for use only for operations in biomedical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D and G3E emissions may be authorized. Entities eligible in the Public Safety Pool may use this frequency on a secondary basis for any other permissible communications consistent with § 90.20(a)(1)(iii) or § 90.20(a)(2)(xiii).

(68) Subpart L of this part contains rules for assignment of frequencies in the 470–512 MHz band.

(69) Subpart S of this part contains rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

(70) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by part 94 of this chapter.

(71) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494.

(72) This frequency band is available to stations in this service subject to the provisions of § 90.259.

(73) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

(74) This band is available for Digital Termination Systems and for associated internodal links in the Point-to-Point Microwave Radio Service. No new licenses will be issued under this subpart but current licenses will be renewed.

(75) Appropriate frequencies in the band 2000–3000 kHz which are designated in part 80 of this chapter as available to Public Ship Stations for telephone communications with Public Coast Stations may be assigned on a secondary basis to fixed Stations in the Public Safety Pool for communication with Public Coast Stations only, provided such stations are located in the United States and the following conditions are met:

(i) That such fixed station is established pursuant to the eligibility provisions of (§ 90.47) and that the isolated area involved is an island or other location not more than 480 km (300 statute miles) removed from the desired;

(ii) That evidence is submitted showing that an arrangement has been made with the coast station licensee for the handling of emergency communications permitted by § 80.453

of this chapter and § 90.20(a)(2)(x)(C); and

(iii) That operation of the Public Safety fixed station shall at no time conflict with any provision of part 80 of this chapter and further, that such operation in general shall conform to the practices employed by Public Ship Stations for radiotelephone communication with the same Public Coast Station.

(76) This frequency is authorized only for communications between medical facilities vehicles and personnel related to medical supervision and instruction for the treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, F3E and G3E emissions are authorized. Public Safety entities may use this frequency on a secondary basis for any other permissible communications consistent with § 90.20(a)(1)(iii) or § 90.20(a)(2)(xiii).

(e) *Additional frequencies available.* In addition to the frequencies shown in the frequency table of this section, the following frequencies are available in this service. (See also § 90.253.)

(1) Substitution of frequencies available below 25 MHz may be made in accordance with the provisions of § 90.263.

(2) Frequencies in the band 73.0–74.6 MHz may be assigned to stations authorized their use on or before December 1, 1961, but no new stations will be authorized in this band, nor will expansion of existing systems be permitted. See also § 90.257.

(3) The frequency bands 31.99 to 32.00 MHz, 33.00 to 33.01 MHz, 33.99 to 34.00 MHz, 37.93 to 38.00 MHz, 39.00 to 39.01 MHz, 39.99 to 40.00 MHz and 42.00 to 42.01 MHz, are available for assignment for developmental operation subject to the provisions of subpart Q of this part.

(4) Frequencies in the 421–430 MHz band are available in the Detroit, Cleveland, and Buffalo areas in accordance with the rules in §§ 90.273 through 90.281.

(5) A Police licensee may use transmitters on the frequencies indicated below in connection with official police activities without specific authorization from the Commission, provided that such use shall be on a secondary basis and shall not cause harmful interference to services of other licensees operating on regularly assigned frequencies, and further provided that all such use complies with the requirements of Federal, State and local laws. The provisions of § 90.429 shall not apply to transmitters authorized under this paragraph. To be eligible for operations in this manner, the transmitter must comply with all of the following requirements.

(i) In accordance with § 90.203 and § 2.803 of this chapter, the transmitter must be of a type which has been type accepted by the Commission.

(ii) The carrier frequency shall be within the bands listed below and must be maintained within 0.005 percent of the frequency of operation. Use on assigned channel center frequencies is not required.

30.85–30.87 MHz
30.89–30.91 MHz
30.93–30.95 MHz
30.97–30.99 MHz
31.01–31.03 MHz
31.05–31.07 MHz
31.09–31.11 MHz
31.13–31.15 MHz
31.17–31.19 MHz
31.21–31.23 MHz
31.25–31.27 MHz
31.29–31.31 MHz
31.33–31.35 MHz
31.37–31.39 MHz
31.41–31.43 MHz
31.45–31.47 MHz
31.49–31.51 MHz
31.53–31.55 MHz
31.57–31.59 MHz
31.61–31.63 MHz
31.65–31.67 MHz
31.69–31.71 MHz
31.73–31.75 MHz
31.77–31.79 MHz
31.81–31.83 MHz
31.85–31.87 MHz
31.89–31.91 MHz
31.93–31.95 MHz
31.97–32.00 MHz
33.00–33.03 MHz
33.05–33.07 MHz
33.41–34.00 MHz
37.00–37.43 MHz
37.89–38.00 MHz
39.00–40.00 MHz
42.00–42.91 MHz
44.61–45.91 MHz
45.93–45.95 MHz
45.97–45.99 MHz
46.01–46.03 MHz
46.05–46.60 MHz
47.00–47.41 MHz
150.995–151.490 MHz
153.740–154.445 MHz
154.635–155.195 MHz
155.415–156.250 MHz
158.715–159.465 MHz
453.0125–453.9875 MHz
458.0125–458.9875 MHz
460.0125–460.5125 MHz
460.5625–460.6375 MHz
462.9375–462.9875 MHz
465.0125–465.5125 MHz
465.5625–465.6375 MHz
467.9375–467.9875 MHz

(iii) The emitted signal shall be non-voice modulation (type PO emission).

(iv) The maximum occupied bandwidth, containing 99 percent of the radiated power, shall not exceed 2.0 kHz.

(v) The transmitter output power shall not exceed a mean power of 30 mW nor shall any peak exceed 1 watt peak power, as measured into a 50 ohm resistive load. Should the transmitter be supplied with a permanently attached antenna or should the transmitter and antenna combination be contained in a sealed unit, the following standard may be used in lieu of the above: the field strength of the fundamental signal of the transmitter and antenna combination shall not exceed 0.4 V/m mean or 2.3 V/m peak when measured at a distance of 3 meters.

(vi) The transmitter shall contain positive means to limit the transmission time to no more than 10 days. In the event of a malfunction of this positive means, the transmitter signal shall cease. The use of battery life to accomplish the transmission time limitation is permissible.

(6) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively, transmissions may be increased to 200 milliseconds every second. Transmissions from base stations will be limited to a total time of 1 second every minute. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant:

(i) Shows that the proposed site is the only suitable location;

(ii) Develops a plan to control any interference caused to TV reception from the operations; and

(iii) Agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations. The licensee must eliminate any interference caused by its operation to TV channel 7 reception within 30 days of the time it is notified in writing by the

Commission. If this interference is not removed within the 30-day period, operation of the base station must be discontinued. The licensee is expected to help resolve all complaints of interference.

(f) *Limitation on number of frequencies assignable.* Normally only two frequencies or pairs of frequencies in the paired frequency mode of operation will be assigned for mobile service operations by a single applicant in a given area. The assignment of an additional frequency or pair of frequencies will be made only upon a satisfactory showing of need, except that:

(1) Additional frequencies above 25 MHz may be assigned in connection with the operation of mobile repeaters in accordance with § 90.247 notwithstanding this limitation;

(2) The frequency 39.06 MHz may be assigned notwithstanding this limitation;

(3) Frequencies in the 25–50 MHz, 150–170 MHz, 450–512 MHz and 902–928 MHz bands may be assigned for the operation of Location and Monitoring Service (LMS) systems in accordance with the provisions of subpart M of this part, notwithstanding this limitation;

(4) A licensee of a radio station in the Public Safety Radio Pool may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without specific authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (5) is used and all other rule requirements are satisfied; and

(5) A Police licensee may use, without special authorization from the Commission, any mobile service frequency between 40 and 952 MHz, listed in paragraph (c)(3) of this section, for communications in connection with physical surveillance, stakeouts, raids, and other such activities. Such use shall be on a secondary basis to operations of licensees regularly authorized on the assigned frequencies. The maximum output power that may be used for such communications is 2 watts. Transmitters, operating under this provision of the rules, shall be exempted from the station identification requirements of § 90.425. Use of frequencies not designated by a ''PP'' in the coordinator column of the frequency table in paragraph (c)(3) of this section, is conditional on the approval of the coordinator corresponding to each frequency. Spread spectrum transmitters may be operated on Public Safety Pool frequencies between 37 and 952 MHz, providing that they are type accepted by the Commission under the provisions of § 2.803 of this chapter and § 90.203, and meet the following conditions:

(i) Frequency hopping transmitters can be operated, with a maximum output power of 2 watts, on any Public Safety Pool frequency between 37 and 952 MHz listed in paragraph (c)(3) of this section. At least 20 hopping frequencies shall be used and the average time of occupancy on any frequency shall not be greater than 1/10 second in every 2 seconds;

(ii) Use of spread spectrum transmitters under paragraph (f)(4) of this section is subject to approval by the applicable frequency coordinator of the radio services of the district in which the license and equipment are to be used; and

(iii) The use of direct sequence spread spectrum equipment is also permitted. Equipment must meet the technical standards of § 15.247 of this chapter.

(6) In addition to the frequencies assigned for mobile service operation, one base station frequency above 152 MHz may be assigned as a common frequency to all licensees in a particular area to permit intersystem communication between base stations or mobile stations or both. This frequency use will not be authorized in any area where all available frequencies are required for independent systems.

(7) A licensee may use, without a specific authorization from the Commission, transmitters on the frequencies indicated below in connection with wildlife tracking and/or telemetry and in connection with official forestry-conservation activities, provided that such use shall be on a secondary basis and shall not cause harmful interference to services of other licensees operating on regularly assigned frequencies. The provisions of § 90.203, § 90.425, and § 90.429 shall not apply to transmitters complying with this paragraph. To be eligible for operations in this manner, the transmitter must comply with all of the following requirements.

(i) The carrier frequency shall be within the bands listed below. The carrier frequency must be maintained within 0.005 percent of the frequency of operation.

Use on assigned channel center frequencies is not required.

(MHz)
31.17 to 31.19
31.21 to 31.23
31.25 to 31.27
31.29 to 31.31
31.33 to 31.35
31.37 to 31.39
31.41 to 31.43
31.45 to 31.47
31.49 to 31.51
31.53 to 31.55
31.57 to 31.59
31.61 to 31.63
31.65 to 31.67
31.69 to 31.71
31.73 to 31.75
31.77 to 31.79
31.81 to 31.83
31.85 to 31.87
31.89 to 31.91
31.93 to 31.95
31.97 to 31.99
44.63 to 44.65
44.67 to 44.69
44.71 to 44.73
44.75 to 44.77
44.79 to 44.81
44.83 to 44.85
44.87 to 44.89
44.91 to 44.93
44.95 to 44.97
44.99 to 45.01
45.03 to 45.05
151.145 to 151.475
159.225 to 159.465

(ii) The emitted signal shall be non-voice modulation (A1D, A2D, F1D, or F2D emission).

(iii) The maximum occupied bandwidth, containing 99 percent of the radiated power, shall not exceed 0.25 kHz.

(iv) The transmitter output power shall not exceed a mean power of 5 mW nor shall any peak exceed 100 mW peak power, as measured into a permanently attached antenna; or if the transmitter and antenna combination are contained in a sealed unit, the field strength of the fundamental signal of the transmitter and antenna combination shall not exceed 0.29 V/m mean or 1.28 V/m peak when measured at a distance of 3 meters.

(v) The requirements of § 90.175 regarding frequency coordination apply.

(8) An additional frequency may be assigned for paging operations from those frequencies available under paragraph (d)(13) of this section.

(9) The frequency 155.340 MHz may be assigned as an additional frequency when it is designated as a mutual assistance frequency as provided in paragraph (d)(40) of this section.

(10) Additional frequencies may be assigned for fixed station operations.

(11) The assignment of an additional frequency or frequencies may be authorized notwithstanding this limitation for common, intra-county, intra-fire-district, or intrastate fire coordination operations. The frequency or frequencies requested must be in accordance with a frequency utilization plan, for the area involved, on file with the Commission.

§ 90.22 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of §§ 90.20(d) (10), (13), (60), and (72). Paging operations on other frequencies authorized before August 15, 1974, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 kilometers (75 mi.) of the following urbanized areas:

Urbanized area	North latitude	West longitude
New York, NY-Northeastern NJ	40–45–06	73–59–39
Los Angeles-Long Beach, CA	34–03–15	118–14–28
Chicago, IL	41–52–28	87–38–22
Philadelphia, PA–NJ	39–56–58	75–09–21
Detroit, MI	42–19–48	83–02–57
San Francisco-Oakland, CA	37–46–39	122–24–40
Boston, MA	42–21–24	71–03–25
Washington, DC–MD–VA	38–53–51	77–00–33
Cleveland, OH	41–29–51	81–41–50
St Louis, MO–IL	38–37–45	90–12–22
Pittsburgh, PA	40–26–19	80–00–00
Minneapolis-St Paul, MN	44–58–57	93–15–43
Houston, TX	29–45–26	95–21–37
Baltimore, MD	39–17–26	76–36–45
Dallas, TX	32–47–09	96–47–37
Milwaukee, WI	43–02–19	87–54–15
Seattle-Everett, WA	47–36–32	122–20–12
Miami, FL	25–46–37	80–11–32
San Diego, CA	32–42–53	117–09–21
Atlanta, GA	33–45–10	84–23–37
Cincinnati, OH–KY	39–06–07	84–30–35
Kansas City, MO–KS	39–04–56	94–35–20
Buffalo, NY	42–52–52	78–52–21
Denver, CO	39–44–58	104–59–22
San Jose, CA	37–20–16	121–53–24
Tampa-St Petersburg, FL	27–51–48	82–33–11
Phoenix, AZ	33–41–10	111–31–15

10. Subpart C is revised to read as follows:

Subpart C—Industrial/Business Radio Pool

Sec.
90.31 Scope.
90.33 General eligibility.
90.35 Industrial/Business Pool.

Subpart C—Industrial/Business Radio Pool

§ 90.31 Scope.

The Industrial/Business Radio Pool covers the licensing of the radio communications of entities engaged in commercial activities, engaged in clergy activities, operating educational, philanthropic, or ecclesiastical institutions, or operating hospitals, clinics, or medical associations. Rules as to eligibility for licensing, frequencies available, permissible communications and classes and number of stations, and any special requirements are set forth in the following sections.

§ 90.33 General eligibility.

(a) In addition to the eligibility shown in the Industrial/Business Pool, eligibility is also provided for any corporation proposing to furnish nonprofit radiocommunication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary. This corporate eligibility is not subject to the cooperative use provision of § 90.179.

(b) Eligibility is also provided for a nonprofit corporation or association that is organized for the purpose of furnishing a radiocommunications service to persons who meet the eligibility requirements of the Industrial/Business Pool. Such use is subject to the cooperative use provisions of § 90.179.

§ 90.35 Industrial/Business Pool.

(a) *Eligibility*. Persons primarily engaged in any of the following activities are eligible to hold authorizations in the Industrial/Business Pool to provide commercial mobile radio service as defined in part 20 of this chapter or to operate stations for transmission of communications necessary to such activities of the licensee:

(1) The operation of a commercial activity;

(2) The operation of educational, philanthropic, or ecclesiastical institutions;

(3) Clergy activities; or

(4) The operation of hospitals, clinics, or medical associations.

(b) Industrial/Business Pool frequencies.

(1) The following table indicates frequencies available for assignment to Industrial/Business Pool stations, together with the class of station(s) to which they are normally assigned, the specific assignment limitations which are explained in paragraph (b) of this section, and the certified frequency coordinator for each frequency:

(2)(i) The letter symbol(s) listed in the Coordinator column of the frequency table in paragraph (a)(3) of this section specifies the frequency coordinator(s) for each frequency as follows:

IP—Petroleum Coordinator

IW—Power Coordinator

LR—Railroad Coordinator

(ii) Frequencies without any coordinator specified may be coordinated by any coordinator certified in the Industrial/Business Pool.

(3) Frequencies.

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz:			
1614	Base or mobile	1, 2, 3, 4	IP
1628	.....do	5.	
1652	.....do	5.	
1676	.....do	5.	
1700	.....do	5.	
2000 to 25,000	Fixed, base or mobile	1.	
2292	Base or mobile	5.	
2398	.....do	5, 7.	
4637.5	.....do	5, 7.	
Megahertz:			
25.02	.....do	3, 4	IP
25.04	.....do	8	IP
25.06	.....do	3, 4	IP
25.08	.....do	8, 9	IP
25.10	.....do	3, 4, 9	IP
25.12	.....do		IP
25.14	.....do	3, 4	IP
25.16	.....do		IP
25.18	.....do	3, 4	IP
25.20	.....do		IP
25.22	.....do	4, 7	IP
25.24	.....do		IP
25.26	.....do	4, 7	IP
25.28	.....do		IP
25.30	.....do	4, 7	IP
25.32	.....do		IP
27.43	.....do.		
27.45	.....do.		
27.47	.....do.		
27.49	.....do	10.	
27.51	Mobile	11.	
27.53	.....do	11.	
29.71	Base or mobile		
29.73	.....do.		
29.75	.....do.		
29.77	.....do.		
29.79	.....do.		
30.58	.....do.		
30.60	.....do.		
30.62	.....do.		
30.64	.....do.		
30.66	.....do.		
30.68	.....do.		
30.70	.....do	4, 7	IP
30.72	.....do.		
30.74	.....do.		
30.76	.....do.		
30.78	.....do	4, 7	IP
30.80	.....do.		
30.82	.....do.		
30.84	Mobile	11, 12.	
30.86	Base or mobile	13	
30.88	.....do.		
30.90	.....do	13.	
30.92	.....do.		
30.94	.....do	13.	
30.96	.....do.		
30.98	.....do	13.	
31.00	.....do.		
31.02	.....do	13.	
31.04	.....do.		
31.06	.....do	13.	
31.08	.....do.		
31.10	.....do	13.	
31.12	.....do.		
31.14	.....do	13.	
31.16	.....do.		
31.20	.....do.		
31.24	.....do.		
31.28	.....do.		
31.32	.....do.		

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
31.36	do.		
31.40	do.		
31.44	do.		
31.48	do.		
31.52	do.		
31.56	do.		
31.60	do.		
31.64	do.		
31.68	do.		
31.72	do.		
31.76	do.		
31.80	do.		
31.84	do.		
31.88	do.		
31.92	do.		
31.96	do.		
33.12	do	11.	
33.14	Mobile	11, 12.	
33.16	Base or mobile		
33.18	do		IP
33.20	do		IP
33.22	do		IP
33.24	do		IP
33.26	do		IP
33.28	do		IP
33.30	do		IP
33.32	do		IP
33.34	do		IP
33.36	do		IP
33.38	do		IP
33.40	Mobile	12, 14.	
35.02	do	11, 12, 13.	
35.04	Base or Mobile	10.	
35.06	do.		
35.08	do.		
35.10	do.		
35.12	do.		
35.14	do.		
35.16	do.		
35.18	do.		
35.28	do.		
35.32	do.		
35.36	do.		
35.40	do.		
35.44	do.		
35.48	do.		
35.48	do.		
35.52	do.		
35.70	do.		
35.72	do.		
35.74	do.		
35.76	do.		
35.78	do.		
35.80	do.		
35.82	do.		
35.84	do.		
35.86	do.		
35.88	do.		
35.90	do.		
35.92	do.		
35.94	do.		
35.96	do.		
35.98	do.		
36.25	do	15	IP
37.44	do.		
37.46	do		IW
37.48	do		IW
37.50	do		IW
37.52	do		IW
37.54	do		IW
37.56	do		IW
37.58	do		IW

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
37.60	Base, mobile, or operational fixed	16	IW
37.62	Base or mobile		IW
37.64	.....do		IW
37.66	.....do		IW
37.68	.....do		IW
37.70	.....do		IW
37.72	.....do		IW
37.74	.....do		IW
37.76	.....do		IW
37.78	.....do		IW
37.80	.....do		IW
37.82	.....do		IW
37.84	Base, mobile, or operational fixed	16	IW
37.86	Base or mobile		IW
37.88	.....do.		
41.71	.....do	15	IP
42.96	.....do.		
42.98	Mobile	11, 12.	
43.00	Base or mobile		
43.02	.....do.		
43.04	.....do	17.	
43.06	.....do.		
43.08	.....do.		
43.10	.....do.		
43.12	.....do.		
43.14	.....do.		
43.16	Mobile.		
43.18	Base or mobile.		
43.28	.....do.		
43.32	.....do.		
43.36	.....do.		
43.40	.....do.		
43.44	.....do.		
43.48	.....do.		
43.52	.....do.		
43.70	.....do.		
43.72	.....do	18.	
43.74	.....do	18.	
43.76	.....do.		
43.78	.....do.		
43.80	.....do.		
43.82	.....do	18.	
43.84	.....do	18.	
43.86	.....do	19.	
43.88	.....do	19.	
43.90	.....do	19.	
43.92	.....do	18, 19.	
43.94	.....do	19.	
43.96	.....do	18.	
43.98	.....do.		
44.00	.....do.		
44.02	.....do.		
44.04	.....do.		
44.06	.....do.		
44.08	.....do.		
44.10	.....do	20.	
44.12	.....do	18.	
44.14	.....do.		
44.16	.....do	18.	
44.18	.....do	18.	
44.20	.....do	18, 21.	
44.22	.....do.		
44.24	.....do.		
44.26	.....do.		
44.28	.....do.		
44.30	.....do.		
44.32	.....do	18.	
44.34	.....do.		
44.36	.....do	18, 19.	
44.38	.....do	19.	
44.40	.....do	18, 19.	
44.42	.....do	19.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
44.44	do	19.	
44.46	do	18.	
44.48	do	18.	
44.50	do.		
44.52	do.		
44.54	do.		
44.56	do.		
44.58	do.		
44.60	do.		
47.44	do.		
47.48	do.		
47.52	do.		
47.56	do.		
47.60	do.		
47.64	do.		
47.68	do.		
47.70	do		IW
47.72	do		IW
47.74	do		IW
47.76	do		IW
47.78	do		IW
47.80	do		IW
47.82	do		IW
47.84	do		IW
47.86	do		IW
47.88	do		IW
47.90	do		IW
47.92	do		IW
47.94	do		IW
47.96	do		IW
47.98	do		IW
48.00	do		IW
48.02	do		IW
48.04	do		IW
48.06	do		IW
48.08	do		IW
48.10	do		IW
48.12	do		IW
48.14	do		IW
48.16	do		IW
48.18	do		IW
48.20	do		IW
48.22	do		IW
48.24	do		IW
48.26	do		IW
48.28	do		IW
48.30	do		IW
48.32	do		IW
48.34	do		IW
48.36	do		IW
48.38	do		IW
48.40	do		IW
48.42	do		IW
48.44	do		IW
48.46	do		IW
48.48	do		IW
48.50	do		IW
48.52	do		IW
48.54	do		IW
48.56	do.		
48.58	do.		
48.60	do.		
48.62	do.		
48.64	do.		
48.66	do.		
48.68	do.		
48.70	do.		
48.72	do.		
48.74	do.		
48.76	do	18.	
48.78	do.		
48.80	do.		

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
48.82	do.		
48.84	do	18.	
48.86	do	18.	
48.88	do.		
48.90	do.		
48.92	do	18.	
48.94	do.		
48.96	do.		
48.98	do.		
49.00	do.		
49.02	do	18.	
49.04	do.		
49.06	do.		
49.08	do	18.	
49.10	do	18.	
49.12	do.		
49.14	do.		
49.16	do	18.	
49.18	do.		
49.20	do	18.	
49.22	do.		
49.24	do	18.	
49.26	do	18.	
49.28	do	18.	
49.30	do.		
49.32	do.		
49.34	do.		
49.36	do	18.	
49.38	do.		
49.40	do	18.	
49.42	do.		
49.44	do.		
49.46	do	18.	
49.48	do.		
49.50	do	18.	
49.52	do.		
49.54	do.		
49.56	do.		
49.58	do.		
72 to 76	Operational fixed	22.	
72.02	Mobile	23, 24.	
72.04	do	23, 24.	
72.06	do	23, 24.	
72.08	do	23, 24, 25.	
72.10	do	23, 24.	
72.12	do	23, 24.	
72.14	do	23, 24.	
72.16	do	23, 24, 25.	
72.18	do	23, 24.	
72.20	do	23, 24.	
72.22	do	23, 24.	
72.24	do	23, 24, 25.	
72.26	do	23, 24.	
72.28	do	23, 24.	
72.30	do	23, 24.	
72.32	do	23, 24, 25.	
72.34	do	23, 24.	
72.36	do	23, 24.	
72.38	do	23, 24.	
72.40	do	23, 24, 25.	
72.44	do	13, 24, 77.	
72.48	do	13, 24, 77.	
72.52	do	13, 24, 77.	
72.56	do	13, 24, 77.	
72.60	do	13, 24, 77.	
74.61	do	26, 77.	
74.63	do	26, 77.	
74.65	do	26, 77.	
74.67	do	26, 77.	
74.69	do	26, 77.	
74.71	do	26, 77.	
74.73	do	26, 77.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
74.75	do	26, 77.	
74.77	do	26, 77.	
74.79	do	26, 77.	
75.21	do	26, 77.	
75.23	do	26, 77.	
75.25	do	26, 77.	
75.27	do	26, 77.	
75.29	do	26, 77.	
75.31	do	26, 77.	
75.33	do	26, 77.	
75.35	do	26, 77.	
75.37	do	26, 77.	
75.39	do	26, 77.	
75.44	do	13, 24, 77.	
75.48	do	13, 24, 77.	
75.52	do	13, 24, 77.	
75.56	do	13, 24, 77.	
75.60	do	13, 24, 77.	
150 to 170	Base or mobile	27.	
150.815	do.		
150.830	do	28, 29.	
150.845	do..		
150.8525	do	30.	
150.860	do.		
150.8675	do	30.	
150.875	do.		
150.8825	do	30.	
150.890	do.		
150.8975	do	30.	
150.905	do.		
150.920	do	28, 29.	
150.935	do.		
150.9425	do	30.	
150.950	do.		
150.9575	do	30.	
150.965	do.		
150.9725	do	30.	
150.980	do	8	IP
150.9875	do	8, 30	IP
150.995	do	31.	
151.0025	do	30, 31.	
151.010	do	31.	
151.0175	do	30, 31.	
151.025	do	31.	
151.0325	do	30, 31.	
151.040	do	31.	
151.0475	do	30, 31.	
151.055	do	31.	
151.070	Base	28, 29, 31.	
151.085	Base or mobile	31.	
151.0925	do	30, 31.	
151.100	do	31.	
151.1075	do	30, 31.	
151.115	do	31.	
151.1225	do	30, 31.	
151.130	do	31.	
151.1375	do	30, 31.	
151.145	do	31.	
151.1525	do	30, 31.	
151.160	do	31.	
151.1675	do	30, 31.	
151.175	do	31.	
151.190	Base	28, 29, 31.	
151.205	Base or mobile	31.	
151.2125	do	30, 31.	
151.220	do	31.	
151.2275	do	30, 31.	
151.235	do	31.	
151.2425	do	30, 31.	
151.250	do	31.	
151.2575	do	30, 31.	
151.265	do	31.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
151.2725	do	30, 31.	
151.280	do	31.	
151.2875	do	30, 31.	
151.295	do	31.	
151.310	Base	28, 29, 31.	
151.325	Base or mobile	31.	
151.3325	do	30, 31.	
151.340	do	31.	
151.3475	do	30, 31.	
151.355	do	31.	
151.3625	do	30, 31.	
151.370	do	31.	
151.3775	do	30, 31.	
151.385	do	31.	
151.3925	do	30, 31.	
151.400	do	31.	
151.4075	do	30, 31.	
151.415	do	31.	
151.4225	do	30, 31.	
151.430	do	31.	
151.4375	do	30, 31.	
151.445	do	31.	
151.4525	do	30, 31.	
151.460	do	31.	
151.4675	do	30, 31.	
151.475	do	31.	
151.4825	do	30, 31.	
151.490	do	32.	
151.4975	do	30, 32.	
151.505	do	17.	
151.5125	do	17, 30.	
151.520	do.		
151.5275	do	30.	
151.535	do.		
151.5425	do	30.	
151.550	do.		
151.5575	do	30.	
151.565	do.		
151.5725	do	30.	
151.580	do.		
151.5875	do	30.	
151.595	do.		
151.6025	do	30.	
151.625	do	10.	
151.640	do	10, 33.	
151.6475	do	30.	
151.655	do.		
151.6625	do	30.	
151.670	do	30.	
151.6775	do	30.	
151.685	do.		
151.700	do	10, 30, 34.	
151.715	do.		
151.7225	do	30.	
151.730	do	30.	
151.7375	do	30.	
151.745	do.		
151.760	do	10, 30, 34.	
151.775	do.		
151.7825	do	30.	
151.790	do	30.	
151.7975	do	30.	
151.805	do.		
151.820	Mobile	12, 14, 30, 35.	
151.835	Base or mobile.		
151.8425	do	30.	
151.850	do	30.	
151.8575	do	30.	
151.865	do.		
151.880	Mobile	12, 14, 30, 35.	
151.895	Base or mobile.		
151.9025	do	30.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
151.910	do	30.	
151.9175	do	30.	
151.925	do.		
151.940	Mobile	12, 14, 30, 35.	
151.955	Base or Mobile.		
151.9625	do	30.	
151.970	do	30.	
151.9775	do	30.	
151.985	do.		
152.2625	do	33.	
152.270	do	6.	
152.2775	do	6, 30.	
152.285	do	6.	
152.2925	do	6, 30.	
152.300	do	6.	
152.3075	do	6, 30.	
152.315	do	6.	
152.3225	do	6, 30.	
152.330	do	6.	
152.3375	do	6, 30.	
152.345	do	6.	
152.3525	do	6, 30.	
152.360	do	6.	
152.3675	do	6, 30.	
152.375	do	6.	
152.3825	do	6, 30.	
152.390	do	6.	
152.3975	do	6, 30.	
152.405	do	6.	
152.4125	do	6, 30.	
152.420	do	6.	
152.4275	do	6, 30.	
152.435	do	6.	
152.4425	do	6, 30.	
152.450	do	6.	
152.4575	do	6, 30.	
152.465	do	6.	
152.480	do	29, 36, 37, 38.	
152.8625	do	33.	
152.870	do	6.	
152.8775	do	30.	
152.885	do.		
152.8925	do	30.	
152.900	do.		
152.9075	do	30.	
152.915	do.		
152.9225	do	30.	
152.930	do.		
152.9375	do	30.	
152.945	do.		
152.9525	do	30.	
152.960	do.		
152.9675	do	30.	
152.975	do.		
152.9825	do	30.	
152.990	do.		
152.9975	do	30.	
153.005	do.		
153.0125	do	30.	
153.020	do.		
153.0275	do	30.	
153.035	do.		
153.0425	do	30.	
153.050	do	4, 7.	
153.0575	do	4, 7, 30.	
153.065	do.		
153.0725	do	30.	
153.080	do	4, 7.	
153.0875	do	4, 7, 30.	
153.095	do.		
153.1025	do	30.	
153.110	do	4, 7.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
153.1175	do	4, 7, 30.	
153.125	do.		
153.1325	do	30.	
153.140	do	4, 7.	
153.1475	do	4, 7, 30.	
153.155	do.		
153.1625	do	30.	
153.170	do	4, 7.	
153.1775	do	4, 7, 30.	
153.185	do.		
153.1925	do	30.	
153.200	do	4, 7.	
153.2075	do	4, 7, 30.	
153.215	do.		
153.2225	do	30.	
153.230	do	4, 7.	
153.2375	do	4, 7, 30.	
153.245	do.		
153.2525	do	30.	
153.260	do	4, 7.	
153.2675	do	4, 7, 30.	
153.275	do.		
153.2825	do	30.	
153.290	do	4, 7.	
153.2975	do	4, 7, 30.	
153.305	do.		
153.3125	do	30.	
153.320	do	4, 7.	
153.3275	do	4, 7, 30.	
153.335	do.		
153.3425	do	30.	
153.350	do	4, 7.	
153.3575	do	4, 7, 30.	
153.365	do.		
153.3725	do	30.	
153.380	do.		
153.3875	do	30.	
153.395	do.		
153.4025	do	30.	
153.410	do		IW
153.4175	do	30	IW
153.425	do.		
153.4325	do	30.	
153.440	do.		
153.4475	do	30.	
153.455	do.		
153.4625	do	30.	
153.470	do		IW
153.4775	do	30	IW
153.485	do.		
153.4925	do	30.	
153.500	do.		
153.5075	do	30.	
153.515	do.		
153.5225	do	30.	
153.530	do		IW
153.5375	do	30	IW
153.545	do.		
153.5525	do	30.	
153.560	do.		
153.5675	do	30.	
153.575	do.		
153.5825	do	30.	
153.590	do		IW
153.5975	do	30	IW
153.605	do.		
153.6125	do	30.	
153.620	do.		
153.6275	do	30.	
153.635	do.		
153.6425	do	30.	
153.650	do		IW

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
153.6575	.....do	30	IW
153.665	.....do.		
153.6725	.....do	30.	
153.680	.....do.		
153.6875	.....do	30.	
153.695	.....do		IW
153.7025	.....do	30	IW
153.710	.....do		IW
153.7175	.....do	30	IW
153.725	.....do		IW
153.7325	.....do	30	IW
154.45625	Fixed or mobile	39, 40, 41, 42.	
154.46375	.....do	39, 40, 43.	
154.47125	.....do	39, 40, 41, 44.	
154.47875	.....do	39, 40, 41, 42.	
154.4825	Base or mobile	30.	
154.490	.....do.		
154.4975	.....do	30.	
154.505	.....do	30.	
154.515	.....do.		
154.5275	Mobile	10, 30, 34.	
154.540	.....Base or mobile.		
154.5475	.....do	30.	
154.555	.....do	33.	
154.570	Mobile	11, 12, 35, 45.	
154.585	.....do	8, 46	IP
154.600	.....do	11, 12, 45, 47.	
154.610	Base or mobile	33.	
154.625	.....do	36, 37, 48.	
154.640	Base	30, 36, 37, 48.	
157.470	Base or mobile	12.	
157.4775	.....do	12, 30.	
157.485	.....do	12.	
157.4925	.....do	12, 30.	
157.500	.....do	12.	
157.5075	.....do	12, 30.	
157.515	.....do	12.	
157.5225	.....do	12, 30.	
157.530	Mobile	6.	
157.5375	.....do	6, 30.	
157.545	.....do	6.	
157.5525	.....do	6, 30.	
157.560	Base or mobile	6.	
157.5675	.....do	6, 30.	
157.575	Mobile	6.	
157.5825	.....do	6, 30.	
157.590	.....do	6.	
157.5975	.....do	6, 30.	
157.605	.....do	6.	
157.6125	.....do	6, 30.	
157.620	Base or mobile	6.	
157.6275	.....do	6, 30.	
157.635	Mobile	6.	
157.6425	.....do	6, 30.	
157.650	.....do	6.	
157.6575	.....do	6, 30.	
157.665	.....do	6.	
157.6725	.....do	6, 30.	
157.680	.....do	6.	
157.6875	.....do	6, 30.	
157.695	.....do	6.	
157.7025	.....do	6, 30.	
157.710	.....do	6.	
157.7175	.....do	6, 30.	
157.725	Base or mobile	6.	
157.740	.....do	29, 36, 37, 38.	
158.1225	.....do	l33	IW
158.130	.....do		IW
158.1375	.....do	30	IW
158.145	.....do.		
158.1525	.....do	30.	
158.160	.....do.		

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
158.1675	do	30.	
158.175	do.		
158.1825	do	30.	
158.190	do		IW
158.1975	do	30	IW
158.205	do.		
158.2125	do	30.	
158.220	do.		
158.2275	do	30.	
158.235	do.		
158.2425	do	30.	
158.250	do		IW
158.2575	do	30	IW
158.265	do.		
158.2725	do	30.	
158.280	do.		
158.2875	do	30.	
158.295	do.		
158.3025	do	30.	
158.310	do	4, 7.	
158.3175	do	4, 7, 30.	
158.325	do.		
158.3325	do	30.	
158.340	Mobile.		
158.3475	do	30.	
158.355	Base or mobile.		
158.3625	do	30.	
158.370	do	4, 7.	
158.3775	do	4, 7, 30.	
158.385	do.		
158.3925	do	30.	
158.400	do	17.	
158.4075	do	17, 30.	
158.415	do.		
158.4225	do	30.	
158.430	do	4, 7.	
158.4375	do	4, 7, 30.	
158.445	Mobile	8, 49	IP
158.460	Base or mobile	29, 36, 37, 38, 48.	
159.480	do	8.	IP
159.4875	do	8, 30.	IP
159.495	do.		
159.5025	do	30.	
159.510	do.		
159.5175	do	30.	
159.525	do.		
159.5325	do	30.	
159.540	do.		
159.5475	do	30.	
159.555	do.		
159.5625	do	30.	
159.570	do.		
159.5775	do	30.	
159.585	do.		
159.5925	do	30.	
159.600	do.		
159.6075	do	30.	
159.615	do.		
159.6225	do	30.	
159.630	do.		
159.6375	do	30.	
159.645	do.		
159.6525	do	30.	
159.660	do.		
159.6675	do	30.	
159.675	do.		
159.6825	do	30.	
159.690	do.		
159.6975	do	30.	
159.705	do.		
159.7125	do	30.	
159.720	do.		

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
159.7275	do	30.	
159.735	do.		
159.7425	do	30.	
159.750	do.		
159.7575	do	30.	
159.765	do.		
159.7725	do	30.	
159.780	do.		
159.7875	do	30.	
159.795	do.		
159.8025	do	30.	
159.810	do.		
159.8175	do	30.	
159.825	do.		
159.8325	do	30.	
159.840	do.		
159.8475	do	30.	
159.855	do.		
159.8625	do	30.	
159.870	do.		
159.8775	do	30.	
159.885	do.		
159.8925	do	30.	
159.900	do.		
159.9075	do	30.	
159.915	do.		
159.9225	do	30.	
159.930	do.		
159.9375	do	30.	
159.945	do.		
159.9525	do	30.	
159.960	do.		
159.9675	do	30.	
159.975	do.		
159.9825	do	30.	
159.990	do.		
159.9975	do	30.	
160.005	do.		
160.0125	do	30.	
160.020	do.		
160.0275	do	30.	
160.035	do.		
160.0425	do	30.	
160.050	do.		
160.0575	do	30.	
160.065	do.		
160.0725	do	30.	
160.080	do.		
160.0875	do	30.	
160.095	do.		
160.1025	do	30.	
160.110	do.		
160.1175	do	30.	
160.125	do.		
160.1325	do	30.	
160.140	do.		
160.1475	do	30.	
160.155	do.		
160.1625	do	30.	
160.170	do.		
160.1775	do	30.	
160.185	do.		
160.1925	do	30.	
160.200	do.		
160.2075	do	30.	
160.215	do	50	LR
160.2225	do	30, 50	LR
160.230	do	50	LR
160.2375	do	30, 50	LR
160.245	do	50	LR
160.2525	do	30, 50	LR
160.260	do	50	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
160.2675	do	30, 50	LR
160.275	do	50	LR
160.2825	do	30, 50	LR
160.290	do	50	LR
160.2975	do	30, 50	LR
160.305	do	50	LR
160.3125	do	30, 50	LR
160.320	do	50	LR
160.3275	do	30, 50	LR
160.335	do	50	LR
160.3425	do	30, 50	LR
160.350	do	50	LR
160.3575	do	30, 50	LR
160.365	do	50	LR
160.3725	do	30, 50	LR
160.380	do	50	LR
160.3875	do	30, 50	LR
160.395	do	50	LR
160.4025	do	30, 50	LR
160.410	do	50, 52	LR
160.4175	do	30, 50, 52	LR
160.425	do	50, 52	LR
160.4325	do	30, 50, 52	LR
160.440	do	50, 52	LR
160.4475	do	30, 50, 52	LR
160.455	do	50, 52	LR
160.4625	do	30, 50, 52	LR
160.470	do	50, 52	LR
160.4775	do	30, 50, 52	LR
160.485	do	50, 52	LR
160.4925	do	30, 50, 52	LR
160.500	do	50, 52	LR
160.5075	do	30, 50, 52	LR
160.515	do	50, 52	LR
160.5225	do	30, 50, 52	LR
160.530	do	50, 52	LR
160.5375	do	30, 50, 52	LR
160.545	do	50, 52	LR
160.5525	do	30, 50, 52	LR
160.560	do	50, 52	LR
160.5675	do	30, 50, 52	LR
160.575	do	50, 52	LR
160.5825	do	30, 50, 52	LR
160.590	do	50, 52	LR
160.5975	do	30, 50, 52	LR
160.605	do	50, 52	LR
160.6125	do	30, 50, 52	LR
160.620	do	50	LR
160.6275	do	30, 50	LR
160.635	do	50	LR
160.6425	do	30, 50	LR
160.650	do	50	LR
160.6575	do	30, 50	LR
160.665	do	50	LR
160.6725	do	30, 50	LR
160.680	do	50	LR
160.6875	do	30, 50	LR
160.695	do	50	LR
160.7025	do	30, 50	LR
160.710	do	50	LR
160.7175	do	30, 50	LR
160.725	do	50	LR
160.7325	do	30, 50	LR
160.740	do	50	LR
160.7475	do	30, 50	LR
160.755	do	50	LR
160.7625	do	30, 50	LR
160.770	do	50	LR
160.7775	do	30, 50	LR
160.785	do	50	LR
160.7925	do	30, 50	LR
160.800	do	50	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
160.8075	do	30, 50	LR
160.815	do	50	LR
160.8225	do	30, 50	LR
160.830	do	50	LR
160.8375	do	30, 50	LR
160.845	do	50	LR
160.8525	do	30, 50	LR
160.860	do	50, 51	LR
160.8675	do	30, 50, 51	LR
160.875	do	50, 51	LR
160.8825	do	30, 50, 51	LR
160.890	do	50, 51	LR
160.8975	do	30, 50, 51	LR
160.905	do	50, 51	LR
160.9125	do	30, 50, 51	LR
160.920	do	50, 51	LR
160.9275	do	30, 50, 51	LR
160.935	do	50, 51	LR
160.9425	do	30, 50, 51	LR
160.950	do	50, 51	LR
160.9575	do	30, 50, 51	LR
160.965	do	50, 51	LR
160.9725	do	30, 50, 51	LR
160.980	do	50, 51	LR
160.9875	do	30, 50, 51	LR
160.995	do	50, 51	LR
161.0025	do	30, 50, 51	LR
161.010	do	50, 51	LR
161.0175	do	30, 50, 51	LR
161.025	do	50, 51	LR
161.0325	do	30, 50, 51	LR
161.040	do	50, 51	LR
161.0475	do	30, 50, 51	LR
161.055	do	50, 51	LR
161.0625	do	30, 50, 51	LR
161.070	do	50, 51	LR
161.0775	do	30, 50, 51	LR
161.085	do	50, 51	LR
161.0925	do	30, 50, 51	LR
161.100	do	50, 51	LR
161.1075	do	30, 50, 51	LR
161.115	do	50, 51	LR
161.1225	do	30, 50, 51	LR
161.130	do	50, 51	LR
161.1375	do	30, 50, 51	LR
161.145	do	50, 51	LR
161.1525	do	30, 50, 51	LR
161.160	do	50, 51	LR
161.1675	do	30, 50, 51	LR
161.175	do	50, 51	LR
161.1825	do	30, 50, 51	LR
161.190	do	50, 51	LR
161.1975	do	30, 50, 51	LR
161.205	do	50, 51	LR
161.2125	do	30, 50, 51	LR
161.220	do	50, 51	LR
161.2275	do	30, 50, 51	LR
161.235	do	50, 51	LR
161.2425	do	30, 50, 51	LR
161.250	do	50, 51	LR
161.2575	do	30, 50, 51	LR
161.265	do	50, 51	LR
161.2725	do	30, 50, 51	LR
161.280	do	50, 51	LR
161.2875	do	30, 50, 51	LR
161.295	do	50, 51	LR
161.3025	do	30, 50, 51	LR
161.310	do	50, 51	LR
161.3175	do	30, 50, 51	LR
161.325	do	50, 51	LR
161.3325	do	30, 50, 51	LR
161.340	do	50, 51	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
161.3475	do	30, 50, 51	LR
161.355	do	50, 51	LR
161.3625	do	30, 50, 51	LR
161.370	do	50, 51	LR
161.3775	do	30, 50, 51	LR
161.385	do	50, 52	LR
161.3925	do	30, 50, 52	LR
161.400	do	50, 52	LR
161.4075	do	30, 50, 52	LR
161.415	do	50, 52	LR
161.4225	do	30, 50, 52	LR
161.430	do	50, 52	LR
161.4375	do	30, 50, 52	LR
161.445	do	50, 52	LR
161.4525	do	30, 50, 52	LR
161.460	do	50, 52	LR
161.4675	do	30, 50, 52	LR
161.475	do	50, 52	LR
161.4825	do	30, 50, 52	LR
161.490	do	50, 52	LR
161.4975	do	30, 50, 52	LR
161.505	do	50, 52	LR
161.5125	do	30, 50, 52	LR
161.520	do	50, 52	LR
161.5275	do	30, 50, 52	LR
161.535	do	50, 52	LR
161.5425	do	30, 50, 52	LR
161.550	do	50, 52	LR
161.5575	do	30, 50, 52	LR
161.565	do	50, 52	LR
161.610	do	78	LR
169 to 172	Mobile, operational fixed	53.	
173.20375	Fixed or mobile	39, 40, 41, 44.	
173.210	do	40, 41, 44, 54.	
173.225	Base or mobile.		
173.2375	Fixed or mobile	39, 40, 41, 42.	
173.250	Base or mobile		
173.2625	Fixed or mobile	39, 40, 41, 42.	
173.275	Base or mobile.		
173.2875	Fixed or mobile	39, 40, 41, 42.	
173.300	Base or mobile.		
173.3125	Fixed or mobile	39, 40, 41, 42.	
173.325	Base or mobile.		
173.3375	Fixed or mobile	39, 40, 41, 42.	
173.350	Base or mobile.		
173.3625	Fixed or mobile	39, 40, 41, 42.	
173.375	Base or mobile.		
173.390	Fixed or mobile	40, 41, 44, 54.	
173.39625	do	39, 40, 41, 42.	
216 to 220	Base or mobile	55.	
220 to 222	Base and mobile	56.	
406 to 413	Operational fixed	53.	
450 to 470	Fixed, base, or mobile	27, 57.	
451.01875	Base or mobile	l33	IW
451.025	do		IW
451.03125	do	33	IW
451.0375	do	30	IW
451.04375	do	33	IW
451.050	do		IW
451.05625	do	33	IW
451.0625	do	30	IW
451.06875	do	33	IW
451.075	do		IW
451.08125	do	33	IW
451.0875	do	30	IW
451.09375	do	33	IW
451.100	do		IW
451.10625	do	33	IW
451.1125	do	30	IW
451.11875	do	33	IW
451.125	do		IW
451.13125	do	33	IW

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
451.1375	do	30	IW
451.14375	do	33	IW
451.150	do		IW
451.15625	do	33	IW
451.1625	do	30	IW
451.16875	do	33	IW
451.175	do.		
451.18125	do	33.	
451.1875	do	30.	
451.19375	do	33.	
451.200	do		IW
451.20625	do	33	IW
451.2125	do	30	IW
451.21875	do	33	IW
451.225	do.		
451.23125	do	33.	
451.2375	do	30.	
451.24375	do	33.	
451.250	do		IW
451.25625	do	33	IW
451.2625	do	30	IW
451.26875	do	33	IW
451.275	do.		
451.28125	do	33.	
451.2875	do	30.	
451.29375	do	33.	
451.300	do.		
451.30625	do	33.	
451.3125	do	30.	
451.31875	do	33.	
451.325	do.		
451.33125	do	33.	
451.3375	do	30.	
451.34375	do	33.	
451.350	do.		
451.35625	do	33.	
451.3625	do	30.	
451.36875	do	33.	
451.375	do.		
451.38125	do	33.	
451.3875	do	30.	
451.39375	do	33.	
451.400	do.		
451.40625	do	33.	
451.4125	do	30.	
451.41875	do	33.	
451.425	do.		
451.43125	do	33.	
451.4375	do	30.	
451.44375	do	33.	
451.450	do.		
451.45625	do	33.	
451.4625	do	30.	
451.46875	do	33.	
451.475	do.		
451.48125	do	33.	
451.4875	do	30.	
451.49375	do	33.	
451.500	do.		
451.50625	do	33.	
451.5125	do	30.	
451.51875	do	33.	
451.525	do.		
451.53125	do	33.	
451.5375	do	30.	
451.54375	do	33.	
451.550	do	4, 7.	
451.55625	do	4, 7, 33.	
451.5625	do	4, 7, 30.	
451.56875	do	4, 7, 33.	
451.575	do.		
451.58125	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
451.5875	do	30.	
451.59375	do	33.	
451.600	do	4, 7.	
451.60625	do	4, 7, 33.	
451.6125	do	4, 7, 30.	
451.61875	do	4, 7, 33.	
451.625	do.		
451.63125	do	33.	
451.6375	do	30.	
451.64375	do	33.	
451.650	do	4, 7.	
451.65625	do	4, 7, 33.	
451.6625	do	4, 7, 30.	
451.66875	do	4, 7, 33.	
451.675	do.		
451.68125	do	33.	
451.6875	do	30.	
451.69375	do	33.	
451.700	do	4, 7.	
451.70625	do	4, 7, 33.	
451.7125	do	4, 7, 30.	
451.71875	do	4, 7, 33.	
451.725	do.		
451.73125	do	33.	
451.7375	do	30.	
451.74375	do	33.	
451.750	do	4, 7.	
451.75625	do	4, 7, 33.	
451.7625	do	4, 7, 30.	
451.76875	do	4, 7, 33.	
451.775	do.		
451.78125	do	33.	
451.7875	do	30.	
451.79375	do	33.	
451.800	Base, mobile, or operational fixed	17, 58.	
451.80625	do	17, 33, 58.	
451.8125	do	17, 30, 58.	
451.81875	do	17, 33, 58.	
451.825	Base or mobile.		
451.83125	do	33.	
451.8375	do	30.	
451.84375	do	33.	
451.850	do.		
451.85625	do	33.	
451.8625	do	30.	
451.86875	do	33.	
451.875	do.		
451.88125	do	33.	
451.8875	do	30.	
451.89375	do	33.	
451.900	do.		
451.90625	do	33.	
451.9125	do	30.	
451.91875	do	33.	
451.925	do.		
451.93125	do	33.	
451.9375	do	30.	
451.94375	do	33.	
451.950	do.		
451.95625	do	33.	
451.9625	do	30.	
451.96875	do	33.	
451.975	do.		
451.98125	do	33.	
451.9875	do	30.	
451.99375	do	33.	
452.000	do.		
452.00625	do	33.	
452.0125	do	30.	
452.01875	do	33.	
452.025	do.		
452.03125	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
452.0375	do	30.	
452.04375	do	33.	
452.050	do.		
452.05625	do	33.	
452.0625	do	30.	
452.06875	do	33.	
452.075	do.		
452.08125	do	33.	
452.0875	do	30.	
452.09375	do	33.	
452.100	do.		
452.10625	do	33.	
452.1125	do	30.	
452.11875	do	33.	
452.125	do.		
452.13125	do	33.	
452.1375	do	30.	
452.14375	do	33.	
452.150	do.		
452.15625	do	33.	
452.1625	do	30.	
452.16875	do	33.	
452.175	do.		
452.18125	do	33.	
452.1875	do	30.	
452.19375	do	33.	
452.200	do.		
452.20625	do	33.	
452.2125	do	30.	
452.21875	do	33.	
452.225	do		
452.23125	do	33.	
452.2375	do	30.	
452.24375	do	33.	
452.250	do.		
452.25625	do	33.	
452.2625	do	30.	
452.26875	do	33.	
452.275	do.		
452.28125	do	33.	
452.2875	do	30.	
452.29375	do	33.	
452.300	do.		
452.30625	do	33.	
452.3125	do	30.	
452.31875	do	33.	
452.325	do.		
452.33125	do	33.	
452.3375	do	30.	
452.34375	do	33.	
452.350	do.		
452.35625	do	33.	
452.3625	do	30.	
452.36875	do	33.	
452.375	do.		
452.38125	do	33.	
452.3875	do	30.	
452.39375	do	33.	
452.400	do.		
452.40625	do	33.	
452.4125	do	30.	
452.41875	do	33.	
452.425	do.		
452.43125	do	33.	
452.4375	do	30.	
452.44375	do	33.	
452.450	do.		
452.45625	do	33.	
452.4625	do	30.	
452.46875	do	33.	
452.475	do.		
452.48125	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
452.4875	do	30.	
452.49375	do	33.	
452.500	do.		
452.50625	do	33.	
452.5125	do	30.	
452.51875	do	33.	
452.525	do.		
452.53125	do	33.	
452.5375	do	30.	
452.54375	do	33.	
452.550	do.		
452.55625	do	33.	
452.5625	do	30.	
452.56875	do	33.	
452.575	do.		
452.58125	do	33.	
452.5875	do	30.	
452.59375	do	33.	
452.600	do.		
452.60625	do	33.	
452.6125	do	30.	
452.61875	do	33.	
452.625	do.		
452.63125	do	33.	
452.6375	do	30.	
452.64375	do	33.	
452.650	do.		
452.65625	do	33.	
452.6625	do	30.	
452.66875	do	33.	
452.675	do.		
452.68125	do	33.	
452.6875	do	30.	
452.69375	do	33.	
452.700	do.		
452.70625	do	33.	
452.7125	do	30.	
452.71875	do	33.	
452.725	do.		
452.73125	do	33.	
452.7375	do	30.	
452.74375	do	33.	
452.750	do.		
452.75625	do	33.	
452.7625	do	30.	
452.76875	do	33.	
452.775	do.		
452.78125	do	33.	
452.7875	do	30.	
452.79375	do	33.	
452.800	do.		
452.80625	do	33.	
452.8125	do	30.	
452.81875	do	33.	
452.825	do.		
452.83125	do	33.	
452.8375	do	30.	
452.84375	do	33.	
452.850	do.		
452.85625	do	33.	
452.8625	do	30.	
452.86875	do	33.	
452.875	do.		
452.88125	do	33.	
452.8875	do	30.	
452.89375	do	33.	
452.900	do		LR
452.90625	do	33	LR
452.9125	do	30	LR
452.91875	do	33	LR
452.925	do	59	LR
452.93125	do	33, 59	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
452.9375	do	30, 59	LR
452.94375	do	33, 59	LR
452.950	do	59	LR
452.95625	do	33, 59	LR
452.9625	do	30, 59	LR
452.96875	do	33, 59	LR
452.975	do.		
452.98125	do	33.	
452.9875	do	30.	
452.99375	do	33.	
453.000	do.		
453.00625	do	33.	
453.0125	do	30.	
453.01875	do	33.	
454.000	do	8	IP
456.01875	do	33	IW
456.025	Mobile		IW
456.03125	do	33	IW
456.0375	do	30	IW
456.04375	do	33	IW
456.050	do		IW
456.05625	do	33	IW
456.0625	do	30	IW
456.06875	do	33	IW
456.075	do		IW
456.08125	do	33	IW
456.0875	do	30	IW
456.09375	do	33	IW
456.100	do		IW
456.10625	do	33	IW
456.1125	do	30	IW
456.11875	do	33	IW
456.125	do		IW
456.13125	do	33	IW
456.1375	do	30	IW
456.14375	do	33	IW
456.150	do		IW
456.15625	do	33	IW
456.1625	do	30	IW
456.16875	do	33	IW
456.175	do.		
456.18125	do	33.	
456.1875	do	30.	
456.19375	do	33.	
456.200	do		IW
456.20625	do	33	IW
456.2125	do	30	IW
456.21875	do	33	IW
456.225	do.		
456.23125	do	33.	
456.2375	do	30.	
456.24375	do	33.	
456.250	do		IW
456.25625	do	33	IW
456.2625	do	30	IW
456.26875	do	33	IW
456.275	do.		
456.28125	do	33.	
456.2875	do	30.	
456.29375	do	33.	
456.300	do.		
456.30625	do	33.	
456.3125	do	30.	
456.31875	do	33.	
456.325	do.		
456.33125	do	33.	
456.3375	do	30.	
456.34375	do	33.	
456.350	do.		
456.35625	do	33.	
456.3625	do	30.	
456.36875	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
456.375	do.		
456.38125	do	33.	
456.3875	do	30.	
456.39375	do	33.	
456.400	do.		
456.40625	do	33.	
456.4125	do	30.	
456.41875	do	33.	
456.425	do.		
456.43125	do	33.	
456.4375	do	30.	
456.44375	do	33.	
456.450	do.		
456.45625	do	33.	
456.4625	do	30.	
456.46875	do	33.	
456.475	do.		
456.48125	do	33.	
456.4875	do	30.	
456.49375	do	33.	
456.500	do.		
456.50625	do	33.	
456.5125	do	30.	
456.51875	do	33.	
456.525	do.		
456.53125	do	33.	
456.5375	do	30.	
456.54375	do	33.	
456.550	do.		
456.55625	do	33.	
456.5625	do	30.	
456.56875	do	33.	
456.575	do.		
456.58125	do	33.	
456.5875	do	30.	
456.59375	do	33.	
456.600	do.		
456.60625	do	33.	
456.6125	do	30.	
456.61875	do	33.	
456.625	do.		
456.63125	do	33.	
456.6375	do	30.	
456.64375	do	33.	
456.650	do.		
456.65625	do	33.	
456.6625	do	30.	
456.66875	do	33.	
456.675	do.		
456.68125	do	33.	
456.6875	do	30.	
456.69375	do	33.	
456.700	do.		
456.70625	do	33.	
456.7125	do	30.	
456.71875	do	33.	
456.725	do.		
456.73125	do	33.	
456.7375	do	30.	
456.74375	do	33.	
456.750	do.		
456.75625	do	33.	
456.7625	do	30.	
456.76875	do	33.	
456.775	do.		
456.78125	do	33.	
456.7875	do	30.	
456.79375	do	33.	
456.800	Base, mobile, or operational fixed	17, 58.	
456.80625	do	17, 33, 58.	
456.8125	do	17, 30, 58.	
456.81875	do	17, 33, 58.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
456.825	Mobile.		
456.83125	do	33.	
456.8375	do	30.	
456.84375	do	33.	
456.850	do.		
456.85625	do	33.	
456.8625	do	30.	
456.86875	do	33.	
456.875	do.		
456.88125	do	33.	
456.8875	do	30.	
456.89375	do	33.	
456.900	do.		
456.90625	do	33.	
456.9125	do	30.	
456.91875	do	33.	
456.925	do.		
456.93125	do	33.	
456.9375	do	30.	
456.94375	do	33.	
456.950	do.		
456.95625	do	33.	
456.9625	do	30.	
456.96875	do	33.	
456.975	do.		
456.98125	do	33.	
456.9875	do	30.	
456.99375	do	33.	
457.000	do.		
457.00625	do	33.	
457.0125	do	30.	
457.01875	do	33.	
457.025	do.		
457.03125	do	33.	
457.0375	do	30.	
457.04375	do	33.	
457.050	do.		
457.05625	do	33.	
457.0625	do	30.	
457.06875	do	33.	
457.075	do.		
457.08125	do	33.	
457.0875	do	30.	
457.09375	do	33.	
457.100	do.		
457.10625	do	33.	
457.1125	do	30.	
457.11875	do	33.	
457.125	do.		
457.13125	do	33.	
457.1375	do	30.	
457.14375	do	33.	
457.150	do.		
457.15625	do	33.	
457.1625	do	30.	
457.16875	do	33.	
457.175	do.		
457.18125	do	33.	
457.1875	do	30.	
457.19375	do	33.	
457.200	do.		
457.20625	do	33.	
457.2125	do	30.	
457.21875	do	33.	
457.225	do.		
457.23125	do	33.	
457.2375	do	30.	
457.24375	do	33.	
457.250	do.		
457.25625	do	33.	
457.2625	do	30.	
457.26875	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
457.275	do.		
457.28125	do	33.	
457.2875	do	30.	
457.29375	do	33.	
457.300	do.		
457.30625	do	33.	
457.3125	do	30.	
457.31875	do	33.	
457.325	do.		
457.33125	do	33.	
457.3375	do	30.	
457.34375	do	33.	
457.350	do.		
457.35625	do	33.	
457.3625	do	30.	
457.36875	do	33.	
457.375	do.		
457.38125	do	33.	
457.3875	do	30.	
457.39375	do	33.	
457.400	do.		
457.40625	do	33.	
457.4125	do	30.	
457.41875	do	33.	
457.425	do.		
457.43125	do	33.	
457.4375	do	30.	
457.44375	do	33.	
457.450	do.		
457.45625	do	33.	
457.4625	do	30.	
457.46875	do	33.	
457.475	do.		
457.48125	do	33.	
457.4875	do	30.	
457.49375	do	33.	
457.500	do.		
457.50625	do	33.	
457.5125	do	30.	
457.51875	do	33.	
457.525	do	11, 12, 47, 60.	
457.53125	do	11, 12, 33, 47, 60.	
457.5375	do	11, 12, 30, 47, 60.	
457.54375	do	11, 12, 33, 47, 60.	
457.550	do	11, 12, 47, 60.	
457.55625	do	11, 12, 33, 47, 60.	
457.5625	do	11, 12, 30, 47, 60.	
457.56875	do	11, 12, 33, 47, 60.	
457.575	do	11, 12, 47, 60.	
457.58125	do	11, 12, 33, 47, 60.	
457.5875	do	11, 12, 30, 47, 60.	
457.59375	do	11, 12, 33, 47, 60.	
457.600	do	11, 12, 47, 60.	
457.60625	do	11, 12, 33, 47, 60.	
457.6125	do	11, 12, 30, 47, 60.	
457.61875	do	11, 12, 33, 47, 60.	
457.625	do.		
457.63125	do	33.	
457.6375	do	30.	
457.64375	do	33.	
457.650	do.		
457.65625	do	33.	
457.6625	do	30.	
457.66875	do	33.	
457.675	do.		
457.68125	do	33.	
457.6875	do	30.	
457.69375	do	33.	
457.700	do.		
457.70625	do	33.	
457.7125	do	30.	
457.71875	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
457.725	do.		
457.73125	do	33.	
457.7375	do	30.	
457.74375	do	33.	
457.750	do.		
457.75625	do	33.	
457.7625	do	30.	
457.76875	do	33.	
457.775	do.		
457.78125	do	33.	
457.7875	do	30.	
457.79375	do	33.	
457.800	do.		
457.80625	do	33.	
457.8125	do	30.	
457.81875	do	33.	
457.825	do.		
457.83125	do	33.	
457.8375	do	30.	
457.84375	do	33.	
457.850	do.		
457.85625	do	33.	
457.8625	do	30.	
457.86875	do	33.	
457.875	do.		
457.88125	do	33.	
457.8875	do	30.	
457.89375	do	33.	
457.900	do		LR
457.90625	do	33	LR
457.9125	do	30	LR
457.91875	do	33	LR
457.925	do	59	LR
457.93125	do	33, 59	LR
457.9375	do	30, 59	LR
457.94375	do	33, 59	LR
457.950	do	59	LR
457.95625	do	33, 59	LR
457.9625	do	30, 59	LR
457.96875	do	33, 59	LR
457.975	do.		
457.98125	do	33.	
457.9875	do	30.	
457.99375	do	33.	
458.000	do.		
458.00625	do	33.	
458.0125	do	30.	
458.01875	do	33.	
459.000	Base or mobile	8	IP
460.650	do	48, 61, 62.	
460.65625	do	33, 48, 61, 62.	
460.6625	do	30, 48, 61, 62, 69.	
460.66875	do	33, 48, 61, 62.	
460.675	do	48, 61, 62.	
460.68125	do	33, 48, 61, 62.	
460.6875	do	30, 48, 61, 62, 69.	
460.69375	do	33, 48, 61, 62.	
460.700	do	48, 61, 62.	
460.70625	do	33, 48, 61, 62.	
460.7125	do	30, 48, 61, 62, 69.	
460.71875	do	33, 48, 61, 62.	
460.725	do	48, 61, 62.	
460.73125	do	33, 48, 61, 62.	
460.7375	do	30, 48, 61, 62, 69.	
460.74375	do	33, 48, 61, 62.	
460.750	do	48, 61, 62.	
460.75625	do	33, 48, 61, 62.	
460.7625	do	30, 48, 61, 62, 69.	
460.76875	do	33, 48, 61, 62.	
460.775	do	48, 61, 62.	
460.78125	do	33, 48, 61, 62.	
460.7875	do	30, 48, 61, 62, 69.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
460.79375	do	33, 48, 61, 62.	
460.800	do	48, 61, 62.	
460.80625	do	33, 48, 61, 62.	
460.8125	do	30, 48, 61, 62, 69.	
460.81875	do	33, 48, 61, 62.	
460.825	do	48, 61, 62.	
460.83125	do	33, 48, 61, 62.	
460.8375	do	30, 48, 61, 62, 69.	
460.84375	do	33, 48, 61, 62.	
460.850	do	48, 61, 62.	
460.85625	do	33, 48, 61, 62.	
460.8625	do	30, 48, 61, 62, 69.	
460.86875	do	33, 48, 61, 62.	
460.875	do	48, 61, 62.	
460.88125	do	33, 48, 61, 62.	
460.8875	do	30, 48, 61, 62, 69.	
460.89375	do	33, 48, 61, 62.	
460.900	do	63, 64, 65.	
460.90625	do	33, 63, 64, 65.	
460.9125	do	30, 63, 64, 65.	
460.91875	do	33, 63, 64, 65.	
460.925	do	63, 64, 65.	
460.93125	do	33, 63, 64, 65.	
460.9375	do	30, 63, 64, 65.	
460.94375	do	33, 63, 64, 65.	
460.950	do	63, 64, 65.	
460.95625	do	33, 63, 64, 65.	
460.9625	do	30, 63, 64, 65.	
460.96875	do	33, 63, 64, 65.	
460.975	do	64, 65, 66	
460.98125	do	33, 64, 65, 66.	
460.9875	do	30, 64, 65, 66.	
460.99375	do	33, 64, 65, 66.	
461.000	do	64, 65, 66.	
461.00625	do	33, 64, 65, 66.	
461.0125	do	30, 64, 65, 66.	
461.01875	do	33, 64, 65, 66.	
461.025	do	62.	
461.03125	do	33, 62.	
461.0375	do	30, 62.	
461.04375	do	33, 62.	
461.050	do	62.	
461.05625	do	33, 62.	
461.0625	do	30, 62.	
461.06875	do	33, 62.	
461.075	do	62.	
461.08125	do	33, 62.	
461.0875	do	30, 62.	
461.09375	do	33, 62.	
461.100	do	62.	
461.10625	do	33, 62.	
461.1125	do	30, 62.	
461.11875	do	33, 62.	
461.125	do	62.	
461.13125	do	33, 62.	
461.1375	do	30, 62.	
461.14375	do	33, 62.	
461.150	do	62.	
461.15625	do	33, 62.	
461.1625	do	30, 62.	
461.16875	do	33, 62.	
461.175	do	62.	
461.18125	do	33, 62.	
461.1875	do	30, 62.	
461.19375	do	33, 62.	
461.200	do	62.	
461.20625	do	33, 62.	
461.2125	do	30, 62.	
461.21875	do	33, 62.	
461.225	do	62.	
461.23125	do	33, 62.	
461.2375	do	30, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
461.24375	do	33, 62.	
461.250	do	62.	
461.25625	do	33, 62.	
461.2625	do	30, 62.	
461.26875	do	33, 62.	
461.275	do	62.	
461.28125	do	33, 62.	
461.2875	do	30, 62.	
461.29375	do	33, 62.	
461.300	do	62.	
461.30625	do	33, 62.	
461.3125	do	30, 62.	
461.31875	do	33, 62.	
461.325	do	62.	
461.33125	do	33, 62.	
461.3375	do	30, 62.	
461.34375	do	33, 62.	
461.350	do	62.	
461.35625	do	33, 62.	
461.3625	do	30, 62.	
461.36875	do	33, 62.	
461.375	do	62.	
461.38125	do	33, 62.	
461.3875	do	30, 62.	
461.39375	do	33, 62.	
461.400	do	62.	
461.40625	do	33, 62.	
461.4125	do	30, 62.	
461.41875	do	33, 62.	
461.425	do	62.	
461.43125	do	33, 62.	
461.4375	do	30, 62.	
461.44375	do	33, 62.	
461.450	do	62.	
461.45625	do	33, 62.	
461.4625	do	30, 62.	
461.46875	do	33, 62.	
461.475	do	62.	
461.48125	do	33, 62.	
461.4875	do	30, 62.	
461.49375	do	33, 62.	
461.500	do	62.	
461.50625	do	33, 62.	
461.5125	do	30, 62.	
461.51875	do	33, 62.	
461.525	do	62.	
461.53125	do	33, 62.	
461.5375	do	30, 62.	
461.54375	do	33, 62.	
461.550	do	62.	
461.55625	do	33, 62.	
461.5625	do	30, 62.	
461.56875	do	33, 62.	
461.575	do	62.	
461.58125	do	33, 62.	
461.5875	do	30, 62.	
461.59375	do	33, 62.	
461.600	do	62.	
461.60625	do	33, 62.	
461.6125	do	30, 62.	
461.61875	do	33, 62.	
461.625	do	62.	
461.63125	do	33, 62.	
461.6375	do	30, 62.	
461.64375	do	33, 62.	
461.650	do	62.	
461.65625	do	33, 62.	
461.6625	do	30, 62.	
461.66875	do	33, 62.	
461.675	do	62.	
461.68125	do	33, 62.	
461.6875	do	30, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
461.69375	do	33, 62.	
461.700	do	62.	
461.70625	do	33, 62.	
461.7125	do	30, 62.	
461.71875	do	33, 62.	
461.725	do	62.	
461.73125	do	33, 62.	
461.7375	do	30, 62.	
461.74375	do	33, 62.	
461.750	do	62.	
461.75625	do	33, 62.	
461.7625	do	30, 62.	
461.76875	do	33, 62.	
461.775	do	62.	
461.78125	do	33, 62.	
461.7875	do	30, 62.	
461.79375	do	33, 62.	
461.800	do	62.	
461.80625	do	33, 62.	
461.8125	do	30, 62.	
461.81875	do	33, 62.	
461.825	do	62.	
461.83125	do	33, 62.	
461.8375	do	30, 62.	
461.84375	do	33, 62.	
461.850	do	62.	
461.85625	do	33, 62.	
461.8625	do	30, 62.	
461.86875	do	33, 62.	
461.875	do	62.	
461.88125	do	33, 62.	
461.8875	do	30, 62.	
461.89375	do	33, 62.	
461.900	do	62.	
461.90625	do	33, 62.	
461.9125	do	30, 62.	
461.91875	do	33, 62.	
461.925	do	62.	
461.93125	do	33, 62.	
461.9375	do	30, 62.	
461.94375	do	33, 62.	
461.950	do	62.	
461.95625	do	33, 62.	
461.9625	do	30, 62.	
461.96875	do	33, 62.	
461.975	do	62.	
461.98125	do	33, 62.	
461.9875	do	30, 62.	
461.99375	do	33, 62.	
462.000	do	62.	
462.00625	do	33, 62.	
462.0125	do	30, 62.	
462.01875	do	33, 62.	
462.025	do	62.	
462.03125	do	33, 62.	
462.0375	do	30, 62.	
462.04375	do	33, 62.	
462.050	do	62.	
462.05625	do	33, 62.	
462.0625	do	30, 62.	
462.06875	do	33, 62.	
462.075	do	62.	
462.08125	do	33, 62.	
462.0875	do	30, 62.	
462.09375	do	33, 62.	
462.100	do	62.	
462.10625	do	33, 62.	
462.1125	do	30, 62.	
462.11875	do	33, 62.	
462.125	do	62.	
462.13125	do	33, 62.	
462.1375	do	30, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
462.14375	do	33, 62.	
462.150	do	62.	
462.15625	do	33, 62.	
462.1625	do	30, 62.	
462.16875	do	33, 62.	
462.175	do	62.	
462.18125	do	33, 62.	
462.1875	do	30, 62.	
462.19375	do	33, 62.	
462.200	do.		
462.20625	do	33.	
462.2125	do	30.	
462.21875	do	33.	
462.225	do.		
462.23125	do	33.	
462.2375	do	30.	
462.24375	do	33.	
462.250	do.		
462.25625	do	33.	
462.2625	do	30.	
462.26875	do	33.	
462.275	do.		
462.28125	do	33.	
462.2875	do	30.	
462.29375	do	33.	
462.300	do.		
462.30625	do	33.	
462.3125	do	30.	
462.31875	do	33.	
462.325	do.		
462.33125	do	33.	
462.3375	do	30.	
462.34375	do	33.	
462.350	do.		
462.35625	do	33.	
462.3625	do	30.	
462.36875	do	33.	
462.375	do.		
462.38125	do	33.	
462.3875	do	30.	
462.39375	do	33.	
462.400	do.		
462.40625	do	33.	
462.4125	do	30.	
462.41875	do	33.	
462.425	do.		
462.43125	do	33.	
462.4375	do	30.	
462.44375	do	33.	
462.450	do.		
462.45625	do	33.	
462.4625	do	30.	
462.46875	do	33.	
462.475	do.		
462.48125	do	33.	
462.4875	do	30.	
462.49375	do	33.	
462.500	do.		
462.50625	do	33.	
462.5125	do	30.	
462.51875	do	33.	
462.525	do.		
462.53125	do	33.	
462.750	Base	29, 36.	
462.7625	Mobile	67.	
462.775	Base	29, 36.	
462.7875	Mobile	67.	
462.800	Base	29, 36.	
462.8125	Mobile	67.	
462.825	Base	29, 36.	
462.8375	Mobile	67.	
462.850	Base	29, 36.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
462.8625	Mobile	67.	
462.875	Base	29, 36.	
462.8875	Mobile	67.	
462.900	Base	29, 36.	
462.9125	Mobile	67.	
462.925	Base	29, 36.	
462.9375	Mobile	67.	
462.94375	Base or mobile	33.	
463.200	.....do	62.	
463.20625	.....do	33, 62.	
463.2125	.....do	30, 62.	
463.21875	.....do	33, 62.	
463.225	.....do	62.	
463.23125	.....do	33, 62.	
463.2375	.....do	30, 62.	
463.24375	.....do	33, 62.	
463.250	.....do	62.	
463.25625	.....do	33, 62.	
463.2625	.....do	30, 62.	
463.26875	.....do	33, 62.	
463.275	.....do	62.	
463.28125	.....do	33, 62.	
463.2875	.....do	30, 62.	
463.29375	.....do	33, 62.	
463.300	.....do	62.	
463.30625	.....do	33, 62.	
463.3125	.....do	30, 62.	
463.31875	.....do	33, 62.	
463.325	.....do	62.	
463.33125	.....do	33, 62.	
463.3375	.....do	30, 62.	
463.34375	.....do	33, 62.	
463.350	.....do	62.	
463.35625	.....do	33, 62.	
463.3625	.....do	30, 62.	
463.36875	.....do	33, 62.	
463.375	.....do	62.	
463.38125	.....do	33, 62.	
463.3875	.....do	30, 62.	
463.39375	.....do	33, 62.	
463.400	.....do	62.	
463.40625	.....do	33, 62.	
463.4125	.....do	30, 62.	
463.41875	.....do	33, 62.	
463.425	.....do	62.	
463.43125	.....do	33, 62.	
463.4375	.....do	30, 62.	
463.44375	.....do	33, 62.	
463.450	.....do	62.	
463.45625	.....do	33, 62.	
463.4625	.....do	30, 62.	
463.46875	.....do	33, 62.	
463.475	.....do	62.	
463.48125	.....do	33, 62.	
463.4875	.....do	30, 62.	
463.49375	.....do	33, 62.	
463.500	.....do	62.	
463.50625	.....do	33, 62.	
463.5125	.....do	30, 62.	
463.51875	.....do	33, 62.	
463.525	.....do	62.	
463.53125	.....do	33, 62.	
463.5375	.....do	30, 62.	
463.54375	.....do	33, 62.	
463.550	.....do	62.	
463.55625	.....do	33, 62.	
463.5625	.....do	30, 62.	
463.56875	.....do	33, 62.	
463.575	.....do	62.	
463.58125	.....do	33, 62.	
463.5875	.....do	30, 62.	
463.59375	.....do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
463.600	do	62.	
463.60625	do	33, 62.	
463.6125	do	30, 62.	
463.61875	do	33, 62.	
463.625	do	62.	
463.63125	do	33, 62.	
463.6375	do	30, 62.	
463.64375	do	33, 62.	
463.650	do	62.	
463.65625	do	33, 62.	
463.6625	do	30, 62.	
463.66875	do	33, 62.	
463.675	do	62.	
463.68125	do	33, 62.	
463.6875	do	30, 62.	
463.69375	do	33, 62.	
463.700	do	62.	
463.70625	do	33, 62.	
463.7125	do	30, 62.	
463.71875	do	33, 62.	
463.725	do	62.	
463.73125	do	33, 62.	
463.7375	do	30, 62.	
463.74375	do	33, 62.	
463.750	do	62.	
463.75625	do	33, 62.	
463.7625	do	30, 62.	
463.76875	do	33, 62.	
463.775	do	62.	
463.78125	do	33, 62.	
463.7875	do	30, 62.	
463.79375	do	33, 62.	
463.800	do	62.	
463.80625	do	33, 62.	
463.8125	do	30, 62.	
463.81875	do	33, 62.	
463.825	do	62.	
463.83125	do	33, 62.	
463.8375	do	30, 62.	
463.84375	do	33, 62.	
463.850	do	62.	
463.85625	do	33, 62.	
463.8625	do	30, 62.	
463.86875	do	33, 62.	
463.875	do	62.	
463.88125	do	33, 62.	
463.8875	do	30, 62.	
463.89375	do	33, 62.	
463.900	do	62.	
463.90625	do	33, 62.	
463.9125	do	30, 62.	
463.91875	do	33, 62.	
463.925	do	62.	
463.93125	do	33, 62.	
463.9375	do	30, 62.	
463.94375	do	33, 62.	
463.950	do	62.	
463.95625	do	33, 62.	
463.9625	do	30, 62.	
463.96875	do	33, 62.	
463.975	do	62.	
463.98125	do	33, 62.	
463.9875	do	30, 62.	
463.99375	do	33, 62.	
464.000	do	62.	
464.00625	do	33, 62.	
464.0125	do	30, 62.	
464.01875	do	33, 62.	
464.025	do	62.	
464.03125	do	33, 62.	
464.0375	do	30, 62.	
464.04375	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
464.050	do	62.	
464.05625	do	33, 62.	
464.0625	do	30, 62.	
464.06875	do	33, 62.	
464.075	do	62.	
464.08125	do	33, 62.	
464.0875	do	30, 62.	
464.09375	do	33, 62.	
464.100	do	62.	
464.10625	do	33, 62.	
464.1125	do	30, 62.	
464.11875	do	33, 62.	
464.125	do	62.	
464.13125	do	33, 62.	
464.1375	do	30, 62.	
464.14375	do	33, 62.	
464.150	do	62.	
464.15625	do	33, 62.	
464.1625	do	30, 62.	
464.16875	do	33, 62.	
464.175	do	62.	
464.18125	do	33, 62.	
464.1875	do	30, 62.	
464.19375	do	33, 62.	
464.200	do	62.	
464.20625	do	33, 62.	
464.2125	do	30, 62.	
464.21875	do	33, 62.	
464.225	do	62.	
464.23125	do	33, 62.	
464.2375	do	30, 62.	
464.24375	do	33, 62.	
464.250	do	62.	
464.25625	do	33, 62.	
464.2625	do	30, 62.	
464.26875	do	33, 62.	
464.275	do	62.	
464.28125	do	33, 62.	
464.2875	do	30, 62.	
464.29375	do	33, 62.	
464.300	do	62.	
464.30625	do	33, 62.	
464.3125	do	30, 62.	
464.31875	do	33, 62.	
464.325	do	62.	
464.33125	do	33, 62.	
464.3375	do	30, 62.	
464.34375	do	33, 62.	
464.350	do	62.	
464.35625	do	33, 62.	
464.3625	do	30, 62.	
464.36875	do	33, 62.	
464.375	do	62.	
464.38125	do	33, 62.	
464.3875	do	30, 62.	
464.39375	do	33, 62.	
464.400	do	62.	
464.40625	do	33, 62.	
464.4125	do	30, 62.	
464.41875	do	33, 62.	
464.425	do	62.	
464.43125	do	33, 62.	
464.4375	do	30, 62.	
464.44375	do	33, 62.	
464.450	do	62.	
464.45625	do	33, 62.	
464.4625	do	30, 62.	
464.46875	do	33, 62.	
464.475	do	62.	
464.48125	do	33, 62.	
464.4875	do	30, 62.	
464.500	do	10, 34.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
464.5125	do	30, 62.	
464.51875	do	33, 62.	
464.525	do	62.	
464.53125	do	33, 62.	
464.5375	do	30, 62.	
464.550	do	10, 34.	
464.5625	do	30, 62.	
464.56875	do	33, 62.	
464.575	do	62.	
464.58125	do	33, 62.	
464.5875	do	30, 62.	
464.59375	do	33, 62.	
464.600	do	62.	
464.60625	do	33, 62.	
464.6125	do	30, 62.	
464.61875	do	33, 62.	
464.625	do	62.	
464.63125	do	33, 62.	
464.6375	do	30, 62.	
464.64375	do	33, 62.	
464.650	do	62.	
464.65625	do	33, 62.	
464.6625	do	30, 62.	
464.66875	do	33, 62.	
464.675	do	62.	
464.68125	do	33, 62.	
464.6875	do	30, 62.	
464.69375	do	33, 62.	
464.700	do	62.	
464.70625	do	33, 62.	
464.7125	do	30, 62.	
464.71875	do	33, 62.	
464.725	do	62.	
464.73125	do	33, 62.	
464.7375	do	30, 62.	
464.74375	do	33, 62.	
464.750	do	62.	
464.75625	do	33, 62.	
464.7625	do	30, 62.	
464.76875	do	33, 62.	
464.775	do	62.	
464.78125	do	33, 62.	
464.7875	do	30, 62.	
464.79375	do	33, 62.	
464.800	do	62.	
464.80625	do	33, 62.	
464.8125	do	30, 62.	
464.81875	do	33, 62.	
464.825	do	62.	
464.83125	do	33, 62.	
464.8375	do	30, 62.	
464.84375	do	33, 62.	
464.850	do	62.	
464.85625	do	33, 62.	
464.8625	do	30, 62.	
464.86875	do	33, 62.	
464.875	do	62.	
464.88125	do	33, 62.	
464.8875	do	30, 62.	
464.89375	do	33, 62.	
464.900	do	62.	
464.90625	do	33, 62.	
464.9125	do	30, 62.	
464.91875	do	33, 62.	
464.925	do	62.	
464.93125	do	33, 62.	
464.9375	do	30, 62.	
464.94375	do	33, 62.	
464.950	do	62.	
464.95625	do	33, 62.	
464.9625	do	30, 62.	
464.96875	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
464.975	do	62.	
464.98125	do	33, 62.	
464.9875	Mobile	67.	
465.000	Base	29, 34, 36.	
465.0125	Mobile	67.	
465.01875	do	33, 34.	
465.650	do	11, 61, 62, 68.	
465.65625	do	11, 33, 61, 62, 68.	
465.6625	do	11, 30, 61, 62, 68, 69.	
465.66875	do	11, 33, 61, 62, 68.	
465.675	do	11, 61, 62, 68.	
465.68125	do	11, 33, 61, 62, 68.	
465.6875	do	11, 30, 61, 62, 68, 69.	
465.69375	do	11, 33, 61, 62, 68.	
465.700	do	11, 61, 62, 68.	
465.70625	do	11, 33, 61, 62, 68.	
465.7125	do	11, 30, 61, 62, 68, 69.	
465.71875	do	11, 33, 61, 62, 68.	
465.725	do	11, 61, 62, 68.	
465.73125	do	11, 33, 61, 62, 68.	
465.7375	do	11, 30, 61, 62, 68, 69.	
465.74375	do	11, 33, 61, 62, 68.	
465.750	do	11, 61, 62, 68.	
465.75625	do	11, 33, 61, 62, 68.	
465.7625	do	11, 30, 61, 62, 68, 69.	
465.76875	do	11, 33, 61, 62, 68.	
465.775	do	11, 61, 62, 68.	
465.78125	do	11, 33, 61, 62, 68.	
465.7875	do	11, 30, 61, 62, 68, 69.	
465.79375	do	11, 33, 61, 62, 68.	
465.800	do	11, 61, 62, 68.	
465.80625	do	11, 33, 61, 62, 68.	
465.8125	do	11, 30, 61, 62, 68, 69.	
465.81875	do	11, 33, 61, 62, 68.	
465.825	do	11, 61, 62, 68.	
465.83125	do	11, 33, 61, 62, 68.	
465.8375	do	11, 30, 61, 62, 68, 69.	
465.84375	do	11, 33, 61, 62, 68.	
465.850	do	11, 61, 62, 68.	
465.85625	do	11, 33, 61, 62, 68.	
465.8625	do	11, 30, 61, 62, 68, 69.	
465.86875	do	11, 33, 61, 62, 68.	
465.875	do	11, 61, 62, 68.	
465.88125	do	11, 33, 61, 62, 68.	
465.8875	do	11, 30, 61, 62, 68, 69.	
465.89375	do	11, 33, 61, 62, 68.	
465.900	do	63, 64.	
465.90625	do	33, 63, 64.	
465.9125	do	30, 63, 64.	
465.91875	do	33, 63, 64.	
465.925	do	63, 64.	
465.93125	do	33, 63, 64.	
465.9375	do	30, 63, 64.	
465.94375	do	33, 63, 64.	
465.950	do	63, 64.	
465.95625	do	33, 63, 64.	
465.9625	do	30, 63, 64.	
465.96875	do	33, 63, 64.	
465.975	do	64, 66.	
465.98125	do	33, 64, 66.	
465.9875	do	30, 64, 66.	
465.99375	do	33, 64, 66.	
466.000	do	64, 66.	
466.00625	do	33, 64, 66.	
466.0125	do	30, 64, 66, 69.	
466.01875	do	33, 64, 66.	
466.025	do	62.	
466.03125	do	33, 62.	
466.0375	do	30, 62.	
466.04375	do	33, 62.	
466.050	do	62.	
466.05625	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
466.0625	do	30, 62.	
466.06875	do	33, 62.	
466.075	do	62.	
466.08125	do	33, 62.	
466.0875	do	30, 62.	
466.09375	do	33, 62.	
466.100	do	62.	
466.10625	do	33, 62.	
466.1125	do	30, 62.	
466.11875	do	33, 62.	
466.125	do	62.	
466.13125	do	33, 62.	
466.1375	do	30, 62.	
466.14375	do	33, 62.	
466.150	do	62.	
466.15625	do	33, 62.	
466.1625	do	30, 62.	
466.16875	do	33, 62.	
466.175	do	62.	
466.18125	do	33, 62.	
466.1875	do	30, 62.	
466.19375	do	33, 62.	
466.200	do	62.	
466.20625	do	33, 62.	
466.2125	do	30, 62.	
466.21875	do	33, 62.	
466.225	do	62.	
466.23125	do	33, 62.	
466.2375	do	30, 62.	
466.24375	do	33, 62.	
466.250	do	62.	
466.25625	do	33, 62.	
466.2625	do	30, 62.	
466.26875	do	33, 62.	
466.275	do	62.	
466.28125	do	33, 62.	
466.2875	do	30, 62.	
466.29375	do	33, 62.	
466.300	do	62.	
466.30625	do	33, 62.	
466.3125	do	30, 62.	
466.31875	do	33, 62.	
466.325	do	62.	
466.33125	do	33, 62.	
466.3375	do	30, 62.	
466.34375	do	33, 62.	
466.350	do	62.	
466.35625	do	33, 62.	
466.3625	do	30, 62.	
466.36875	do	33, 62.	
466.375	do	62.	
466.38125	do	33, 62.	
466.3875	do	30, 62.	
466.39375	do	33, 62.	
466.400	do	62.	
466.40625	do	33, 62.	
466.4125	do	30, 62.	
466.41875	do	33, 62.	
466.425	do	62.	
466.43125	do	33, 62.	
466.4375	do	30, 62.	
466.44375	do	33, 62.	
466.450	do	62.	
466.45625	do	33, 62.	
466.4625	do	30, 62.	
466.46875	do	33, 62.	
466.475	do	62.	
466.48125	do	33, 62.	
466.4875	do	30, 62.	
466.49375	do	33, 62.	
466.500	do	62.	
466.50625	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
466.5125	do	30, 62.	
466.51875	do	33, 62.	
466.525	do	62.	
466.53125	do	33, 62.	
466.5375	do	30, 62.	
466.54375	do	33, 62.	
466.550	do	62.	
466.55625	do	33, 62.	
466.5625	do	30, 62.	
466.56875	do	33, 62.	
466.575	do	62.	
466.58125	do	33, 62.	
466.5875	do	30, 62.	
466.59375	do	33, 62.	
466.600	do	62.	
466.60625	do	33, 62.	
466.6125	do	30, 62.	
466.61875	do	33, 62.	
466.625	do	62.	
466.63125	do	33, 62.	
466.6375	do	30, 62.	
466.64375	do	33, 62.	
466.650	do	62.	
466.65625	do	33, 62.	
466.6625	do	30, 62.	
466.66875	do	33, 62.	
466.675	do	62.	
466.68125	do	33, 62.	
466.6875	do	30, 62.	
466.69375	do	33, 62.	
466.700	do	62.	
466.70625	do	33, 62.	
466.7125	do	30, 62.	
466.71875	do	33, 62.	
466.725	do	62.	
466.73125	do	33, 62.	
466.7375	do	30, 62.	
466.74375	do	33, 62.	
466.750	do	62.	
466.75625	do	33, 62.	
466.7625	do	30, 62.	
466.76875	do	33, 62.	
466.775	do	62.	
466.78125	do	33, 62.	
466.7875	do	30, 62.	
466.79375	do	33, 62.	
466.800	do	62.	
466.80625	do	33, 62.	
466.8125	do	30, 62.	
466.81875	do	33, 62.	
466.825	do	62.	
466.83125	do	33, 62.	
466.8375	do	30, 62.	
466.84375	do	33, 62.	
466.850	do	62.	
466.85625	do	33, 62.	
466.8625	do	30, 62.	
466.86875	do	33, 62.	
466.875	do	62.	
466.88125	do	33, 62.	
466.8875	do	30, 62.	
466.89375	do	33, 62.	
466.900	do	62.	
466.90625	do	33, 62.	
466.9125	do	30, 62.	
466.91875	do	33, 62.	
466.925	do	62.	
466.93125	do	33, 62.	
466.9375	do	30, 62.	
466.94375	do	33, 62.	
466.950	do	62.	
466.95625	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
466.9625	do	30, 62.	
466.96875	do	33, 62.	
466.975	do	62.	
466.98125	do	33, 62.	
466.9875	do	30, 62.	
466.99375	do	33, 62.	
467.000	do	62.	
467.00625	do	33, 62.	
467.0125	do	30, 62.	
467.01875	do	33, 62.	
467.025	do	62.	
467.03125	do	33, 62.	
467.0375	do	30, 62.	
467.04375	do	33, 62.	
467.050	do	62.	
467.05625	do	33, 62.	
467.0625	do	30, 62.	
467.06875	do	33, 62.	
467.075	do	62.	
467.08125	do	33, 62.	
467.0875	do	30, 62.	
467.09375	do	33, 62.	
467.100	do	62.	
467.10625	do	33, 62.	
467.1125	do	30, 62.	
467.11875	do	33, 62.	
467.125	do	62.	
467.13125	do	33, 62.	
467.1375	do	30, 62.	
467.14375	do	33, 62.	
467.150	do	62.	
467.15625	do	33, 62.	
467.1625	do	30, 62.	
467.16875	do	33, 62.	
467.175	do	62.	
467.18125	do	33, 62.	
467.1875	do	30, 62.	
467.19375	do	33, 62.	
467.200	do.		
467.20625	do	33.	
467.2125	do	30.	
467.21875	do	33.	
467.225	do.		
467.23125	do	33.	
467.2375	do	30.	
467.24375	do	33.	
467.250	do.		
467.25625	do	33.	
467.2625	do	30.	
467.26875	do	33.	
467.275	do.		
467.28125	do	33.	
467.2875	do	30.	
467.29375	do	33.	
467.300	do.		
467.30625	do	33.	
467.3125	do	30.	
467.31875	do	33.	
467.325	do.		
467.33125	do	33.	
467.3375	do	30.	
467.34375	do	33.	
467.350	do.		
467.35625	do	33.	
467.3625	do	30.	
467.36875	do	33.	
467.375	do.		
467.38125	do	33.	
467.3875	do	30.	
467.39375	do	33.	
467.400	do.		
467.40625	do	33.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
467.4125	do	30.	
467.41875	do	33.	
467.425	do.		
467.43125	do	33.	
467.4375	do	30.	
467.44375	do	33.	
467.450	do.		
467.45625	do	33.	
467.4625	do	30.	
467.46875	do	33.	
467.475	do.		
467.48125	do	33.	
467.4875	do	30.	
467.49375	do	33.	
467.500	do.		
467.50625	do	33.	
467.5125	do	30.	
467.51875	do	33.	
467.525	do.		
467.53125	do	33.	
467.74375	do	33, 62.	
467.750	do	11, 12, 35, 60.	
467.75625	do	11, 12, 33, 35, 60.	
467.7625	do	11, 12, 30, 35, 60.	
467.76875	do	11, 12, 33, 35, 60.	
467.775	do	11, 12, 35, 60.	
467.78125	do	11, 12, 33, 35, 60.	
467.7875	do	11, 12, 30, 35, 60.	
467.79375	do	11, 12, 33, 35, 60.	
467.800	do	11, 12, 35, 60.	
467.80625	do	11, 12, 33, 35, 60.	
467.8125	do	11, 12, 30, 35, 60.	
467.81875	do	11, 12, 33, 35, 60.	
467.825	do	11, 12, 35, 60.	
467.83125	do	11, 12, 33, 35, 60.	
467.8375	do	11, 12, 33, 35, 60.	
467.850	do	11, 12, 35.	
467.8625	do	67.	
467.875	do	11, 12, 35.	
467.8875	do	67.	
467.900	do	11, 12, 35.	
467.9125	do	67.	
467.925	do	11, 12, 35.	
467.93125	do	33.	
467.9375	do	30, 67.	
467.94375	do	33.	
468.200	do	62.	
468.20625	do	33, 62.	
468.2125	do	30, 62.	
468.21875	do	33, 62.	
468.225	do	62.	
468.23125	do	33, 62.	
468.2375	do	30, 62.	
468.24375	do	33, 62.	
468.250	do	62.	
468.25625	do	33, 62.	
468.2625	do	30, 62.	
468.26875	do	33, 62.	
468.275	do	62.	
468.28125	do	33, 62.	
468.2875	do	30, 62.	
468.29375	do	33, 62.	
468.300	do	62.	
468.30625	do	33, 62.	
468.3125	do	30, 62.	
468.31875	do	33, 62.	
468.325	do	62.	
468.33125	do	33, 62.	
468.3375	do	30, 62.	
468.34375	do	33, 62.	
468.350	do	62.	
468.35625	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
468.3625	do	30, 62.	
468.36875	do	33, 62.	
468.375	do	62.	
468.38125	do	33, 62.	
468.3875	do	30, 62.	
468.39375	do	33, 62.	
468.400	do	62.	
468.40625	do	33, 62.	
468.4125	do	30, 62.	
468.41875	do	33, 62.	
468.425	do	62.	
468.43125	do	33, 62.	
468.4375	do	30, 62.	
468.44375	do	33, 62.	
468.450	do	62.	
468.45625	do	33, 62.	
468.4625	do	30, 62.	
468.46875	do	33, 62.	
468.475	do	62.	
468.48125	do	33, 62.	
468.4875	do	30, 62.	
468.49375	do	33, 62.	
468.500	do	62.	
468.50625	do	33, 62.	
468.5125	do	30, 62.	
468.51875	do	33, 62.	
468.525	do	62.	
468.53125	do	33, 62.	
468.5375	do	30, 62.	
468.54375	do	33, 62.	
468.550	do	62.	
468.55625	do	33, 62.	
468.5625	do	30, 62.	
468.56875	do	33, 62.	
468.575	do	62.	
468.58125	do	33, 62.	
468.5875	do	30, 62.	
468.59375	do	33, 62.	
468.600	do	62.	
468.60625	do	33, 62.	
468.6125	do	30, 62.	
468.61875	do	33, 62.	
468.625	do	62.	
468.63125	do	33, 62.	
468.6375	do	30, 62.	
468.64375	do	33, 62.	
468.650	do	62.	
468.65625	do	33, 62.	
468.6625	do	30, 62.	
468.66875	do	33, 62.	
468.675	do	62.	
468.68125	do	33, 62.	
468.6875	do	30, 62.	
468.69375	do	33, 62.	
468.700	do	62.	
468.70625	do	33, 62.	
468.7125	do	30, 62.	
468.71875	do	33, 62.	
468.725	do	62.	
468.73125	do	33, 62.	
468.7375	do	30, 62.	
468.74375	do	33, 62.	
468.750	do	62.	
468.75625	do	33, 62.	
468.7625	do	30, 62.	
468.76875	do	33, 62.	
468.775	do	62.	
468.78125	do	33, 62.	
468.7875	do	30, 62.	
468.79375	do	33, 62.	
468.800	do	62.	
468.80625	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
468.8125	do	30, 62.	
468.81875	do	33, 62.	
468.825	do	62.	
468.83125	do	33, 62.	
468.8375	do	30, 62.	
468.84375	do	33, 62.	
468.850	do	62.	
468.85625	do	33, 62.	
468.8625	do	30, 62.	
468.86875	do	33, 62.	
468.875	do	62.	
468.88125	do	33, 62.	
468.8875	do	30, 62.	
468.89375	do	33, 62.	
468.900	do	62.	
468.90625	do	33, 62.	
468.9125	do	30, 62.	
468.91875	do	33, 62.	
468.925	do	62.	
468.93125	do	33, 62.	
468.9375	do	30, 62.	
468.94375	do	33, 62.	
468.950	do	62.	
468.95625	do	33, 62.	
468.9625	do	30, 62.	
468.96875	do	33, 62.	
468.975	do	62.	
468.98125	do	33, 62.	
468.9875	do	30, 62.	
468.99375	do	33, 62.	
469.000	do	62.	
469.00625	do	33, 62.	
469.0125	do	30, 62.	
469.01875	do	33, 62.	
469.025	do	62.	
469.03125	do	33, 62.	
469.0375	do	30, 62.	
469.04375	do	33, 62.	
469.050	do	62.	
469.05625	do	33, 62.	
469.0625	do	30, 62.	
469.06875	do	33, 62.	
469.075	do	62.	
469.08125	do	33, 62.	
469.0875	do	30, 62.	
469.09375	do	33, 62.	
469.100	do	62.	
469.10625	do	33, 62.	
469.1125	do	30, 62.	
469.11875	do	33, 62.	
469.125	do	62.	
469.13125	do	33, 62.	
469.1375	do	30, 62.	
469.14375	do	33, 62.	
469.150	do	62.	
469.15625	do	33, 62.	
469.1625	do	30, 62.	
469.16875	do	33, 62.	
469.175	do	62.	
469.18125	do	33, 62.	
469.1875	do	30, 62.	
469.19375	do	33, 62.	
469.200	do	62.	
469.20625	do	33, 62.	
469.2125	do	30, 62.	
469.21875	do	33, 62.	
469.225	do	62.	
469.23125	do	33, 62.	
469.2375	do	30, 62.	
469.24375	do	33, 62.	
469.250	do	62.	
469.25625	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
469.2625	do	30, 62.	
469.26875	do	33, 62.	
469.275	do	62.	
469.28125	do	33, 62.	
469.2875	do	30, 62.	
469.29375	do	33, 62.	
469.300	do	62.	
469.30625	do	33, 62.	
469.3125	do	30, 62.	
469.31875	do	33, 62.	
469.325	do	62.	
469.33125	do	33, 62.	
469.3375	do	30, 62.	
469.34375	do	33, 62.	
469.350	do	62.	
469.35625	do	33, 62.	
469.3625	do	30, 62.	
469.36875	do	33, 62.	
469.375	do	62.	
469.38125	do	33, 62.	
469.3875	do	30, 62.	
469.39375	do	33, 62.	
469.400	do	62.	
469.40625	do	33, 62.	
469.4125	do	30, 62.	
469.41875	do	33, 62.	
469.425	do	62.	
469.43125	do	33, 62.	
469.4375	do	30, 62.	
469.44375	do	33, 62.	
469.450	do	62.	
469.45625	do	33, 62.	
469.4625	do	30, 62.	
469.46875	do	33, 62.	
469.475	do	62.	
469.48125	do	33, 62.	
469.4875	do	30, 62.	
469.500	do	10, 30, 34.	
469.5125	do	30, 62.	
469.51875	do	33, 62.	
469.525	do	62.	
469.53125	do	33, 62.	
469.5375	do	30, 62.	
469.550	do	10, 30, 34.	
469.5625	do	30, 62.	
469.56875	do	33, 62.	
469.575	do	62.	
469.58125	do	33, 62.	
469.5875	do	30, 62.	
469.59375	do	33, 62.	
469.600	do	62.	
469.60625	do	33, 62.	
469.6125	do	30, 62.	
469.61875	do	33, 62.	
469.625	do	62.	
469.63125	do	33, 62.	
469.6375	do	30, 62.	
469.64375	do	33, 62.	
469.650	do	62.	
469.65625	do	33, 62.	
469.6625	do	30, 62.	
469.66875	do	33, 62.	
469.675	do	62.	
469.68125	do	33, 62.	
469.6875	do	30, 62.	
469.69375	do	33, 62.	
469.700	do	62.	
469.70625	do	33, 62.	
469.7125	do	30, 62.	
469.71875	do	33, 62.	
469.725	do	62.	
469.73125	do	33, 62.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
469.7375	do	30, 62.	
469.74375	do	33, 62.	
469.750	do	62.	
469.75625	do	33, 62.	
469.7625	do	30, 62.	
469.76875	do	33, 62.	
469.775	do	62.	
469.78125	do	33, 62.	
469.7875	do	30, 62.	
469.79375	do	33, 62.	
469.800	do	62.	
469.80625	do	33, 62.	
469.8125	do	30, 62.	
469.81875	do	33, 62.	
469.825	do	62.	
469.83125	do	33, 62.	
469.8375	do	30, 62.	
469.84375	do	33, 62.	
469.850	do	62.	
469.85625	do	33, 62.	
469.8625	do	30, 62.	
469.86875	do	33, 62.	
469.875	do	62.	
469.88125	do	33, 62.	
469.8875	do	30, 62.	
469.89375	do	33, 62.	
469.900	do	62.	
469.90625	do	33, 62.	
469.9125	do	30, 62.	
469.91875	do	33, 62.	
469.925	do	62.	
469.93125	do	33, 62.	
469.9375	do	30, 62.	
469.94375	do	33, 62.	
469.950	do	62.	
469.95625	do	33, 62.	
469.9625	do	30, 62.	
469.96875	do	33, 62.	
469.975	do	62.	
469.98125	do	33, 62.	
470 to 512	Base or mobile	70.	
806 to 821	Mobile	71.	
851 to 866	Base or mobile	71.	
896 to 901	Mobile	71.	
928 and above	Operational fixed	72.	
929 to 930	Base only	73.	
935 to 940	Base or mobile	71.	
1,427 to 1,435	Base, or mobile operational fixed	55 .	
2,450 to 2,500	Base or mobile	74.	
8,400 to 8,500	do	75.	
10,550 to 10, 680	do	76.	

(c) Explanation of assignment limitations appearing in the frequency table of paragraph (b)(3) of this section:

(1) Use of this frequency is permitted as follows:

(i) Only entities engaged in the following activities are eligible to use this spectrum, and then only in accordance with § 90.266:

(A) Prospecting for petroleum, natural gas or petroleum products;

(B) Distribution of electric power or the distribution by pipeline of fuels or water;

(C) Exploration, its support services, and the repair of pipelines; or

(D) The repair of telecommunications circuits.

(ii) Except as provided in this part, licensees may not use these frequencies in the place of other operational circuits permitted by the Commission's rules. Circuits operating on these frequencies may be used only for the following purposes:

(A) Providing standby backup communications for circuits which have been disrupted and which directly affect the safety of life, property, or the national interest or are used for coordinating inter-utility, intra-utility, and power pool distribution of electric power;

(B) Providing operational circuits during exploration;

(C) Coordinating the repair of inter-utility, intra-utility, and power pool electric power distribution networks, or the repair of pipelines;

(D) Exploratory efforts in mining for solid fuels, minerals, and metals important to the national interest;

(E) Repair of pipelines used for the transmission of fuel or water;

(F) Services supporting the exploration for energy or mineral resources important to the national

interest, without which such exploration cannot be conducted; or

(G) Coordinating the repair of wireline or point-to-point microwave circuits.

(2) Use of this frequency is limited to an amplitude modulation mode of operation.

(3) This frequency is available for assignment only to stations utilized for geophysical purposes.

(4) Geophysical operations may use tone or impulse signaling for purposes other than indicating failure of equipment or abnormal conditions on this frequency. All such tone or impulse signaling shall be on a secondary basis and subject to the following limitations:

(i) Maximum duration of a single non-voice transmission may not exceed 3 minutes;

(ii) The bandwidth utilized for secondary tone or impulse signaling shall not exceed that authorized to the licensee for voice emission on the frequency concerned;

(iii) Frequency loading resulting from the use of secondary tone or impulse signaling will not be considered in whole or in part, as a justification for authorizing additional frequencies in the licensee's mobile service system; and

(iv) The maximum transmitter output power for tone or impulse transmissions shall not exceed 50 watts.

(5) Frequencies below 25 MHz will be assigned to base or mobile stations only upon a satisfactory showing that, from a safety of life standpoint, frequencies above 25 MHz will not meet the operational requirements of the applicant.

(6) Frequencies may be assigned in pairs with the separation between base and mobile transmit frequencies being 5.26 MHz. A mobile station may be assigned the frequency which would normally be assigned to a base station for single-frequency operation. However, this single-frequency operation may be subject to interference that would not occur to a two-frequency system.

(7) This frequency is available for assignment to geophysical stations on a secondary basis to other licensees. Geophysical stations must cease operations on this frequency immediately upon receiving notice that interference is being caused to mobile service stations.

(8) This frequency is primarily available for oil spill containment and cleanup operations and for training and drills essential in the preparations for the containment and cleanup of oil spills. It is secondarily available for general base-mobile operations on a noninterference basis. Secondary users of this frequency are required to forego its use should oil spill containment and cleanup activities be present in their area of operation or upon notice by the Commission or a primary user that harmful interference is being caused to oil spill containment or cleanup activities in other areas.

(9) Operation on this frequency is secondary to stations in the maritime mobile service operating in accordance with the International table of frequency allocations.

(10) This frequency will be assigned only to stations used in itinerant operations, except within 56 km (35 miles) of Detroit, Mich., where it may be assigned for either itinerant or permanent area operations (*i.e.*, general use).

(11) Operation on this frequency is limited to a maximum output power of 2 watts; and each station authorized will be classified and licensed as a mobile station. Any units of such a station, however, may provide the operational functions of a base or fixed station on a secondary basis to mobile service operations, Provided, that the separation between the control point and the center of the radiating portion of the antenna of any units so used does not exceed 8 m (25 ft.).

(12) This frequency may not be used aboard aircraft in flight.

(13) This frequency is shared with the Public Safety Pool.

(14) Operation on this frequency is limited to a maximum output power of 1 watt and each station authorized will be classified and licensed as a mobile station. Any units of such a station, however, may provide the operational functions of a base of fixed station on a secondary basis to mobile service operations, Provided, That the separation between the control point and the center of the radiating portion of the antenna of any units so used does not exceed 8 m (25 ft.).

(15) This Government frequency is available for shared Government/non-Government use by stations engaged in oil spill containment and cleanup operations and for training and drills essential in the preparation for containment and cleanup of oil spills. Such use will be confined to inland and coastal waterways.

(16) This frequency may be assigned only to stations operating in an interconnected or coordinated utility system in accordance with an operational communications plan which sets forth all points of communications. Authorizations at variance with an established operational communications plan will be made only on a secondary basis.

(17) This frequency will be assigned only to stations used in itinerant operations.

(18) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

(19) In addition to single frequency operation, this frequency is available to base and mobile stations for the paired frequency mode of operation. For two frequency systems, the separation between base and mobile transmit frequencies is 500 kHz with the base stations transmitting on the higher of the two frequencies.

(20) In the State of Alaska only, the frequency 44.10 MHz is available for assignment on a primary basis to stations in the Common Carrier Rural Radio Service utilizing meteor burst communications. The frequency may be used by private radio stations for meteor burst communications on a secondary, non-interference basis. Usage shall be in accordance with part 22 of this chapter and this part 90. Stations utilizing meteor burst communications shall not cause harmful interference to stations of other radio services operating in accordance with the allocation table.

(21) In the State of Alaska only, the frequency 44.20 MHz is available for assignment on a primary basis to private land mobile radio stations utilizing meteor burst communications. The frequency may be used by common carrier stations for meteor burst communications on a secondary, noninterference basis. Usage shall be in accordance with part 22 of this chapter and this part 90. Stations utilizing meteor burst communications shall not cause harmful interference to stations of other radio services operating in accordance with the allocation table.

(22) The frequencies available for use at operational fixed stations in the band 72–76 MHz are listed in § 90.257(a)(1). These frequencies are shared with other services and are available only in accordance with the provisions of § 90.257. Seismic telemetry transmitters type accepted with 1 watt or less power and a frequency tolerance not exceeding +/−0.005% may be used as temporary operational fixed stations.

(23) This frequency is shared with fixed stations in other services and is subject to no protection from interference.

(24) All operations on this frequency are subject to the provisions of § 90.257(b).

(25) This frequency is shared with the Radio Control (R/C) Service, of the part 95 Personal Radio Services, where it is used solely for the radio control of models.

(26) Pulsed modulations will not be authorized on this frequency.

(27) Assignment of frequencies in this band are subject to the provisions of § 90.173. In the 150–170 MHz band, licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

(28) In Puerto Rico and the Virgin Islands this frequency is subject to the following:

(i) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E, or G3E emissions may be authorized. Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subparts B or C of this part, to representatives of Federal Government agencies, and foreign governments and their representatives; and

(ii) This frequency will not be assigned to stations for use at temporary locations.

(29) This frequency will be authorized a channel bandwidth of 25 kHz. Except when limited elsewhere, one-way paging transmitters on this frequency may operate with an output power of 350 watts.

(30) This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz. In the 450–470 MHz band, secondary telemetry operations pursuant to § 90.238(e) will be authorized on this frequency.

(31) Use of this frequency is limited to stations located in Puerto Rico and the Virgin Islands.

(32) This frequency is not available to stations located in Puerto Rico and the Virgin Islands.

(33) This frequency will be assigned with an authorized bandwidth not to exceed 6 kHz.

(34) Operation on this frequency is limited to a maximum output power of 35 watts.

(35) This frequency may be used for mobile operation for radio remote control and telemetering functions. A1D, A2D, F1D, or F2D emission may be authorized and mobile stations used to control remote objects or devices may be operated on the continuous carrier transmit mode.

(36) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E, or G3E emissions may be authorized. Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subparts B or C of this part, to representatives of Federal Government agencies, and foreign governments and their representatives.

(37) This frequency is available on a secondary basis to one-way paging communications.

(38) This frequency will not be assigned to stations for use at temporary locations.

(39) For FM transmitters the sum of the highest modulating frequency and the amount of frequency deviation may not exceed 2.8 kHz and the maximum frequency deviation may not exceed 2.5 kHz. For AM transmitters the highest modulating frequency may not exceed 2.0 kHz. The carrier frequency must be maintained within 0.0005 percent, and the authorized bandwidth may not exceed 6 kHz.

(40) This frequency is shared with the Public Safety Pool for remote control and telemetry operations.

(41) Operational fixed stations must employ directional antennas having a front-to-back ratio of at least 20 dB. Omnidirectional antennas having unity gain may be employed for stations communicating with at least three receiving locations separated by 160 deg. of azimuth.

(42) The maximum effective radiated power (ERP) may not exceed 20 watts for fixed stations and 2 watts for mobile stations. The height of the antenna system may not exceed 15.24 meters (50 ft.) above the ground. All such operation is on a secondary basis to adjacent channel land mobile operations.

(43) This frequency is available for the following:

(i) Assignment to multiple address fixed stations employing omnidirectional antennas used for power utility peak load shaving and shedding and to mobile stations used for the remote control of objects and devices. The maximum power that may be authorized to fixed stations is 300 watts output, and the maximum power that may be authorized for mobile stations is 1 watt output. This frequency may also be assigned to operational fixed stations employing directional antenna systems (front-to-back ratio of 20 dB) when such stations are located at least 120 km. (75 mi.) from the boundaries of any urbanized area of 200,000 or more population. (U.S. Census of Population, 1960). The maximum power output of the transmitter for such fixed stations may not exceed 50 watts. A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D emission may be authorized; or

(ii) On a secondary basis for remote control and telemetry operations, subject to paragraphs (c)(41), (42), (43), (46), and (47) of this section.

(44) The maximum output power of the transmitter may not exceed 50 watts for fixed stations and 1 watt for mobile stations. A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D emission may be authorized, and mobile stations used to control remote objects and devices may be operated in the continuous transmit mode.

(45) Authorizations to operate on this frequency will be issued on a secondary basis for A2B, A2D, F2B or F2D emission for tone signaling or for a combination of such emission with A3E, F3E or G3E emission with a maximum bandwidth of 20 kHz. The output power shall not exceed 2 watts. The maximum distance between any transmitter and the center of the radiating portion of its antenna shall not exceed 8 m. (25 ft.).

(46) This frequency is limited to a maximum power of 20 watts.

(47) This frequency may be used for mobile operation for remote control and telemetering functions. A1D, A2D, F1D, or F2D emission may be authorized. The use of the continuous carrier transmit mode for these purposes is permitted only for stations authorized and continuously licensed since before May 21, 1971.

(48) Except as noted in paragraph (c)(61) of this section, operation on this frequency is limited to a maximum output power of 20 watts.

(49) Operation on this frequency is limited to a maximum output power of 75 watts.

(50) This frequency may also be used for the transmission of tone or voice communications, including such communications when prerecorded, for purposes of automatically indicating abnormal conditions of trackage and railroad rolling stock when in motion, on a secondary basis to other stations on this frequency. All such operations shall be subject to the following:

(i) The output power shall not exceed 30 watts;

(ii) The bandwidth used shall not exceed that authorized to the licensee for voice transmissions on the frequency concerned;

(iii) The station shall be so designed and installed that it can normally be activated only by its associated automatic control equipment and, in addition, it shall be equipped with a time delay or clock device which will deactivate the station within three (3) minutes following activation by the last car in the train; and

(iv) Stations authorized pursuant to the provisions of this paragraph are exempt from the station identification requirements of § 90.425.

(51) In Puerto Rico and the Virgin Islands only, this frequency is available on a shared basis with remote pickup broadcast stations.

(52) In Puerto Rico and the Virgin Islands only, this frequency is available to all stations operating in the Industrial/Business Pool.

(53) Frequencies in this band will be assigned only for transmitting hydrological or meteorological data or for low power wireless microphones in accordance with the provisions of § 90.265.

(54) For FM transmitters the sum of the highest modulating frequency and the amount of frequency deviation may not exceed 1.7 kHz and the maximum deviation may not exceed 1.2 kHz. For AM transmitters the highest modulating frequency may not exceed 1.2 kHz. The carrier frequency must be maintained within 0.0005 percent and the authorized bandwidth may not exceed 3 kHz.

(55) This band is available to stations operating in this service subject to the provisions of § 90.259.

(56) Subpart T of this part contains rules for assignment of frequencies in the 220–222 MHz band.

(57) The requirements for secondary fixed use of frequencies in this band are set forth in § 90.261.

(58) Operational fixed assignments on this frequency will only be made to an itinerant fixed control or relay station on a secondary basis to land-mobile stations in the Industrial/Business Pool, provided that the fixed relay or control station is to be associated with base and mobile facilities authorized to use other frequencies available for itinerant operation in the Industrial/Business Pool. All such use of these frequencies for fixed systems is limited to locations 161 or more km. (100 mi.) from the center of any urbanized area of 200,000 or more population, except that the distance may be 120 km. (75 mi.) if the output power does not exceed 20 watts. All such fixed systems are limited to a maximum of two frequencies and must employ directional antennas with a front-to-back ratio of at least 15 dB. The centers of urbanized areas of 200,000 or more population are determined from the appendix, page 226, of the U.S. Commerce publication, ''Air Line Distance Between Cities in the United States.'' Urbanized areas of 200,000 or more population are defined in the U.S. Census of Population, 1960, volume 1, table 23, page 1–50.

(59) This frequency may be assigned primarily for stations used for the purpose of controlling slave locomotives that are placed within a train to assist the lead locomotive by providing, among other functions, auxiliary starting, pulling, and braking actions. Additionally, on a secondary basis this frequency may be assigned for remote control of all types of locomotives and, within a railroad yard or terminal area, for remote control of cab indicator devices placed with a locomotive to give visual signals to the operator of the locomotive. (A1, A2, F1 or F2 emissions may be authorized.)

(60)(i) Frequencies subject to this assignment limitation are herein considered collectively for use for communications concerned with cargo handling from a dock, or a cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

Mobile relay (MHz)	Mobile (MHz)
457.525	467.750
457.53125	467.75625
457.5375	467.7625
457.54375	467.76875
457.550	467.775
457.55625	467.78125
457.5625	467.7875
457.56875	467.79375
457.575	467.800
457.58125	467.80625
457.5875	467.8125
457.59375	467.81875
457.600	467.825
457.60625	467.83125
457.6125	
457.61875	

(ii) For single frequency simplex: Use mobile relay frequencies. The effective radiated power (ERP) on any frequency shall not exceed 2 watts. The center of the radiating system of the on-board repeater antenna shall be located no more than 3 m (10 ft.) above the vessel's highest working deck.

(61) This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(61)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with the servicing and supplying of aircraft.

(ii) To stations in the Industrial/Business Pool for secondary use at locations 80 km (50 mi) or more from the coordinates of the listed airports at a maximum ERP of 300 watts.

(iii) To stations in the Industrial/Business Pool for secondary use at locations 16 km (10 mi) or more from the coordinates of the listed airports at a maximum transmitter output power of 2 watts. Use of the frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to April 17, 1986 may continue to operate with facilities authorized as of that date.

(iv) The airports and their respective reference coordinates are:

City and airport	Reference coordinate	
	Latitude	Longitude
Akron, OH:		
Akron-Canton Regional (CAK)	40°55′01″ N	81°26′30″ W
Albany-Troy-Schenectady, NY:		
Albany County (ALB)	42°44′53″ N	73°48′12″ W
Albuquerque, NM:		
Albuquerque International (ABQ)	35°02′30″ N	106°36′23″ W
Allentown-Bethlehem, PA:		
Allentown-Bethlehem-Easton (ABE)	40°39′11″ N	75°26′25″ W
Anchorage, AK:		
Anchorage International (ANC)	61°10′30″ N	149°59′38″ W
Atlanta, GA:		
Atlanta International (ATL)	33°38′25″ N	84°25′37″ W
Dekalb-Peachtree (PDK)	33°52′30″ N	84°18′08″ W
Fulton County (FTY)	33°46′45″ N	84°31′17″ W

City and airport	Reference coordinate	
	Latitude	Longitude
Baltimore, MD:		
Baltimore-Washington Int'l (BWI)	39°10′30″ N	76°40′10″ W
Birmingham, AL:		
Birmingham Municipal (BHM)	33°33′50″ N	86°45′16″ W
Boston, MA:		
Logan International (BOS)	42°21′51″ N	71°00′21″ W
Bridgeport, CT:		
Sikorsky Memorial (BDR)	41°09′49″ N	73°07′35″ W
Buffalo, NY:		
Greater Buffalo Int'l (BUF)	42°56′26″ N	78°43′57″ W
Canton, OH:		
Akron-Canton Regional (CAK)	40°55′01″ N	81°26′30″ W
Charlotte, NC:		
Charlotte-Douglas Int'l (CLT)	35°12′52″ N	80°56′37″ W
Chattanooga, TN:		
Lovell (CHA)	35°02′07″ N	85°12′15″ W
Chicago, IL-Northwest, IN:		
Chicago-Wheeling-Palwaukee (PWK)	42°06′48″ N	87°54′03″ W
Meigs (CGX)	41°51′32″ N	87°36′28″ W
Michiana Regional (SBN)	41°42′18″ N	86°18′59″ W
Midway (MDW)	41°47′10″ N	87°45′08″ W
O'Hare International (ORD)	41°58′48″ N	87°54′16″ W
West Chicago-Dupage (DPE)	41°54′52″ N	88°14′47″ W
Cincinnati, OH:		
Greater Cincinnati Int'l (CVG)	39°14′59″ N	84°23′14″ W
Lunken (LUK)	39°06′12″ N	84°25′08″ W
Cleveland, OH:		
Burke Lakefront (BKL)	41°31′03″ N	81°41′01″ W
Cuyahoga County (CGF)	41°33′54″ N	81°29′11″ W
Hopkins International (CLE)	41°24′38″ N	81°50′58″ W
Columbus, OH:		
Port Columbus Int'l (CMH)	39°59′42″ N	82°53′11″ W
Dallas, TX:		
Addison (ADS)	32°58′06″ N	96°50′10″ W
Dallas-Ft. Worth Regional (DFW)	32°53′45″ N	97°02′10″ W
Dallas-Love Field (DAL)	32°50′49″ N	96°51′05″ W
Red Bird (RBD)	32°40′49″ N	96°52′02″ W
Davenport, IA (Rock Island, Moline, IL):		
Davenport Municipal (DVN)	41°36′42″ N	90°35′21″ W
Quad City (MLI)	41°26′56″ N	90°30′35″ W
Dayton, OH:		
Dayton International (DAY)	39°54′04″ N	84°13′12″ W
Denver, CO:		
Centennial (APA)	39°34′19″ N	104°50′54″ W
Colorado Springs Municipal (COS)	38°48′31″ N	104°42′5″ W
Denver-Jeffco (BJC)	39°54′28″ N	105°26′53″ W
Stapleton International (DEN)	39°46′ 22″ N	104°52′ 38″ W
Des Moines, IA:		
Des Moines Municipal (DSM)	41°32′06″ N	93°39′38″ W
Detroit, MI:		
Detroit City (DET)	42°24′33″ N	83°00′36″ W
Detroit Metro-Wayne County (DTW)	42°12′55″ N	83°20′55″ W
Oakland-Pontiac (PTK)	42°39′54″ N	83°25′05″ W
Willow Run (YIP)	42°14′16″ N	83°31′50″ W
El Paso, TX:		
El Paso International (ELP)	31°48′24″ N	106°22′38″ W
Flint, MI:		
Bishop (FNT)	42°57′56″ N	83°44′37″ W
Ft. Lauderdale-Hollywood, FL:		
Ft. Lauderdale Executive (FXE)	26°11′49″ N	80°10′15″ W
Ft. Lauderdale-Hollywd Int'l (FLL)	26°04′19″ N	80°09′13″ W
Ft. Worth, TX:		
Meacham (FTW)	32°49′09″ N	97°21′41″ W
Fresno, CA:		
Chandler Downtown (FCH)	36°43′56″ N	119°49′08″ W
Fresno Air Terminal (FAT)	36°46′36″ N	119°43′02″ W
Grand Rapids, MI:		
Kent County Int'l (GRR)	42°52′57″ N	85°31′26″ W
Hana, HI:		
Hana (HNN)	20°47′56″ N	156°01′02″ W
Harrisburg, PA:		
Capital City (CXY)	40°13′01″ N	76°51′06″ W

City and airport	Reference coordinate	
	Latitude	Longitude
Harrisburg Int'l (MDT)	40°11′36″ N	76°45′49″ W
Hartford, CT (Windsor Locks):		
Bradley Int'l (BDL)	41°56′20″ N	72°41′01″ W
Hartford-Brainard (HFD)	41°44′10″ N	72°39′02″ W
Hilo, HI:		
General Lyman Field (ITO)	19°43′24″ N	155°03′05″ W
Honolulu, HI:		
Honolulu International (HNL)	21°19′20″ N	157°55′27″ W
Houston, TX:		
W.P. Hobby (HOU)	29°38′43″ N	95°16′43″ W
D.W. Hooks Memorial (DWH)	30°03′50″ N	95°33′11″ W
Houston Intercontinental (IAH)	29°58′55″ N	95°20′45″ W
Indianapolis, IN:		
Indianapolis Int'l (IND)	39°43′32″ N	86°17′02″ W
Jacksonville, FL:		
Craig Municipal (CRG)	30°20′10″ N	81°30′53″ W
Jacksonville Int'l (JAX)	30°29′33″ N	81°41′24″ W
Kahului, HI:		
Kahului (OGG)	20°54′07″ N	156°25′59″ W
Kailula-Kona, HI:		
Ke-Ahole (KOA)	19°44′08″ N	156°25′06″ W
Kameula, HI:		
Waimea-Kohala (MUE)	20°00′16″ N	155°40′15″ W
Kansas City, MO-KS:		
Fairfax Municipal (KCK)	39°08′50″ N	94°56′14″ W
Kansas City Int'l (MCI)	39°17′57″ N	94°43′04″ W
Kansas City Municipal Dntn (MKC)	39°07′24″ N	94°35′33″ W
Richard-Gebaur (GBW)	38°50′37″ N	94°33′37″ W
Kauna Kakai, HI:		
Molokai (MKK)	21°09′22″ N	157°55′07″ W
Las Vegas, NV:		
McCarran Int'l (LAS)	36°04′58″ N	115°09′13″ W
Lihue, HI:		
Lihue (LIH)	21°58′42″ N	159°20′40″ W
Los Angeles, CA:		
Burbank-Glendale-Pasadena (BUR)	34°21′02″ N	118°21′27″ W
Catalina (AVX)	33°24′20″ N	118°24′50″ W
Long Beach-Daugherty Field (LGB)	33°49′03″ N	118°09′03″ W
Los Angeles Int'l (LAX)	33°56′33″ N	118°24′26″ W
Ontario Int'l (ONT)	34°03′22″ N	117°36′11″ W
Santa Ana-John Wayne-Orange City (SNA)	33°40′32″ N	117°52′02″ W
Louisville, KY:		
Standiford Field (SDF)	38°10′40″ N	85°44′11″ W
Memphis, TN:		
Memphis Int'l (MEM)	35°02′59″ N	89°58′43″ W
Miami, FLA:		
Miami Int'l (MIA)	25°47′34″ N	80°17′26″ W
Opa Locka (OPF)	25°54′25″ N	80°16′50″ W
Tamiami (TMB)	25°38′51″ N	80°25′59″ W
Milwaukee, WI:		
General Mitchell (MKE)	42°56′49″ N	87°53′49″ W
Minneapolis-St. Paul, MN:		
Minneapolis-St. Paul (MSP)	44°53′03″ N	93°12′54″ W
Mobile, AL:		
Bates Field (MOB)	30°41′23″ N	88°14′31″ W
Nashville, TN:		
Nashville Metropolitan (BNA)	36°07′37″ N	86°40′53″ W
New Haven, CT:		
Tweed-New Haven Municipal (HVN)	41°15′50″ N	72°53′15″ W
New Orleans, LA:		
Lakefront (NEW)	30°02′33″ N	90°01′41″ W
New Orleans Int'l (MSY)	29°59′34″ N	90°15′23″ W
Newport News-Hampton,VA:		
Patrick Henry Int'l (PHF)	37°07′54″ N	76°29′36″ W
New York-Northeast, NJ:		
Farmingdale Republic (FRG)	40°43′43″ N	73°24′50″ W
JFK International (JFK)	40°38′25″ N	73°46′42″ W
LaGuardia (LGA)	40°46′38″ N	73°52′27″ W
Long Island-McArthur (ISP)	40°47′44″ N	73°06′00″ W
Morristown Municipal (NJ) (MMU)	40°47′57″ N	74°24′55″ W
Newark Int'l (FWR)	40°41′35″ N	74°10′07″ W
Teterboro (NJ) (TEB)	40°51′00″ N	74°03′41″ W

City and airport	Reference coordinate	
	Latitude	Longitude
Norfolk-Portsmouth, VA:		
Norfolk Int'l (ORF)	36°53′40″ N	76°12′06″ W
Oklahoma City, OK:		
Wiley Post (DWA)	35°32′03″ N	97°38′48″ W
Will Rogers World (OKC)	35°23′35″ N	97°36′02″ W
Omaha, NE:		
Eppley Airfield (OMA)	41°18′04″ N	95°53′36″ W
Orlando, FL:		
Orlando Executive (ORL)	28°32′43″ N	81°19′59″ W
Orlando Int'l (MCO)	28°25′54″ N	81°19′59″ W
Philadelphia, PA-NJ:		
Northeast Philadelphia (PNE)	40°04′55″ N	75°00′40″ W
Philadelphia Int'l (PHC)	39°52′13″ N	75°14′43″ W
Phoenix, AZ:		
Phoenix-Sky Habor Int'l (PHX)	33°26′10″ N	112°00′32″ W
Scottsdale Municipal (SDC)	33°37′22″ N	111°54′35″ W
Pittsburgh, PA:		
Allegheny County (AGC)	40°21′16″ N	79°55′49″ W
Greater Pittsburgh Int'l (PIT)	40°29′30″ N	80°13′55″ W
Portland, OR:		
Portland-Hillsboro (HIO)	45°32′26″ N	122°56′55″ W
Portland International (PDX)	45°35′20″ N	122°35′47″ W
Portland-Troutdale (TTD)	45°32′58″ N	122°24′00″ W
Providence-Pawtucket, RI—MA:		
North Central State (SFZ)	41°55′15″ N	71°29′30″ W
T.F. Green State (PVD)	41°43′31″ N	71°25′41″ W
Reno, NV:		
Reno International (RNO)	39°29′52″ N	119°46′04″ W
Richmond, VA:		
Byrd International (RIC)	37°30′18″ N	77°19′12″ W
Rochester, NY:		
Rochester-Monroe County (ROC)	43°07′08″ N	77°40′22″ W
Sacramento, CA:		
Sacramento Executive (SAC)	38°30′45″ N	121°29′33″ W
Sacramento Metropolitan (SMF)	38°41′44″ N	121°36′01″ W
St. Louis, MO–IL:		
Spirit of St. Louis (SUS)	38°39′36″ N	90°38′43″ W
St. Louis-Lambert Int'l (STC)	38°44′51″ N	90°21′39″ W
St. Petersburg, FL:		
Albert Whitted Municipal (SPG)	27°45′53″ N	82°37′39″ W
Clearwater Int'l (PIE)	27°54′38″ N	82°41′16″ W
Salt Lake City, UT:		
Salt Lake City Int'l (SLC)	40°47′13″ N	111°58′05″ W
San Antonio, TX:		
San Antonio Int'l (SAT)	29°32′00″ N	98°28′10″ W
San Bernardino, CA:		
Ontario Int'l (ONT)	34°03′22″ N	117°36′11″ W
San Diego, CA:		
Lindbergh Int'l (SAN)	32°44′01″ N	117°11′12″ W
San Francisco-Oakland, CA:		
Metropolitan Oakland Int'l (OAK)	37°43′17″ N	122°13′11″ W
San Francisco Int'l (SFO)	37°37′08″ N	122°22′26″ W
San Jose, CA:		
San Jose Int'l (SJC)	37°21′41″ N	121°55′38″ W
Scranton, PA:		
Wilkes-Barre Scranton Int'l (AVP)	41°20′20″ N	75°43′27″ W
Seattle, WA:		
King County Int'l (BFI)	47°31′49″ N	122°18′03″ W
Seattle-Tacoma Int'l (SEA)	47°26′57″ N	122°18′29″ W
Shreveport, LA:		
Shreveport Downtown (DTN)	32°32′23″ N	93°44′40″ W
Shreveport Regional (SHV)	32°26′48″ N	93°49′30″ W
South Bend, IN:		
Michiana Regional (SBW)	41°42′18″ N	86°18′59″ W
Spokane, WA:		
Grant County (MWH)	47°12′28″ N	119°19′08″ W
Spokane Int'l (GEG)	47°37′12″ N	117°31′58″ W
Springfield, MA:		
Barnes Municipal (BAF)	42°09′28″ N	72°42′58″ W
Westover Field (CEF)	42°11′52″ N	72°31′50″ W
Syracuse, NY:		
Syracuse-Hancock Int'l (SYR)	43°06′44″ N	76°06′32″ W

City and airport	Reference coordinate	
	Latitude	Longitude
Tacoma, WA:		
Tacoma Narrows (TIW)	47°16′05″ N	122°34′37″ W
Tampa, FL:		
Tampa Int'l (TPA)	27°58′31″ N	82°32′00″ W
Toledo, OH:		
Toledo Express (TOL)	41°35′15″ N	83°48′19″ W
Trenton, NJ-PA:		
Mercer County (TTN)	40°16′38″ N	74°48′50″ W
Tucson, AZ:		
Tucson Int'l (TUS)	32°07′06″ N	110°56′35″ W
Tulsa, OK:		
R.L. Jones, Jr. (RVS)	36°02′18″ N	95°59′05″ W
Tulsa Int'l (TUL)	36°11′54″ N	95°53′16″ W
Washington, DC:		
Dulles International (IAD)	38°56′39″ N	77°27′26″ W
National (DCA)	38°51′07″ N	77°02′17″ W
Wichita, KS:		
Mid-Continent (ICT)	37°39′00″ N	97°25′58″ W
Wilkes-Barre, PA:		
Wilkes-Barre-Scranton (AVP)	41°20′20″ N	75°43′27″ W
Wilmington, DE:		
Gr. Wilm.-New Castle City (ILG)	39°40′42″ N	75°36′25″ W
Worcester, MA:		
Worcester Municipal (ORH)	42°16′02″ N	71°52′34″ W
Youngstown-Warren, OH-PA:		
Youngstown Municipal (YNG)	41°15′32″ N	80°40′34″ W

(62) This frequency may be assigned to fixed stations in the Industrial/Business Pool in accordance with the provisions of § 90.261.

(63) Within the boundaries of urbanized areas of 200,000 or more population, defined in the United States Census of Population, 1960, vol. 1, table 23, page 1–50, this frequency may be used only by persons rendering a central station commercial protection service within the service area of the radio station utilizing the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central Station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Industrial/Business Pool may be licensed on this frequency only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urbanized areas of 200,000 or more population. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication ''Air Line Distance Between Cities in the United States.''

(64) Persons who render a central station commercial protection service are authorized to operate fixed stations on this frequency for the transmission of tone or impulse signals on a secondary, noninterference base-to-base/mobile operations subject to the following conditions and limitations:

(i) Secondary fixed operations may be used only for the following purposes:

(A) Indication of equipment malfunction;

(B) Actuation of a device to indicate the presence of an intruder, fire, or other hazardous condition on the property under the protection of the licensee;

(C) Indication of an abnormal condition in facilities under the protection of the licensee that, if not promptly reported, would result in danger to human life;

(D) Transmission, as may be necessary, to verify status of equipment; adjust operating conditions; or correct any abnormal condition; or

(E) Confirmation of status, or that an operation or correction has been accomplished.

(ii) The maximum duration of any one non-voice signal may not exceed 2 seconds and shall not be transmitted more than three times.

(iii) Systems employing automatic interrogation shall be limited to non-voice techniques and shall not be activated for this purpose more than 10 seconds out of any 60-second period. This 10-second frame includes both transmit and response times.

(iv) The bandwidth shall not exceed that authorized to the licensee for the primary operation on the frequency concerned.

(v) Frequency loading resulting from the use of secondary signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(vi) A mobile service frequency may not be used exclusively for secondary signaling.

(vii) The output power shall not exceed 30 watts (at the remote site).

(viii) A1D, A2D, F1D, or F2D emission may be authorized.

(ix) The transmitter shall be designed to deactivate automatically after 3 minutes of continuous carrier radiation.

(x) Operational fixed stations authorized under this paragraph are exempt from the requirements of §§ 90.137(b), 90.429(d), 90.425 and 90.433.

(xi) On these frequencies, base, mobile relay or mobile stations may transmit secondary tone or impulse signals to receivers, as provided in this section.

(65) Licensees providing a central station commercial protection service may communicate with police or fire stations, or vehicles, on this frequency, and may install licensed transmitting units which operate on this frequency at

police or fire stations, or in police or fire vehicles, if the frequency's primary use is in a base/mobile system for a central station commercial protection service.

(66) This frequency may be assigned only to persons rendering a central station commercial protection service, which is defined in paragraph (c)(63) of this section, within the service area of the radio station utilizing the frequency.

(67) Use of this frequency is on a secondary basis and subject to the provisions of § 90.267 (a)(3), (a)(4), (a)(5), and (a)(7).

(68) Maximum permissible power output for stations on airports is 3 watts. Each station authorized on this frequency will be classified and licensed as a mobile station. Any units of such a station, however, may provide the functions of a base station on a secondary basis to mobile service operations provided that the vertical separation between the control point or ground level and the center of the radiating portion of the antenna of any units so used shall not exceed 8 m (25 ft.).

(69) This frequency may be used on a secondary, non-interference basis by a hospital or health care institution holding a license to operate a radio station under this part to operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission.

(70) Subpart L of this part contains rules for assignment of frequencies in the 470–512 MHz band.

(71) Subpart S of this part contains rules for assignment of frequencies in the 806–821/851–866 and 896–901/935–940 MHz bands.

(72) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by part 101 of this chapter.

(73) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494.

(74) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

(75) Use of frequencies in this band is limited to developmental operation and is subject to the provisions of subpart Q of this part.

(76) The frequencies in the band 10.55–10.68 GHz are available for Digital Termination Systems and for associated intermodal links in the Point-to-Point Microwave Service. No new licenses will be issued under this subpart but current licenses will be renewed.

(77) All communications on this frequency must be conducted within the boundaries or confines of the licensee's business premises.

(78) Base and mobile stations authorized as of April 1, 1968, may continue to be authorized for such operation on a secondary basis to the Maritime Mobile Service. The licensees of such stations may renew, modify, reinstate, or assign their licenses in those cases where such assignment accompanies a change of ownership of the licensee's business to the assignee, and may expand existing systems when using that frequency; however, they will not be authorized to establish any new systems.

(d) *Additional frequencies available.* In addition to the frequencies shown in the frequency table of this section, the following frequencies are available in this service. (See also § 90.253.)

(1) Frequencies may be substituted for those available below 25 MHz in accordance with the provisions of § 90.263.

(2) Frequencies in the band 73.0–74.6 MHz may be assigned to stations authorized their use on or before December 1, 1961, but no new stations will be authorized in this band, nor will expansion of existing systems be permitted. (See also § 90.257.)

(3) Frequencies in the 421–430 MHz band are available in the Detroit, Cleveland, and Buffalo areas in accordance with the rules in §§ 90.273 through 90.281.

(4) The following frequencies are available only in Puerto Rico and the Virgin Islands. These ''Base and Mobile'' and ''Mobile only'' frequencies are available on a shared basis with the Public Safety Pool. These ''Mobile only'' frequencies may be assigned to a control station associated with a mobile relay system if it is also assigned to the associated mobile station.

Base and mobile	Mobile only
159.240	160.410
159.2475	160.4175
159.255	160.425
159.2625	160.4325
159.270	160.440
159.2775	160.4475
159.285	160.455
159.2925	160.4625
159.300	160.470
159.3075	160.4775
159.315	160.485
159.3225	160.4925
159.330	160.500
159.3375	160.5075
159.345	160.515
159.3525	160.5225
159.360	160.530
159.3675	160.5375
159.375	160.545
159.3825	160.5525
159.390	160.560
159.3975	160.5675
159.405	160.575
159.4125	160.5825
159.420	160.590
159.4275	160.5975
159.435	160.605
159.4425	160.6125

(5) Low power mobile stations of 100 mw or less output power used for one-way, non-voice medical telemetry operations in hospitals or in medical convalescent centers are subject to the provisions of § 90.238.

(6) The frequency band 33.00–33.01 MHz may be used for developmental operations subject to the provisions of subpart Q of this part. Any type of emission other than pulsed emission may be used if the bandwidth occupied by the emission is contained within the assigned frequency band.

(e) *Limitation on number of frequencies assignable.* Normally only one frequency, or pair of frequencies in the paired frequency mode of operation, will be assigned for mobile service operations by a single applicant in a given area. The assignment of an additional frequency or pair of frequencies will be made only upon a satisfactory showing of need, except that:

(1) Additional frequencies above 25 MHz may be assigned in connection with operation of mobile repeaters in accordance with § 90.247 notwithstanding this limitation.

(2) Frequencies in the ranges 30.56–30.57 MHz, 35.00–35.01 MHz, 35.99–36.00 MHz, and 37.00–37.01 MHz are available for developmental operation by applicants in this service subject to the provisions of subpart Q of this part, notwithstanding this limitation.

(3) Frequencies in the 25–50 MHz, 150–170 MHz, 450–512 MHz and 902–928 MHz bands may be assigned for the operation of Location and Monitoring Service (LMS) systems in accordance with the provisions of subpart M of this part, notwithstanding this limitation.

(4) Authorizations for multiple frequencies for geophysical operations

will be granted on the frequencies governed by the limitations in paragraphs (c) (3) and (4) of this section notwithstanding this limitation. However, each geophysical exploration party may only use a maximum of four frequencies at any one time.

(5) Authorization for more than one mobile frequency in the band 72–76 MHz will be issued notwithstanding this limitation.

(6) This limitation shall not apply to paragraph (c)(1) of this section.

(7) Frequencies in the 457 and 467 MHz bands may be assigned collectively as provided by paragraph (c)(60) of this section notwithstanding this limitation.

(f) *Limitation on itinerant operation.* Base or mobile stations being utilized in itinerant operation will be authorized only on base or mobile frequencies designated for itinerant operation under paragraphs (c)(10) or (c)(17) of this section, or on other frequencies not designated for permanent use.

(g) The frequencies 10–490 kHz are used to operate electric utility Power Line Carrier (PLC) systems on power transmission lines for communications essential to the reliability and security of electric service to the public, in accordance with part 15 of this chapter. Any electric utility that generates, transmits, or distributes electrical energy for use by the general public or by the members of a cooperative organization may operate PLC systems and shall supply to a Federal Communications Commission/National Telecommunications and Information Administration recognized industry-operated entity, information on all existing, changes to existing, and proposed systems for inclusion in a data base. Such information shall include the frequency, power, location of transmitter(s), location of receivers and other technical and operational parameters, which would characterize the system's potential both to interfere with authorized radio users, and to receive harmful interference from these users. In an agreed upon format, the industry-operated entity shall inform the NTIA and the FCC of these system characteristics prior to implementation of any proposed PLC system and shall provide monthly or periodic lists with supplements of PLC systems. The FCC and NTIA will supply appropriate application and licensing information to the notification activity regarding authorized radio stations operating in the band. PLC systems in this band operate on a noninterference basis to radio systems assigned frequencies by the NTIA or licensed by the FCC and are not protected from interference due to these radio operations.

Subparts D and E—[Removed and Reserved]

11. Subparts D and E are removed and reserved.

12. Section 90.127 is amended by revising the first sentence of paragraph (a), introductory text, and the first sentence of paragraph (a)(1) to read as follows:

§ 90.127 Submission and filing of applications.

(a) All applications for private land mobile licenses that require both frequency coordination and fees as set forth at part 1, subpart G of this chapter shall first be sent to a certified coordinator for the radio pool concerned as specified in §§ 90.20(c)(2) and 90.35(b)(2). * * *

(1) All applications for private land mobile licenses that require frequency coordination but not a fee shall be sent to a certified coordinator for the radio pool concerned as specified in §§ 90.20(c)(2) and 90.35(b)(2). * * *

* * * * *

13. Section 90.129 is amended by revising paragraphs (h) and (n) and the introductory text of paragraphs (m) and (o) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(h) Requests for authorization to communicate with foreign stations in accordance with § 90.20(b) or § 90.417;

* * * * *

(m) Applicants requesting licenses to operate on frequencies pursuant to § 90.20(d)(6) must submit disaster communications plans containing the following information:

* * * * *

(n) All applications for renewal of base/mobile station licenses by licensees who also operate wildlife tracking telemetry transmitters, as described in § 90.20(f)(7), must include a statement detailing the number of units in service, by frequency, on Public Safety Pool frequencies at the time the renewal application is filed.

(o) Applicants requesting licenses to operate on frequencies pursuant to § 90.35(c)(1) must submit communications plans containing the following information:

* * * * *

14. Section 90.138 is revised to read as follows:

§ 90.138 Applications for itinerant frequencies.

An application for authority to conduct an itinerant operation in the Industrial/Business Pool must be restricted to use of itinerant frequencies or other frequencies not designated for permanent use and need not be accompanied by evidence of frequency coordination. Users should be aware, however, that no protection is provided from interference from other itinerant operations.

15. Section 90.145 is amended by revising paragraphs (b)(6) and (b)(13) to read as follows:

§ 90.145 Special temporary authority.

* * * * *

(b) * * *

(6) Class of station and name of radio service or radio pool;

* * * * *

(13) Statement of eligibility for a radio service or radio pool under this part.

* * * * *

16. Section 90.149 is amended by revising paragraph (a) to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five (5) years from the date of the original issuance, modification, or renewal, except that the license term for stations licensed as commercial mobile radio service on 220–222 MHz, 929–930 MHz paging, Industrial/Business Pool, and SMR frequencies shall be ten (10) years. Licensees shall have an additional thirty (30) days after the expiration of the license term to apply for reinstatement of expired licenses.

* * * * *

17. Section 90.159 is amended by revising the introductory text of paragraph (b), paragraph (b)(6), the last sentence of paragraph (c), and the fourth sentence of paragraph (d) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) An applicant proposing to operate a new land mobile radio station or modify an existing station below 470 MHz or in the one-way paging 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) that is required to submit a frequency recommendation pursuant to paragraphs (b) through (h) of § 90.175 may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127 if the application is accompanied by evidence of frequency coordination in accordance

with § 90.175 and provided that the following conditions are satisfied:

* * * * *

(6) The applicant has submitted an application to the Commission stating the frequency the applicant intends to use and that the frequency coordination requirements specified in § 90.175 for selection and use of this frequency have been met and a minimum of ten business days has passed between submission of the application to the Commission and the onset of operation.

(c) * * * All other categories of applications listed in § 90.175(i) that do not require evidence of frequency coordination are excluded from the provisions of this section.

(d) * * * Consistent with § 90.175(g), the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. * * *

* * * * *

18. Section 90.167 is amended by revising paragraph (a) to read as follows:

§ 90.167 Time in which a station must commence service.

(a) Unless otherwise specified in this part, all 220–222 MHz, private carrier paging, Industrial/Business Pool, and SMR licensees must commence service within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

* * * * *

19. Section 90.173 is amended by revising paragraphs (a), (f), (g), (h), (l), and (m), and the third sentence of paragraph (i), and removing and reserving paragraph (j) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

(a) The frequencies which ordinarily may be assigned to stations in the services governed by this part are listed in subparts B, C and F of this part. Frequencies other than those listed in subparts B and C may be assigned in the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz bands, provided such applications are accompanied by a showing of frequency coordination in accordance with the requirements of § 90.175. Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

* * * * *

(f) Applications for stations in the 150–174 MHz and 421–512 MHz bands for operation on frequencies 15 kHz or less removed from existing stations in the same geographic area will be granted based upon a recommendation from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b)(2).

(g) In the states of Alaska and Hawaii, and in areas outside the continental limits of the United States and the adjacent waters, the frequencies above 150.8 MHz which are listed elsewhere in this part as available for assignment to base stations or mobile stations in the Industrial/Business Pool are also available for assignment to operational fixed stations in the Industrial/Business Pool on a secondary basis.

(h) In the Public Safety Pool, base stations may be authorized to operate on a secondary basis on frequencies below 450 MHz which are available to mobile stations.

(i) * * * In the Industrial/Business Pool, in the 150 MHz band, the frequencies subject to § 90.35(c)(6) may be assigned in pairs with the separation between base and mobile frequencies being 5.26 MHz. * * *

(j) [Reserved]

* * * * *

(l) In the 150–174 MHz band, except where otherwise specifically provided, authorizations for frequencies that were available prior to August 18, 1995 will be granted with channel bandwidths of 25 kHz or less. Authorizations for all other frequencies in this band will be granted with channel bandwidths of 12.5 kHz or less (*i.e.*, in the Public Safety Pool, frequencies subject to §§ 90.20 (d)(27) and (d)(44), and in the Industrial/Business Pool, frequencies subject to §§ 90.35 (c)(30) and (c)(33)).

(m) In the 421–512 MHz band, except where otherwise specifically provided, authorizations for frequencies that were available prior to August 18, 1995 will be granted with channel bandwidths of 25 kHz or less. New authorizations for frequencies 12.5 kHz removed from these frequencies will be made for channel bandwidths of 12.5 kHz or less (*i.e.*, in the Public Safety Pool, frequencies subject to § 90.20(d)(27) and in the Industrial/Business Pool, frequencies subject to § 90.35(c)(30)). Authorizations for frequencies 6.25 kHz removed from these frequencies will be granted with channel bandwidths of 6.25 kHz or less (*i.e.*, in the Public Safety Pool, frequencies subject to § 90.20(d)(44), and in the Industrial/Business Pool, frequencies subject to § 90.35(c)(33)).

* * * * *

20. Section 90.175 is amended by removing the last sentence of the introductory text and paragraph (g), redesignating paragraphs (b) through (f) as paragraphs (e) through (i) respectively, redesignating paragraph (a) as paragraph (b), adding new paragraphs (a), (c), and (d), and revising newly redesignated paragraphs (b), (e), (i)(3), and (i)(5), and the first sentence of newly redesignated paragraph (g) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) Frequency coordinators may request, and applicants are required to provide, all appropriate technical information, system requirements, and justification for requested station parameters when such information is necessary to identify and recommend the most appropriate frequency. Additionally, applicants bear the burden of proceeding and the burden of proof in requesting the Commission to overturn a coordinator's recommendation.

(b) *For frequencies between 25 and 470 MHz:* A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b)(2) recommending the most appropriate frequency. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to minimize potential interference.

(c) *For frequencies above 800 MHz:* When frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified coordinators.

(d) *For Frequencies in the 450–470 MHz band:* When used for secondary fixed operations, frequencies shall be assigned and coordinated pursuant to § 90.261.

(e) *For frequencies between 470 and 512 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz:* A statement is required from the applicable coordinator recommending specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio serve, frequency pool, or category of user involved.

* * * * *

(g) Any recommendation submitted in accordance with paragraphs (a), (c), (d), or (e) of this section is advisory in character and is not an assurance that the Commission will grant a license for operation on that frequency. * * *

* * * * *

(i) * * *

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to § 90.35(c)(77).

* * * * *

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operation only.

* * * * *

21. Section 90.176 is revised to read as follows:

§ 90.176 Coordinator notification requirements on frequencies below 512 MHz.

(a) *Frequencies below 470 MHz.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (e) of this section to all other frequency coordinators who are also certified to coordinate that frequency.

(1) The applicable frequency coordinator for each frequency is specified in the coordinator column of the frequency tables of §§ 90.20(c)(3) and 90.35(b)(3).

(2) For frequencies that do not specify any frequency coordinator, all certified in-pool coordinators must be notified.

(3) For frequencies that are shared between the Public Safety Pool and the Industrial/Business Pool (frequencies subject to §§ 90.20(d)(7), (d)(25), (d)(34), or (d)(46) in the Public Safety Pool, and subject to §§ 90.35(c)(13), (c)(25), or (d)(4) in the Industrial/Business Pool), all certified coordinators of both pools must be notified.

(b) *Frequencies in the 470–512 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (e) of this section to all other certified frequency coordinators in the Public Safety Pool and the Industrial/Business Pool.

(c) Each frequency coordinator must also notify all other certified in-pool coordinators on any day that the frequency coordinator does not make any frequency recommendations.

(d) Notification must be made to all coordinators at approximately the same time and can be made using any method that ensures compliance with the one business day requirement.

(e) At a minimum the following information must be included in each notification:

(1) Name of applicant;

(2) Frequency or frequencies recommended;

(3) Antenna locations and heights;

(4) Effective radiated power (ERP);

(5) Type(s) of emissions;

(6) Description of the service area; and

(7) Date and time of recommendation.

(f) Upon request, each coordinator must provide any additional information requested from another certified coordinator regarding a pending recommendation that it has processed but has not yet been granted by the Commission.

(g) It is the responsibility of each coordinator to insure that its frequency recommendations do not conflict with the frequency recommendations of any other frequency coordinator. Should a conflict arise, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

22. Section 90.187 is added to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

(a) Applicants for trunked systems operating on frequencies between 150 and 512 MHz (except 220–222 MHz) must indicate on their applications (class of station code, see § 1.952 of this chapter or Instructions for FCC Form 600) that their system will be trunked. Licensees of stations that are not trunked, may trunk their systems only after modifying their license (See § 90.135).

(b) In the bands between 150 and 512 MHz, trunking may be authorized under the following conditions:

(1) Where applicants for or licensees operating in the 470–512 MHz band meet the loading requirements of § 90.313 and have exclusive use of their frequencies in their service area.

(2) Trunking will be permitted on frequencies where an applicant or licensee does not have an exclusive service area, provided that all frequency coordination requirements are complied with and consent is obtained from all licensees pursuant to paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section.

(i) Stations that have operating frequencies (base and mobile) that are 15 kHz or less removed from proposed stations that will operate with a 25 kHz channel bandwidth; stations that have operating frequencies (base and mobile) that are 7.5 kHz or less removed from proposed stations that will operate with a 12.5 kHz bandwidth; or stations that have operating frequencies (base and mobile) 3.75 kHz or less removed from proposed stations that will operate with a 6.25 kHz bandwidth; and

(ii) Stations with service areas (37 dBu contour for stations in the 150–174 MHz band and 39 dBu contour for stations in the 421–512 MHz bands; See § 90.205) that overlap a circle with radius 113 km (70 mi.) from the proposed base station. Alternatively, applicants may submit an engineering analysis based upon generally accepted engineering practices and standards which demonstrates that the service area of the trunked system does not overlap any existing stations whose service areas overlap a circle with radius 113 km (70 mi.) from the proposed base station.

(iii) The consensual agreements among licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all licensees have consented to the use of trunking. If a licensee has agreed to the use of trunking, but later decides against the use of trunking, the licensee may request that the licensee(s) of the trunked system reconsider the use of trunking. If the licensee is unable to reach an agreement with the licensee(s) of the trunked system, the licensee may request that the Commission consider the matter and assign it another channel. New licensees will only be assigned the same channel as a trunked system, if the new licensee reaches an agreement with the licensee(s) of the trunked system.

(c) Trunking of systems licensed on paging-only channels or licensed in the Radiolocation Service (subpart F) is not permitted.

23. Section 90.203 is amended by removing and reserving paragraphs (b)(6) and (j)(1) and revising paragraph (j)(9) and the second sentence of paragraphs (j)(3) and (j)(5) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(j) * * *

(3) * * * Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

* * * * *

(5) * * * Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

* * * * *

(9) Transmitters used for stolen vehicle recovery on 173.075 MHz must

comply with the requirements of § 90.20(e)(6).

* * * * *

24. Section 90.207 is amended by revising paragraphs (b) and (d) and the first sentence of paragraph (l) to read as follows:

§ 90.207 Types of emissions.

* * * * *

(b) Authorizations to use A3E, F3E, or G3E emission also include the use of emissions for tone signals or signaling devices whose sole functions are to establish an to maintain communications, to provide automatic station identification, and for operations in the Public Safety Pool, to activate emergency warning devices used solely for the purpose of advising the general public or emergency personnel of an impending emergency situation.

* * * * *

(d) Except for Traveler's Information stations in the Public Safety Pool authorized in accordance with § 90.242, only J3E emission will be authorized for telephony systems on frequencies below 25 MHz.

* * * * *

(l) For stations in the Public Safety and Industrial/Business Pools utilizing digital voice modulation, in either the scrambled or unscrambled mode, F1E or G1E emission will be authorized. * * *

* * * * *

25. Section 90.213 is amended by revising footnote 1 to the table in paragraph (a) to read as follows:

§ 90.213 Frequency stability.

* * * * *

[1] Fixed and base stations with over 200 watts transmitter power must have a frequency stability of 50 ppm except for equipment used in the Public Safety Pool where the frequency stability is 100 ppm.

* * * * *

26. Section 90.217 is amended by revising the introductory text to read as follows:

§ 90.217 Exemption from technical standards.

Except as noted herein, transmitters used at stations licensed below 800 MHz on any frequency listed in subparts B and C of this part or licensed on a business category channel above 800 MHz which have an output power not exceeding 120 milliwatts are exempt from the technical requirements set out in this subpart, but must instead comply with the following:

* * * * *

27. Section 90.235 is amended by revising the last sentence of the introductory text, the last sentence of paragraph (d), and paragraph (e) to read as follows:

§ 90.235 Secondary fixed signaling operations.

* * * Voice signaling will be permitted only in the Public Safety Pool.

* * * * *

(d) * * * In the Public Safety Pool, the maximum duration of any voice signaling transmission shall not exceed 6 seconds and shall not be repeated more than 3 times.

(e) Until December 31, 1999, for systems in the Public Safety Pool authorized prior to June 20, 1975, and Power and Petroleum licensees as defined in § 90.7 authorized prior to June 1, 1976, the maximum duration of any signaling transmission shall not exceed 6 seconds and shall not be repeated more than 5 times. For Power licensees authorized between June 1, 1976, and August 14, 1989, signaling duration shall not exceed 2 seconds and shall not be repeated more than 5 times. Such systems include existing facilities and additional facilities which may be authorized as a clear and direct expansion of existing facilities. After December 31, 1999, all signaling systems shall be required to comply with the two second message duration and three message repetition requirements.

* * * * *

28. Section 90.237 is amended by revising the introductory text to read as follows:

§ 90.237 Interim provisions for operations of radioteleprinter and radiofacsimile devices.

These provisions authorize and govern the use of radioteleprinter and radiofacsimile devices for base station use (other than on mobile-only or paging-only frequencies) in all radio pools and services except Radiolocation in this part.

* * * * *

29. Section 90.238 is amended by revising paragraphs (a), (b), (c), (d), (e), (h) and (i) to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(a) 72–76 MHz (in accordance with § 90.257 and subject to the rules governing the use of that band).

(b) 154.45625, 154.46375, 154.47125, and 154.47875 MHz (subject to the rules governing the use of those frequencies).

(c) 173.20375, 173.210, 173.2375, 173.2625, 173.2875, 173.3125, 173.3375, 173.3625, 173.390, and 173.39625 MHz (subject to the rules governing the use of those frequencies).

(d) 216–220 and 1427–1435 MHz (as available in the Public Safety and Industrial/Business Pools and in accordance with § 90.259).

(e) In the 450–470 MHz band, telemetry operations will be authorized on a secondary basis with a transmitter output power not to exceed 2 watts on frequencies subject to § 90.20(d)(27) or § 90.35(c)(30).

* * * * *

(h) 458–468 MHz band (as available in the Public Safety Pool for bio-medical telemetry operations).

(i) Frequencies available for low power (2 watts or less) operations in the Industrial/Business Pool.

30. Section 90.241 is amended by revising the introductory text of paragraphs (a) and (c) and revising paragraphs (d) and (e) to read as follows:

§ 90.241 Radio call box operations.

(a) The frequencies in the 72–76 MHz band listed in § 90.257(a)(1) may be assigned in the Public Safety Pool for operation or radio call boxes to be used by the public to request fire, police, ambulance, road service, and other emergency assistance, subject to the following conditions and limitations:

* * * * *

(c) Frequencies in the 450–470 MHz band which are designated as available for assignment to central control stations and radio call box installations in § 90.20(c) or § 90.20(d)(58) may be assigned in the Public Safety Pool for highway call box systems subject to the following requirements:

* * * * *

(d) In addition to the frequencies available pursuant to § 90.20(c) the frequencies set forth in § 90.20(d)(58) may be used for central control station and call box installations in areas where such frequencies are available for fixed system use subject to the requirements and limitations of that section and subject to the provisions of paragraphs (c) (1), (4), (5), (6), (7), (8), (9), (10), and (12) of this section.

(e) In accordance with subpart Q of this part, the frequencies available pursuant to § 90.20(c) or § 90.20(d)(58) for central control station and call box installations may be assigned for developmental operation as part of a highway safety communication program which is designed to provide radio communications directly with motorists to and from their motor vehicles.

31. Section 90.242 is amended by revising the introductory text of paragraph (a) and paragraph (a)(1) to read as follows:

§ 90.242 Travelers' information stations.

(a) The frequencies 530 through 1700 kHz in 10 kHz increments may be assigned to the Public Safety Pool for the operation of Travelers' Information Stations subject to the following conditions and limitations.

(1) For Travelers' Information Station applications only, eligibility requirements as set forth in § 90.20(a) are extended to include park districts and authorities.

* * * * *

32. Section 90.243 is amended by revising paragraphs (a), (b)(1), (b)(3), (c)(3), (c)(4), and (c)(5) and removing and reserving paragraph (b)(2) to read as follows:

§ 90.243 Mobile relay stations.

(a) Mobile relay operations will be authorized on frequencies below 512 MHz, except in the Radiolocation Service.

(b) * * *

(1) In the Public Safety Pool, medical services systems in the 150–160 MHz band are permitted to be cross-banded for mobile and central stations operations with mobile relay stations authorized to operate in the 450–470 MHz band.

(2) [Reserved]

(3) In the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), mobile relay operation shall be on a secondary basis to other co-channel operations.

* * * * *

(c) * * *

(3) Except in the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), each new mobile-relay station authorized after January 1, 1972, shall be equipped for automatic deactivation of the transmitter within 5 seconds after the signals controlling the station cease.

(4) Except in the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), each new mobile-relay station authorized after January 1, 1972, during periods that is not controlled from a manned fixed control point; shall have an automatic time delay or clock device that will deactivate the station not more than 3 minutes after its activation by a mobile unit.

(5) In the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), each mobile relay station, regardless of the frequency or frequencies of the signal by which it is activated shall be so designated and installed that it will be deactivated automatically when its associated receiver or receivers are not receiving a signal on the frequency or frequencies which normally activate it.

* * * * *

33. Section 90.247 is amended by revising paragraphs (a), (b), (d), and (e) to read as follows:

§ 90.247 Mobile repeater stations.

* * * * *

(a) Mobile repeaters and/or associated hand-carried transmitters may be assigned separate base/mobile frequencies for this use in addition to the number of frequencies normally assignable to the licensee.

(b) In the Industrial/Business Pool, on frequencies below 450 MHz, only low power frequencies (2 watts or less output power) may be assigned for use by mobile repeaters or by hand-carried transmitters whose communications are directed to mobile repeaters, when separate frequencies are assigned for that purpose.

* * * * *

(d) In the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), use of mobile repeaters is on a secondary basis to the stations of any other licensee. Hand carried units used in connection with mobile repeaters on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3) may operate only above 150 MHz and are limited to a maximum output power of six watts. The frequency and maximum power shall be specified in the station authorization.

(e) In the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), the output power of a mobile repeater station, when transmitting as a repeater station on the frequency used for communication with its associated pack-carried or hand-carried units, shall not exceed 6 watts except when the same frequency is also used by the same station for direct communication with vehicular mobile units or with one or more base stations.

* * * * *

34. Section 90.249 is amended by revising the second sentence of paragraph (a)(2), the first sentence of paragraph (a)(3), and the last sentence of paragraph (c) to read as follows:

§ 90.249 Control stations.

* * * * *

(a) * * *

(2) * * * In the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), such a control station may be assigned any mobile service station frequency available for assignment to mobile stations. * * *

(3) Control and fixed stations in the Public Safety Pool may be authorized on a temporary basis to operate on frequencies available for base and mobile stations between 152 and 450 MHz, where there is an adequate showing that such operations cannot be conducted on frequencies allocated for assignment to operational fixed stations. * * *

* * * * *

(c) * * * In the Industrial/Business Pool, on frequencies designated with an ''LR'' in the coordinator column of the frequency table in § 90.35(b)(3), base stations used intermittently as control stations shall operate only on a mobile service frequency which is available for assignment to base stations.

35. Section 90.257 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

* * * * *

(b) The following criteria governs the authorization and use of frequencies in the 72–76 MHz band by mobile stations in the Industrial/Business Pool.

* * * * *

36. Section 90.259 is amended by revising the first sentence to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1435 MHz.

Frequencies in the bands 216–220 MHz and 1427–1435 MHz may be assigned to applicants under this part provided the band is listed in the individual radio pool under which they establish eligibility. * * *

37. Section 90.261 is amended by revising paragraph (a) and removing and reserving paragraphs (d) and (e) to read as follows:

§ 90.261 Assignment and use of the frequencies in the band 450–470 MHz for fixed operations.

(a) Frequencies in the 450–470 MHz band as listed in § 90.20(c)(3) and § 90.35(b)(3) may be assigned to all eligibles for fixed use on a secondary basis to land mobile operations.

* * * * *

(d) [Reserved]

(e) [Reserved]

* * * * *

38. Section 90.263 is amended by revising the first sentence to read as follows:

§ 90.263 Substitution of frequencies below 25 MHz.

Frequencies below 25 MHz when shown in the radio pool frequency listings under this part will be assigned to base or mobile stations only upon a satisfactory showing that, from a safety of life standpoint, frequencies above 25 MHz will not meet the operational requirements of the applicant. * * *

39. Section 90.264 is amended by revising paragraph (g) to read as follows:

§ 90.264 Disaster communications between 2 and 10 MHz.

* * * * *

(g) Applicants must fulfill eligibility requirements set out in § 90.20(d)(6) and shall submit disaster communications plans pursuant to § 90.129(m).

* * * * *

40. Section 90.265 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 90.265 Assignment and use of frequencies in the bands 169–172 MHz and 406–413 MHz.

(a) The following frequencies are available for assignment to fixed stations in the Industrial/Business Pool subject to the provisions of this section:

* * * * *

41. Section 90.266 is amended by revising the section heading, the introductory text of paragraph (b), and paragraph (g) to read as follows:

§ 90.266 Long distance communications on frequencies below 25 MHz.

* * * * *

(b) Only in the following circumstances will authority be extended to stations to operate on the frequencies below 25 MHz:

* * * * *

(g) Applicants must fulfill eligibility requirements set out in § 90.35(c)(1) and submit communications plans pursuant to § 90.129(o).

* * * * *

42. Section 90.267 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(2) and (a)(6) and removing and reserving paragraph (a)(1) to read as follows:

§ 90.267 Assignment and use of frequencies in the 450–470 MHz band for low-power use.

(a) Any regularly assignable frequency in the 450–470 MHz band listed in the tables in subparts B and C of this part may be designated by the frequency coordinators as a low-power channel in a defined geographic area. These channels are subject to the following conditions.

(1) [Reserved]

(2) Assignments are subject to the frequency coordination requirements of § 90.175.

* * * * *

(6) Each coordinator must maintain a list of all channels designated for low-power use and the geographic areas where such channels are available. The coordinator must make this list available to the public upon request.

* * * * *

43. Section 90.269 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 90.269 Use of frequencies for self-powered vehicle detectors.

(a) Frequencies subject to § 90.20(d)(22) may be used for the operation of self-powered vehicle detectors by licensees of base/mobile stations in the Public Safety Pool in accordance with the following conditions:

* * * * *

44. Section 90.273 is amended by revising the first two sentences and Tables 1 and 2 of paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 90.273 Availability and use of frequencies in the 421–430 MHz band.

* * * * *

(a) The following tables list frequencies available for assignment in the Public Safety and Industrial/Business Pools as indicated. In the tables, the Public Safety Pool frequencies are denoted as ''PS'' and the Industrial/Business Pool frequencies are denoted as ''IB.'' * * *

TABLE 1.—CHANNELS AVAILABLE IN DETROIT AND CLEVELAND AREAS ONLY

Frequency (MHz)	Pool in which assigned
Paired channels:	
422.19375*	IB
422.200	IB
422.20625*	IB
422.21250	IB
422.21875*	IB
422.225	IB
422.23125*	IB
422.23750	IB
422.24375*	IB
422.250	IB
422.25625*	IB
422.26250	IB
422.26875*	IB
422.275	IB
422.28125*	IB
422.28750	IB
422.29375*	IB
422.300	IB

TABLE 1.—CHANNELS AVAILABLE IN DETROIT AND CLEVELAND AREAS ONLY—Continued

Frequency (MHz)	Pool in which assigned
422.30625*	IB
422.31250	IB
422.31875*	IB
422.325	IB
422.33125*	IB
422.33750	IB
422.34375*	IB
422.350	IB
422.35625*	IB
422.36250	IB
422.36875*	IB
422.375	IB
422.38125*	IB
422.38750	IB
422.39375*	IB
422.400	IB
422.40625*	IB
422.41250	IB
422.41875*	IB
422.425	IB
422.43125*	IB
422.43750	IB
422.44375*	IB
422.450	IB
422.45625*	IB
422.46250	IB
422.46875*	IB
422.475	IB
422.48125*	IB
422.48750	IB
422.49375*	IB
422.500	IB
422.50625*	IB
422.51250	IB
422.51875*	IB
422.525	IB
422.53125*	IB
422.53750	IB
422.54375*	IB
422.550	IB
422.55625*	IB
422.56250	IB
422.56875*	IB
422.575	IB
422.58125*	IB
422.58750	IB
422.59375*	IB
422.600	IB
422.60625*	IB
422.61250	IB
422.61875*	IB
422.625	IB
422.63125*	IB
422.63750	IB
422.64375*	IB
422.650	IB
422.65625*	IB
422.66250	IB
422.66875*	IB
422.675	IB
422.68125*	IB
422.68750	IB
422.69375*	IB
422.700	IB
422.70625*	IB
422.71250	IB
422.71875*	IB
422.725	IB
422.73125*	IB

TABLE 1.—CHANNELS AVAILABLE IN DETROIT AND CLEVELAND AREAS ONLY—Continued

Frequency (MHz)	Pool in which assigned
422.73750	IB
422.74375*	IB
422.750	IB
422.75625*	IB
422.76250	IB
422.76875*	IB
422.775	IB
422.78125*	IB
422.78750	IB
422.79375*	IB
422.800	IB
422.80625*	IB
422.81250	IB
422.81875*	IB
422.825	IB
422.83125*	IB
422.83750	IB
422.84375*	IB
422.850	IB
422.85625*	IB
422.86250	IB
422.86875*	IB
422.875	IB
422.88125*	IB
422.88750	IB
422.89375*	IB
422.900	IB
422.90625*	IB
422.91250	IB
422.91875*	IB
422.925	IB
422.93125*	IB
422.93750	IB
422.94375*	IB
422.950	IB
422.95625*	IB
422.96250	IB
422.96875*	IB
422.975	IB
422.98125*	IB
422.98750	IB
422.99375*	IB
423.000	PS
423.00625*	PS
423.01250	PS
423.01875*	PS
423.025	PS
423.03125*	PS
423.03750	PS
423.04375*	PS
423.050	PS
423.05625*	PS
423.06250	PS
423.06875*	PS
423.075	PS
423.08125*	PS
423.08750	PS
423.09375*	PS
423.100	PS
423.10625*	PS
423.11250	PS
423.11875*	PS
423.125	PS
423.13125*	PS
423.13750	PS
423.14375*	PS
423.150	PS
423.15625*	PS
423.16250	PS

TABLE 1.—CHANNELS AVAILABLE IN DETROIT AND CLEVELAND AREAS ONLY—Continued

Frequency (MHz)	Pool in which assigned
423.16875*	PS
423.175	PS
423.18125*	PS
423.18750	PS
423.19375*	PS
423.200	PS
423.20625*	PS
423.21250	PS
423.21875*	PS
423.225	PS
423.23125*	PS
423.23750	PS
423.24375*	PS
423.250	PS
423.25625*	PS
423.26250	PS
423.26875*	PS
423.275	PS
423.28125*	PS
423.28750	PS
423.29375*	PS
423.300	PS
423.30625*	PS
423.31250	PS
423.31875*	PS
423.325	PS
423.33125*	PS
423.33750	PS
423.34375*	PS
423.350	PS
423.35625*	PS
423.36250	PS
423.36875*	PS
423.375	PS
423.38125*	PS
423.38750	PS
423.39375*	PS
423.400	PS
423.40625*	PS
423.41250	PS
423.41875*	PS
423.425	PS
423.43125*	PS
423.43750	PS
423.44375*	PS
423.450	PS
423.45625*	PS
423.46250	PS
423.46875*	PS
423.475	PS
423.48125*	PS
423.48750	PS
423.49375*	PS
423.500	PS
423.50625*	PS
423.51250	PS
423.51875*	PS
423.525	PS
423.53125*	PS
423.53750	PS
423.54375*	PS
423.550	PS
423.55625*	PS
423.56250	PS
423.56875*	PS
423.575	PS
423.58125*	PS
423.58750	PS
423.59375*	PS

TABLE 1.—CHANNELS AVAILABLE IN DETROIT AND CLEVELAND AREAS ONLY—Continued

Frequency (MHz)	Pool in which assigned
423.600	PS
423.60625*	PS
423.61250	PS
423.61875*	PS
423.625	PS
423.63125*	PS
423.63750	PS
423.64375*	PS
423.650	PS
423.65625*	PS
423.66250	PS
423.66875*	PS
423.675	PS
423.68125*	PS
423.68750	PS
423.69375*	PS
423.700	PS
423.70625*	PS
423.71250	PS
423.71875*	PS
423.725	PS
423.73125*	PS
423.73750	PS
423.74375*	PS
423.750	PS
423.75625*	PS
423.76250	PS
423.76875*	PS
423.775	PS
423.78125*	PS
423.78750	PS
423.79375*	PS
423.800	PS
423.80625*	PS

*This frequency will be assigned with an authorized bandwidth not to exceed 6 kHz.

TABLE 2.—CHANNELS AVAILABLE IN BUFFALO, DETROIT AND CLEVELAND AREAS

Frequency (MHz)	Pool in which assigned
Paired channels:	
423.81875*	PS
423.825	PS
423.83125*	PS
423.83750	PS
423.84375*	PS
423.850	PS
423.85625*	PS
423.86250	PS
423.86875*	PS
423.875	PS
423.88125*	PS
423.88750	PS
423.89375*	PS
423.900	PS
423.90625*	PS
423.91250	PS
423.91875*	PS
423.925	PS
423.93125*	PS
423.93750	PS
423.94375*	PS
423.950	PS

TABLE 2.—CHANNELS AVAILABLE IN BUFFALO, DETROIT AND CLEVELAND AREAS—Continued

Frequency (MHz)	Pool in which assigned
423.95625*	PS
423.96250	PS
423.96875*	PS
423.975	PS
423.98125*	PS
423.98750	PS
423.99375*	PS
424.000	PS
424.00625*	PS
424.01250	PS
424.01875*	PS
424.025	PS
424.03125*	PS
424.03750	PS
424.04375*	PS
424.050	PS
424.05625*	PS
424.06250	PS
424.06875*	PS
424.075	PS
424.08125*	PS
424.08750	PS
424.09375*	PS
424.100	PS
424.10625*	PS
424.11250	PS
424.11875*	PS
424.125	PS
424.13125*	PS
424.13750	PS
424.14375*	PS
424.150	PS
424.15625*	PS
424.16250	PS
424.16875*	PS
424.175	PS
424.18125*	PS
424.18750	PS
424.19375*	PS
424.200	PS
424.20625*	PS
424.21250	PS
424.21875*	PS
424.225	PS
424.23125*	PS
424.23750	PS
424.24375*	PS
424.250	PS
424.25625*	PS
424.26250	PS
424.26875*	PS
424.275	PS
424.28125*	PS
424.28750	PS
424.29375*	PS
424.300	PS
424.30625*	PS
424.31250	PS
424.31875*	PS
424.325	PS
424.33125*	PS
424.33750	PS
424.34375*	PS
424.350	PS
424.35625*	PS
424.36250	PS
424.36875*	PS
424.375	PS
424.38125*	PS

TABLE 2.—CHANNELS AVAILABLE IN BUFFALO, DETROIT AND CLEVELAND AREAS—Continued

Frequency (MHz)	Pool in which assigned
424.38750	PS
424.39375*	PS
424.400	IB
424.40625*	IB
424.41250	IB
424.41875*	IB
424.425	IB
424.43125*	IB
424.43750	IB
424.44375*	IB
424.450	IB
424.45625*	IB
424.46250	IB
424.46875*	IB
424.475	IB
424.48125*	IB
424.48750	IB
424.49375*	IB
424.500	IB
424.50625*	IB
424.51250	IB
424.51875*	IB
424.525	IB
424.53125*	IB
424.53750	IB
424.54375*	IB
424.550	IB
424.55625*	IB
424.56250	IB
424.56875*	IB
424.575	IB
424.58125*	IB
424.58750	IB
424.59375*	IB
424.600	IB
424.60625*	IB
424.61250	IB
424.61875*	IB
424.625	IB
424.63125*	IB
424.63750	IB
424.64375*	IB
424.650	IB
424.65625*	IB
424.66250	IB
424.66875*	IB
424.675	IB
424.68125*	IB
424.68750	IB
424.69375*	IB
424.700	IB
424.70625*	IB
424.71250	IB
424.71875*	IB
424.725	IB
424.73125*	IB
424.73750	IB
424.74375*	IB
424.750	IB
424.75625*	IB
424.76250	IB
424.76875*	IB
424.775	IB
424.78125*	IB
424.78750	IB
424.79375*	IB
424.800	IB
424.80625*	IB
424.81250	IB

TABLE 2.—CHANNELS AVAILABLE IN BUFFALO, DETROIT AND CLEVELAND AREAS—Continued

Frequency (MHz)	Pool in which assigned
424.81875*	IB
424.825	IB
424.83125*	IB
424.83750	IB
424.84375*	IB
424.850	IB
424.85625*	IB
424.86250	IB
424.86875*	IB
424.875	IB
424.88125*	IB
424.88750	IB
424.89375*	IB
424.900	IB
424.90625*	IB
424.91250	IB
424.91875*	IB
424.925	IB
424.93125*	IB
424.93750	IB
424.94375*	IB
424.950	IB
424.95625*	IB
424.96250	IB
424.96875*	IB
424.975	IB
424.98125*	IB
424.98750	IB
424.99375*	IB
Single channels:	
425.000	IB
425.00625*	IB
425.01250	IB
425.01875*	IB
425.025	IB
425.03125*	IB
425.03750	IB
425.04375*	IB
425.050	IB
425.05625*	IB
425.06250	IB
425.06875*	IB
425.075	IB
425.08125*	IB
425.08750	IB
425.09375*	IB
425.100	IB
425.10625*	IB
425.11250	IB
425.11875*	IB
425.125	IB
425.13125*	IB
425.13750	IB
425.14375*	IB
425.150	IB
425.15625*	IB
425.16250	IB
425.16875*	IB
425.175	IB
425.18125*	IB
425.18750	IB
425.19375*	IB
425.200	IB
425.20625*	IB
425.21250	IB
425.21875*	IB
425.225	IB
425.23125*	IB
425.23750	IB

TABLE 2.—CHANNELS AVAILABLE IN BUFFALO, DETROIT AND CLEVELAND AREAS—Continued

Frequency (MHz)	Pool in which assigned
425.24375*	IB
425.250	PS
425.25625*	PS
425.26250	PS
425.26875*	PS
425.275	PS
425.28125*	PS
425.28750	PS
425.29375*	PS
425.300	PS
425.30625*	PS
425.31250	PS
425.31875*	PS
425.325	PS
425.33125*	PS
425.33750	PS
425.34375*	PS
425.350	PS
425.35625*	PS
425.36250	PS
425.36875*	PS
425.375	PS
425.38125*	PS
425.38750	PS
425.39375*	PS
425.400	PS
425.40625*	PS
425.41250	PS
425.41875*	PS
425.425	PS
425.43125*	PS
425.43750	PS
425.44375*	PS
425.450	PS
425.45625*	PS
425.46250	PS
425.46875*	PS
425.475	PS
425.48125*	PS

*This frequency will be assigned with an authorized bandwidth not to exceed 6 kHz.

(b) [Reserved]

* * * * *

45. Section 90.275 is revised to read as follows:

§ 90.275 Selection and assignment of frequencies in the 421–430 MHz band.

Applicants must specify the frequencies in which the proposed system will operate pursuant to a recommendation by a frequency coordinator certified for the pool in which the requested frequency is assigned.

§ 90.277 [Removed]

46. Section 90.277 is removed.

47. Section 90.283 is amended by revising paragraph (a) to read as follows:

§ 90.283 Inter-service sharing of maritime frequencies in the 156–162 MHz band.

(a) The following frequency pairs may be assigned to any eligible applicant that meets the definition of a Power, Petroleum, Forest products, Film and video production, Relay press, Special industrial, Manufacturers, Telephone maintenance, Motor carrier, Railroad, Taxicab, or Automobile emergency licensee, as defined in § 90.7, for licensing in the Industrial/Business Pool for duplex operation within the 48 contiguous states in accordance with the rules of § 90.35, the conditions set forth in this section, and the CANADA/U.S.A. channeling agreement for VHF maritime public correspondence found in § 80.57 of this chapter.

* * * * *

48. Section 90.301 is amended by revising the last sentence to read as follows:

§ 90.301 Scope.

* * * Under this special sharing plan, different frequencies are allocated depending on the geographic urban area involved as fully detailed in the following rule sections.

49. Section 90.303 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 90.303 Availability of frequencies.

(a) * * * The specific frequencies available are listed in § 90.311.

* * * * *

50. Section 90.311 is amended by redesignating paragraph (a)(3) as paragraph (a)(4), revising paragraphs (a)(1), (a)(2), and the introductory text and table of paragraph (a), adding a new paragraph (a)(3), and removing and reserving paragraph (b) to read as follows:

§ 90.311 Frequencies.

(a) Except as provided for in § 90.315 and except for those frequencies allocated to services in part 22 of this chapter (see §§ 22.591, 22.621, 22.651, and 22.1007 of this chapter) the following frequencies in the band 470–512 MHz may be assigned as indicated in the table below. The first and last assignable frequencies are shown. Assignable frequencies occur in increments of 6.25 kHz. The separation between base and mobile transmit frequencies is 3 MHz for two frequency operation.

Channel assignment	Urbanized area	General access pool	
		Base and mobile	Mobile
14	Boston, MA Chicago, IL Cleveland, OH Los Angeles, CA Miami, FL New York/N.E. NJ Pittsburgh, PA	470.30625 to 472.99375	473.30625 to 475.99375.
15	Chicago, IL Cleveland, OH Detroit, MI New York/N.E. NJ	476.30625 to 478.99375	479.30625 to 481.99375.
16	Boston, MA Dallas/Fort Worth, TX Detroit, MI San Francisco/Oakland, CA	482.30625 to 484.99375	485.30625 to 487.99375.
17	Houston, TX San Francisco/Oakland, CA Washington, DC/MD/VA	488.30625 to 490.99375	491.30625 to 493.99375.
18	Pittsburgh, PA Washington, DC/MD/VA	494.30625 to 496.99375	497.30625 to 499.99375.
19	Philadelphia, PA	500.30625 to 502.99375	503.30625 to 505.99375.

Channel assignment	Urbanized area	General access pool	
		Base and mobile	Mobile
20	Los Angeles, CA Philadelphia, PA	506.30625 to 508.99375	509.30625 to 511.99375.

(1) Channel availability in the General Access Pool in any of the urbanized areas referred to in the table depends on whether that channel is presently assigned to one of the following categories of users:

(i) Public safety (as defined in § 90.20(a));

(ii) Power and telephone maintenance licensees (as defined in § 90.7);

(iii) Special industrial licensees (as defined in § 90.7);

(iv) Business licensees (as defined in § 90.35(a));

(v) Petroleum, forest products, and manufacturers licensees (as defined in § 90.7);

(vi) Railroad, motor carrier, and automobile emergency licensees (as defined in § 90.7); and

(vii) Taxicab licensees (as defined in § 90.7).

(2) If assigned, subsequent authorizations will only be granted to users from the same category. If unassigned, or should a channel subsequently become unassigned, it will be treated as available in the General Access Pool.

(3) Normally, each channel should be substantially loaded in accordance with the standards set out in § 90.313.

* * * * *

(b) [Reserved]

51. Section 90.313 is amended by revising paragraph (a) to read as follows:

§ 90.313 Frequency loading criteria.

(a) Except as provided for in paragraph (b) of this section, the maximum channel loading on frequencies in the 470–512 MHz band is as follows:

(1) 50 units for systems eligible in the Public Safety Pool (see § 90.20(a)).

(2) 90 units for systems eligible in the Industrial/Business Pool (see § 90.35(a)).

* * * * *

52. Section 90.415 is amended by revising paragraph (b) to read as follows:

§ 90.415 Prohibited uses.

* * * * *

(b) Render a communications common carrier service, except for stations in the Public Safety Pool providing communications standby facilities under § 90.20(a)(2)(xi) and stations licensed under this part in the SMR, private carrier paging, Industrial/Business Pool, or 220–222 MHz services.

53. Section 90.417 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 90.417 Interstation communication.

* * * * *

(b) * * * Communications by Public Safety Pool eligibles with foreign stations will be approved only to be conducted in accordance with Article 5 of the Inter-American Radio Agreement, Washington, DC, 1949, the provisions of which are set forth in § 90.20(b).

54. Section 90.419 is amended by revising paragraph (a) and the introductory text of paragraphs (b) and (d) to read as follows:

§ 90.419 Points of communication.

* * * * *

(a) Base stations licensed under subpart T of this part and those in the Public Safety Pool that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services or pools.

(b) Base stations licensed on any frequency in the Industrial/Business Pool and on base stations frequencies above 450 MHz in the Public Safety Pool may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these pools only when:

* * * * *

(d) Operational fixed stations licensed in the Industrial/Business Pool may communicate on a secondary basis with associated base stations licensed in these services when:

* * * * *

55. Section 90.421 is amended by revising paragraphs (a) and (b), removing paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k), and redesignating paragraph (l) as paragraph (c) to read as follows:

§ 90.421 Operation of mobile units in vehicles not under the control of the licensee.

* * * * *

(a) Public Safety Pool.

(1) Mobile units licensed in the Public Safety Pool may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.

(2) Additionally, units may be installed in the following:

(i) Vehicles of contractors or other persons having a direct responsibility for official highway activities;

(ii) Vehicles of forestry cooperators, and persons having a direct responsibility in the prevention, detection, and suppression of forest fires; and

(iii) Mobile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordinations is required for medical services activities.

(b) Industrial/Business Pool. Mobile units licensed in the Industrial/Business Pool may be installed in the following:

(1) Vehicles of persons furnishing under contract to the licensee and for the duration of the contract, a facility or service directly related to the activities of the licensee;

(2) Vehicles operated by an organization or association comprised of interconnected electric utilities forming interconnections, power pools, or groups;

(3) Vehicles of persons furnishing a private emergency road service to its members pursuant to a contract with the association; and

(4) Vehicles operated by organizations providing, under contract, facilities or service in connection with railroad operation or maintenance including pickup, delivery, or transfer between stations of property shipped, continued in, or destined for shipment by railroad common carrier. Parties to the contract must comply with the provisions of § 90.179.

* * * * *

56. Section 90.425 is amended by revising the second sentence of the introductory text of paragraph (a), the first sentence of paragraphs (a)(1), (a)(4)(ii), and (a)(4)(iii), and paragraphs (a)(4)(i), (d)(2), and (d)(6) to read as follows:

§ 90.425 Station identification.

* * * * *

(a) * * * Except as provided for in paragraph (d) of this section, each station or system shall be identified by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety Pool) during periods of continuous operation. * * *

(1) A mobile relay stations call sign may be used to identify the associated control and mobile stations, except in the Public Safety Pool where the stations operate on frequencies below 450 MHz. * * *

* * * * *

(4) * * *

(i) In the Public Safety Pool, mobile units licensed to a governmental entity and which operate on frequencies above 30 MHz may use an identifier which contains, at a minimum, the name of the licensee if the licensee maintains at the station a list of the special identifiers to be used by the mobile units.

(ii) In the Industrial/Business Pool, licensees may request the Commission's local Engineer-in-Charge to approve the use of special mobile unit identifiers in lieu of the assigned call sign. * * *

(iii) In the Industrial/Business Pool, railroad licensees (as defined in § 90.7) may identify stations by the name of the railroad and the train number, caboose number, engine number, or the name of the fixed wayside station. * * *

* * * * *

(d) * * *

(2) It is a mobile station in the Public Safety Pool using F1E or G1E emission.

* * * * *

(6) It is a paging station authorized in accordance with the provisions of § 90.20(a)(2)(v).

* * * * *

§ 90.460 [Amended]

57. Section 90.460 is amended by removing the last two sentences.

58. Section 90.476 is amended by revising paragraphs (a) and (b) to read as follows:

§ 90.476 Interconnection of fixed stations and certain mobile stations.

(a) Fixed stations and mobile stations used to provide the functions of fixed stations pursuant to the provisions of §§ 90.35(c)(11), 90.35(c)(42), and 90.267 are not subject to the interconnection provisions of §§ 90.477 and 90.483 and may be interconnected with the facilities of common carriers.

(b) Mobile stations used to provide the functions of base and mobile relay stations pursuant to the provisions of §§ 90.35(c)(11), 90.35(c)(42), and 90.267 are not subject to the provisions of § 90.477(d)(3) and may be interconnected with the facilities of common carriers subject to the provisions of §§ 90.477(d)(1), 90.477(d)(2), 90.477(e), and 90.483.

* * * * *

59. Section 90.477 is amended by revising the first two sentences of paragraph (d)(3) to read as follows:

§ 90.477 Interconnected systems.

(d) * * *

(3) For licensees in the Industrial/Business Pool and those licensees who establish eligibility pursuant to § 90.20(a)(2), except for §§ 90.20(a)(2)(i) and 90.20(a)(2)(ii) and medical emergency systems in the 450–470 MHz band, interconnection will be permitted only where the base station site or sites proposed stations are located 120 km (75 mi.) or more from the designated centers of the urbanized areas listed below. If these licensees seek to connect within 120 km (75 mi.) of the 25 cities, they must obtain the consent of all co-channel licensees located both within 120 km (75 mi.) of the center of the city; and within 120 km (75 mi.) of the interconnected base station transmitter. * * *

* * * * *

60. Section 90.483 is amended by revising the second sentence of paragraph (d) to read as follows:

§ 90.483 Permissible methods and requirements of interconnecting private and public systems of communications.

* * * * *

(d) * * * This provision does not apply to systems which establish eligibility pursuant to §§ 90.20(a)(1)(i), 90.20(a)(1)(ii), and 90.20(a)(2), except §§ 90.20(a)(2)(i) and 90.20(a)(2)(ii), or who are Power, Petroleum, or Railroad licensees (as defined in § 90.7), or to systems above 800 MHz. * * *

61. Section 90.494 is amended by revising paragraphs (c) and (g) to read as follows:

§ 90.494 Paging operations on shared channels in the 929–930 MHz band.

* * * * *

(c) All frequencies listed in this section may be used to provide one-way paging communications to persons eligible for licensing under subpart B or C of this part, representatives of Federal Government agencies, individuals, and foreign governments and their representatives. The provisions of § 90.173(b) apply to all frequencies listed in this section.

* * * * *

(g) Licenses may be granted on these shared paging channels only for expansion (addition of new sites or relocation of existing sites) or other modification, assignment or transfer of control of existing, licensed private or commercial paging systems, and for new private, internal-use paging systems. Any application for authority to operate a new commercial paging system on any of these shared channels is unacceptable for filing.

62. Section 90.603 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.603 Eligibility.

* * * * *

(b) Any person proposing to provide communications service to any person eligible for licensing under subparts B or C of this part on a not-for-profit, cost-shared basis.

(c) Any person eligible under this part and proposing to provide on a commercial basis base station an ancillary facilities as a Specialized Mobile Radio Service System operator, for the use of individuals, federal government agencies and persons eligible for licensing under subparts B or C of this part.

63. Section 90.617 is amended by revising the first sentence of the introductory text of paragraph (a), the second sentence of paragraphs (a)(1) and (c), and the first sentence of paragraph (b) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

(a) The channels listed in Table 1 and paragraph (a)(1) of this section are available to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. * * *

(1) * * * The assignment of these channels will be done in accordance with the policies defined in the *Report and Order* of Gen. Docket No. 87–112 (See § 90.16). * * *

(b) The channels listed in Table 2A are available to eligible applicants in the Industrial/Land Transportation Category (consisting of Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab, and Automobile Emergency licensees, as defined in § 90.7). * * *

(c) * * * This category includes those entities eligible in the Industrial/Business Pool of subpart C of this part and does not include Special Mobilized

Radio Systems as defined in § 90.603(c). * * *

* * * * *

64. Section 90.619 is amended by revising paragraph (b)(7)(iii), the first sentence paragraphs (a)(1) and (a)(3), and the second sentence of paragraphs (a)(2) and (a)(4) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(1) Table 1A lists the channels in the 806–821/851–866 MHz band that are available for assignment to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. * * *

(2) * * * These channels will be assigned according to the policies defined in the *Report and Order* of Gen. Docket No. 87–112 (See § 90.16). * * *

(3) Tables 2A and 2B list the channels that are available for assignment to eligible applicants in the Industrial/Land Transportation Category (consisting of Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab, and Automobile Emergency licensees, as defined in § 90.7). * * *

(4) * * * This category includes those entities eligible in the Industrial/Business Pool of subpart C of this part and does not include Special Mobilized Radio Systems as defined in § 90.603(c). * * *

* * * * *

(b) * * *

(7) * * *

(iii) The Public Safety Category consists of those entities eligible in the Public Safety Pool of subpart B of this part. The Industrial/Land Transportation Category consists of Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab, and Automobile Emergency licensees (as defined in § 90.7). The Business Radio Category consists of those entities eligible in the Industrial/Business Pool of subpart C of this part. Specialized Mobile Radio Systems (SMRS) will not be authorized in any of the above mentioned categories, but only in the SMRS category to those applicants eligible under § 90.603(c).

* * * * *

65. Section 90.623 is amended by revising paragraph (b) to read as follows:

§ 90.623 Limitation on the number of frequencies assignable for conventional systems.

* * * * *

(b) Where an applicant proposes to operate a conventional radio system to provide facilities for the use of a single person or entity eligible under subparts B or C of this part, the applicant may be assigned only the number of frequency pairs justified on the basis of the requirement of the proposed single user of the system.

* * * * *

66. Section 90.625 is amended by revising paragraph (b) to read as follows:

§ 90.625 Other criteria to be applied in assigning channels for use in conventional systems of communication.

* * * * *

(b) Where an applicant proposes to furnish service to eligibles under subparts B or C of this part on a commercial basis using a conventional system of communication, the applicant will be considered on the same basis as that of an applicant for private or shared communication facilities.

* * * * *

67. Section 90.631 is amended by revising the first sentence of paragraphs (g) and (h) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(g) Wide area systems may be authorized to persons eligible for licensing under subparts B or C of this part upon an appropriate showing of need. * * *

(h) Regional, statewide, or ribbon configuration systems may be authorized to persons eligible for licensing under subparts B or C of this part upon an appropriate showing of need. * * *

* * * * *

68. Section 90.633 is amended by revising the first sentence of paragraphs (f) and (g) to read as follows:

§ 90.633 Conventional systems loading requirements.

* * * * *

(f) Wide area systems may be authorized to persons eligible for licensing under subparts B or C of this part upon an appropriate showing of need. * * *

(g) Regional, statewide, or ribbon configuration systems may be authorized to persons eligible for licensing under subparts B or C of this part upon an appropriate showing of need. * * *

69. Section 90.645 is amended by revising paragraph (b) to read as follows:

§ 90.645 Permissible operations.

* * * * *

(b) Only persons who are eligible for facilities, either under this subpart or in the radio service included under subparts B or C of this part.

* * * * *

70. Section 90.656 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 90.656 Responsibilities of base station licensees of Specialized Mobile Radio Systems.

(a) The licensees of base stations that provide Specialized Mobile Radio service on a commercial basis of the use of individuals, Federal government agencies, or persons eligible for licensing under either subparts B or C of this part will be responsible for exercising effective operational control over all mobile and control stations that communicate with the base station. * * *

* * * * *

71. Section 90.703 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 90.703 Eligibility.

* * * * *

(a) Any person eligible for licensing under subparts B or C of this part.

(b) Any person proposing to provide communications service to any person eligible for licensing under subparts B or C of this part, on a not-for-profit, cost-shared basis.

(c) Any person eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of individuals, federal government agencies and persons eligible for licensing under subparts B or C of this part.

72. Section 90.705 is revised to read as follows:

§ 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 90.1009 and 90.1013. Phase II applications for radio facilities operating on public safety/mutual aid channels (Channels 161 through 170) or emergency medical channels (Channels 181 through 185) under this subpart must be prepared on FCC Form 600 and submitted or filed in accordance with § 90.127.

73. Section 90.713 is amended by revising paragraph (e) to read as follows:

§ 90.713 Entry criteria.

* * * * *

(e) A Phase II applicant for authorization in a geographic area for

Channels 166 through 170 in the public safety/mutual aid category may not have any interest in another pending application in the same geographic area for Channels 166 through 170 in the public safety/mutual aid category, and a Phase II applicant for authorization in a geographic area for channels in the emergency medical category may not have any interest in another pending application in the same geographic area for channels in the emergency medical category.

74. Section 90.719 is amended by revising paragraph (c) to read as follows:

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

* * * * *

(c) Channels 181 through 185 are set aside in Phase II for emergency medical use for applicants that meet the eligibility criteria of § 90.20(a)(1)(iii) or § 90.20(a)(2)(xiii).

* * * * *

75. Section 90.720 is revised to read as follows:

§ 90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees who meet the eligibility criteria of §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), or 90.20(a)(2)(xiii) are authorized by this rule to use mobile and/or portable units on Channels 161–170 throughout the United States, its territories, and possessions to transmit:

(1) Communications relating to the immediate safety of life;

(2) Communications to facilitate interoperability among entities eligible under §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), and 90.20(a)(2)(xiii); or

(3) Communications on behalf of and by members of organizations established for disaster relief purposes having an emergency radio communications plan (*i.e.*, licensees eligible under § 90.20(a)(2)(vii)) for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of emergency conditions during periods of actual or impending emergency, or disaster, until substantially normal conditions are restored; for limited training exercises incidental to an emergency radio communications plan, and for necessary operational communications of the disaster relief organization or its chapter affiliates.

(b) Any Government entity and any non-Government entity eligible to obtain a license under §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), or 90.20(a)(2)(xiii) is also eligible to obtain a license for base/mobile operations on Channels 161 through 170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability among the above-specified entities, may only be conducted on a secondary non-interference basis to such communications.

76. Section 90.723 is amended by revising paragraphs (a) and (c) to read as follows:

§ 90.723 Selection and assignment of frequencies.

(a) Phase II applications for frequencies in the 220–222 MHz band shall specify whether their intended use is for 10-channel nationwide systems, 10-channel EA systems, 15-channel Regional systems, public safety/mutual aid use, or emergency medical use. Phase II applicants for frequencies for public safety/mutual aid use or emergency medical use shall specify the number of frequencies requested. All frequencies in this band will be assigned by the Commission.

* * * * *

(c) Phase II applicants for public safety/mutual aid and emergency medical channels will be assigned only the number of channels justified to meet their requirements.

* * * * *

77. Section 90.733 is amended by revising paragraph (a)(2) to read as follows:

§ 90.733 Permissible operations.

(a) * * *

(2) Only by persons who are eligible for facilities under either this subpart or in the pools included in subpart B or C of this part.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

78. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. Secs. 154, 303, unless otherwise noted.

79. Section 101.77 is amended by revising paragraph (a)(1) to read as follows:

§ 101.77 Public safety licensees in the 1850–1990 and 2110–2200 MHz bands.

(a) * * *

(1) The agency is a Police licensee, a Fire Licensee, or an Emergency Medical Licensee as defined in § 90.7 of this chapter, or meets the eligibility requirements of § 90.20(a)(2) of this chapter, except for § 90.20(a)(2)(ii) of this chapter, or that it is a licensee of other part 101 facilities licensed on a primary basis under the eligibility requirements of part 90, subpart B of this chapter; and

* * * * *

80. Section 101.147 is amended by revising the second sentence, footnote 1 of Table 1, and footnote 1 of Table 2 of paragraph (b)(1) and the first sentence of paragraph (b)(2) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(b) * * *

(1) * * * Except as noted, however, the frequencies may be used by power licensees, as defined in § 90.7 of this chapter, only if the frequencies in paragraph (b)(2) of this section are exhausted in the particular geographic area. * * *

[1] Available to power licensees, as defined in § 90.7 of this chapter, regardless of whether frequencies in the power pool are exhausted.

* * * * *

[1] Available to power licensees, as defined in § 90.7 of this chapter, regardless of whether frequencies in the power pool are exhausted.

(2) Power Pool: Frequencies listed in this paragraph are available to persons defined as a Power licensee in § 90.7 of this chapter for use in multiple address systems. * * *

* * * * *

81. Section 101.601 is revised to read as follows:

§ 101.601 Eligibility.

Any person, or any governmental entity or agency, eligible for licensing in a radio service or pool under part 80, 87, or 90 of this chapter or any person proposing to provide communications service to such persons, governmental entities or agencies is eligible to hold a license under this subpart.

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federal register

Thursday
April 17, 1997

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 170, et al.
Substances Generally Recognized as Safe; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 170, 184, 186, and 570

[Docket No. 97N–0103]

Substances Generally Recognized as Safe

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to clarify the criteria for exempting the use of a substance in human food or in animal feed from the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act (the act) because such use is generally recognized as safe (GRAS). FDA is also proposing to replace the current GRAS affirmation process with a notification procedure whereby any person may notify FDA of a determination that a particular use of a substance is GRAS. Under the proposed notification procedure, the agency intends to evaluate whether the submitted notice provides a sufficient basis for a GRAS determination and whether information in the notice or otherwise available to FDA raises issues that lead the agency to question whether use of the substance is GRAS. This proposal reflects FDA's commitment to achieving the goals for the Reinventing Food Regulations part of the President's National Performance Review (hereinafter referred to as Reinventing Food Regulations). The proposed notification procedure would allow FDA to direct its resources to questions about GRAS status that are a priority with respect to public health protection.

DATES: Written comments by July 16, 1997, except that comments regarding information collection should be submitted by May 19, 1997. The agency proposes that any final rule that may issue based on this proposal become effective 60 days after its date of publication.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

Regarding Human Food Issues: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

Regarding Animal Feed Issues: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

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I. Background

A. The 1958 Amendment

In 1958, in response to public concern about the increased use of chemicals in foods and food processing and with the support of the food industry, Congress enacted the Food Additives Amendment (the 1958 amendment) to the act. The basic thrust of the 1958 amendment was to require that, before a new additive could be used in food, its producer demonstrate the safety of the additive to FDA. The 1958 amendment defined the terms ''food additive'' (section 201(s) of the act (21 U.S.C. 321(s))) and ''unsafe food additive'' (section 409(a) of the act (21 U.S.C. 348(a))), established a premarket approval process for food additives (section 409(b) through (h)), and amended the food adulteration provisions of the act to deem adulterated any food that is, or bears or contains, any food additive that is unsafe within the meaning of section 409 (section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C))).

Congress recognized that, under this scheme, the safety of an additive could not be established with absolute certainty, and thus provided for a science-based safety standard that requires producers of food additives to demonstrate to a reasonable certainty that no harm will result from the intended use of an additive (Ref. 1). FDA has incorporated this safety standard into its regulations (§ 170.3(i) (21 CFR 170.3(i))). If FDA finds an additive to be safe, based ordinarily on data submitted by the producer to the agency in a food additive petition (FAP), the agency issues a regulation specifying the conditions under which the additive may be safely used.

In enacting the 1958 amendment, Congress recognized that many substances intentionally added to food would not require a formal premarket review by FDA to assure their safety, either because their safety had been established by a long history of use in

food or by virtue of the nature of the substances, their customary or projected conditions of use, and the information generally available to scientists about the substances. Congress thus adopted, in section 201(s) of the act, a two-step definition of ''food additive.'' The first step broadly includes any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food. The second step, however, excludes from the definition of ''food additive'' substances that are generally recognized, among experts qualified by scientific training and experience to evaluate their safety (''qualified experts''), as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or through experience based on common use in food) to be safe under the conditions of their intended use.

Importantly, under section 201(s) of the act, it is the use of a substance, rather than the substance itself, that is eligible for the GRAS exemption. In addition, it is well settled that a mere showing that use of a substance is ''safe'' is not sufficient to exempt the substance from the act's definition of ''food additive'' (*United States* v. *An Article of Food * * * Coco Rico, Inc.*, 752 F.2d 11, 15 n. 4 (1st Cir. 1985)). Instead, the substance must be shown to be ''generally recognized'' as safe under the conditions of its intended use (*Id.*; *United States* v. *Articles of Food and Drug * * * Coli-Trol 80*, 518 F.2d 743, 745 (5th Cir. 1975)). The proponent of the exemption has the burden of proving that the use of the substance is ''generally recognized'' as safe (*Id*). To establish such recognition, the proponent must show that there is a consensus of expert opinion regarding the safety of the use of the substance. (See *United States* v. *Western Serum Co., Inc.*, 666 F.2d 335, 338 (9th Cir. 1982); *United States* v. *Articles of Drug * * * Promise Toothpaste*, 624 F.Supp. 776, 778 (N.D. Ill. 1985), *aff'd* 826 F.2d 564 (7th Cir. 1987); *United States* v. *Articles of Drug * * * Hormonin*, 498 F.Supp.2d 424, 435 (D.N.J. 1980).) Unanimity among experts regarding safety of a substance is not required. (See *United States* v. *Articles of Drug * * * 5,906 boxes*, 745 F.2d 105, 119 n. 22 (1st Cir. 1984); *United States* v. *An Article of Drug * * * 4,680 Pails*, 725 F.2d 976, 990 (5th Cir. 1984); *Coli-Trol* 80, *supra*, 518 F.2d at 746; *Promise Toothpaste, supra*, 624 F.Supp. at 782.) However, the existence of a severe conflict among experts regarding the safety of the use of a substance precludes a finding of general recognition (*4,680 Pails, supra*, 725 F.2d at 990; *Premo Pharmaceutical Laboratories* v. *United States*, 629 F.2d 795, 803 (2d Cir. 1980)) (*Cf. Coli-Trol 80, supra*, 518 F.2d at 746 (mere conflict among experts is not enough to preclude a finding of general recognition)).

It is on the basis of the GRAS exemption to the food additive definition that many substances (such as vinegar, vegetable oil, baking powder, and many salts, spices, flavors, gums, and preservatives) are lawfully marketed today without a food additive regulation. Under the 1958 amendment, a substance that is GRAS for a particular use may be marketed for that use without agency review and approval. However, when a use of a substance does not qualify for the GRAS exemption or other exemptions provided under section 201(s) of the act, that use of the substance is a food additive use subject to the premarket approval mandated by the act. In such circumstances, the agency can take enforcement action to stop distribution of the food substance and foods containing it on the grounds that such foods are or contain an unlawful food additive.

Importantly, under section 201(s) of the act, the GRAS exemption applies to the premarket approval requirements for food additives only. There is no corresponding exemption to the premarket approval requirements for color additives, which are defined in section 201(t) of the act.

B. History of FDA's Approach to the GRAS Exemption

1. The GRAS List

Shortly after passage of the 1958 amendment, FDA clarified the regulatory status of a multitude of food substances that were used in food prior to 1958 and amended its regulations to include a list of food substances that, when used for the purposes indicated and in accordance with current good manufacturing practice, are GRAS. This list was incorporated into the agency's regulations as § 121.101(d) (now parts 182 and 582 (21 CFR parts 182 and 582)) (24 FR 9368, November 20, 1959). As part of that rulemaking, however, FDA acknowledged that it would be impracticable to list all substances that are GRAS for their intended use (formerly § 121.101(a); current § 182.1(a)).

Section 121.101(d) became commonly referred to as ''the GRAS list.'' FDA added other categories of substances (e.g., spices, seasonings, and flavorings) to the GRAS list in subsequent rulemakings (25 FR 404, January 19, 1960; and 26 FR 3991, May 9, 1961).

2. Opinion Letters

Many substances that were considered GRAS by the food industry were not included in the agency's GRAS list. Under the 1958 amendment, a substance that is GRAS for a particular use may be marketed for that use without agency review and approval. Nonetheless, as a practical matter, manufacturers who determined on their own initiative that use of a substance qualified for the GRAS exemption frequently decided to obtain the agency's opinion on whether their determination was justified. Many manufacturers wrote to FDA and requested an ''opinion letter,'' in which agency officials would render an informal opinion on the GRAS status of use of a substance. Although convenient and expedient, these opinion letters were often available only to the requestor. Moreover, these opinion letters were not binding on the agency at the time they were issued and were in fact formally revoked in 1970 (21 CFR 170.6, 35 FR 5810, April 9, 1970).

3. Agency-Initiated GRAS Review

In 1969 (34 FR 17063, October 21, 1969), FDA removed various cyclamate salts, a family of nonnutritive sweeteners, from the GRAS list because they were implicated in the formation of bladder tumors in rats (Ref. 2). In response to the concerns raised by the new information on cyclamates, then-President Nixon directed FDA to reexamine the safety of GRAS substances (Ref. 3), and FDA announced that the agency was conducting a comprehensive study of substances presumed to be GRAS (35 FR 18623, December 8, 1970). The purpose of the study was to evaluate, by contemporary standards, the available safety information regarding substances presumed to be GRAS and to issue each item in a new (i.e., affirmed) GRAS list, a food additive regulation, or an interim food additive regulation pending completion of additional studies.

4. GRAS Criteria and the GRAS Affirmation Process

In the notice announcing the comprehensive agency review of presumed GRAS substances, FDA proposed criteria that could be used to establish whether these substances should be listed as GRAS, become the subject of a food additive regulation, or be listed in an interim food additive

regulation pending completion of additional studies (35 FR 18623). These criteria were incorporated into the agency's regulations as § 121.3 (precursor of current § 170.30 (21 CFR 170.30)) (36 FR 12093, June 25, 1971).

FDA made a second announcement that it was conducting a study of presumed GRAS substances (36 FR 20546, October 23, 1971) and subsequently instituted a rulemaking to establish procedures that the agency could use, on its own initiative, to affirm the GRAS status of substances that were the subject of that review and were found to satisfy the criteria established in § 121.3 (proposed rule, 37 FR 6207, March 25, 1972; final rule, 37 FR 25705, December 2, 1972). These procedures were subsequently codified at § 170.35 (a) and (b) (21 CFR 170.35 (a) and (b)). Because the GRAS review did not cover all GRAS substances (e.g., it did not cover many substances that were marketed based on a manufacturer's independent GRAS determination), that rulemaking included a mechanism (the current GRAS petition process; § 170.35(c)) whereby an individual could petition FDA to review the GRAS status of substances not being considered as part of the agency's GRAS review.

In 1974, the agency proposed to clarify the criteria for GRAS status, the differences between GRAS status and food additive status, and the procedures being used to conduct the current review of food substances (39 FR 34194, September 23, 1974). The final regulations based on this proposal amended § 121.3 (current § 170.30) to distinguish a determination of GRAS status through scientific procedures (scientific procedures GRAS determination; current § 170.30(b)) from a determination of GRAS status through experience based on common use in food (common use GRAS determination; current § 170.30(c)) (41 FR 53600, December 7, 1976). Those final regulations also established definitions for ''common use in food'' (current § 170.3(f)) and ''scientific procedures'' (current § 170.3(h)). FDA subsequently added criteria (§ 170.30(c)(2)) for the determination of GRAS status through experience based on common use in food when that use occurred exclusively or primarily outside of the United States (53 FR 16544, May 10, 1988).

5. The Plant Policy Statement

FDA's ''Statement of Policy: Foods Derived From New Plant Varieties'' (the plant policy statement) (57 FR 22984, May 29, 1992) is an example of a recent agency policy announcement regarding agency priorities in reviewing the GRAS status of substances added to food. In the plant policy statement, FDA reviewed its position on the applicability of the food additive definition and section 409 of the act to foods derived from new plant varieties in light of the intended changes in the composition of foods that might result from the newer techniques of genetic modification such as recombinant deoxyribonucleic acid (rDNA) techniques:

> The statutory definition of ''food additive'' makes clear that it is the intended or expected introduction of a substance into food that makes the substance potentially subject to food additive regulation. Thus, in the case of foods derived from new plant varieties, it is the transferred genetic material and the intended expression product or products that could be subject to food additive regulation, if such material or expression products are not GRAS.

(57 FR 22984 at 22990)

In the plant policy statement, FDA provided extensive guidance, including criteria and analytical steps that producers could follow, on situations in which producers should consult with FDA to determine whether an FAP is appropriate. FDA also stated its intent to use its food additive authority in regulating foods and their byproducts derived from new plant varieties to the extent necessary to protect public health.

C. Elements of the GRAS Standard

Under section 201(s) of the act, a substance is exempt from the definition of food additive and thus, from premarket approval requirements, if its safety is generally recognized by qualified experts. Accordingly, a determination that a particular use of a substance is GRAS requires both technical evidence of safety and a basis to conclude that this technical evidence of safety is generally known and accepted. In contrast, a determination that a food additive is safe requires only technical evidence of safety.[1] Thus, a GRAS substance is distinguished from a food additive on the basis of the common knowledge about the safety of the substance for its intended use rather than on the basis of what the substance is or the types of data and information that are necessary to establish its safety. To emphasize this distinction between a GRAS substance and a food additive, and to simplify discussion about the standard for general recognition of safety, in this document, FDA uses the term ''technical element'' when discussing technical evidence of safety and ''common knowledge element'' when discussing general knowledge and acceptance of safety.

The technical element of the GRAS standard requires that information about the substance establish that the intended use of the substance is safe. As discussed in section I.A of this document, FDA has defined ''safe'' (§ 170.3(i)) as a reasonable certainty in the minds of competent scientists that the substance is not harmful under its intended conditions of use. Current § 170.30(b) provides that general recognition of safety through scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of the substance as a food additive. Similarly, current § 170.30(c)(1) provides that general recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation and must be based solely on food use of the substance prior to that date. Current § 170.3(f) defines ''common use in food'' as a substantial history of consumption for food use by a significant number of consumers.

The common knowledge element of the GRAS standard includes two facets: (1) The data and information relied on to establish the technical element must be generally available; and (2) there must be a basis to conclude that there is consensus among qualified experts about the safety of the substance for its intended use. Neither facet is, by itself, sufficient to satisfy the common knowledge element of the GRAS standard.

The usual mechanism to establish that scientific information is generally available is to show that the information is published in a peer-reviewed scientific journal. However, mechanisms to establish the basis for concluding that there is expert consensus about the safety of a substance are more varied. In some cases, publication in a peer-reviewed scientific journal of data (such as toxicity studies) on a test substance has been used to establish expert consensus in addition to general availability. In other cases, such publication of data and information in the primary

[1] In issuing a food additive regulation, the agency considers technical evidence of safety but does not address the GRAS standard of general recognition. Thus, in most cases, the agency's issuance of a food additive regulation means that FDA did not consider the possible GRAS status of that substance. In a few cases (e.g., 21 CFR 173.357, cellulose triacetate used as a fixing agent in the immobilization of lactase enzyme preparation), FDA concluded, in evaluating the GRAS status of a substance, that the safety of a use of a substance was not generally recognized and authorized its use as a food additive rather than affirm it as GRAS (59 FR 36935, July 20, 1994).

scientific literature has been supplemented by: (1) Publication of data and information in the secondary scientific literature, such as scientific review articles, textbooks, and compendia; (2) documentation of the opinion of an ''expert panel'' that is specifically convened for this purpose; or (3) the opinion or recommendation of an authoritative body such as the National Academy of Sciences (NAS) or the Committee on Nutrition of the American Academy of Pediatrics (CON/AAP) on a broad or specific issue that is related to a GRAS determination.

In this document, FDA is using the term ''consensus'' in discussing the common knowledge element of the GRAS standard. Such consensus does not require unanimity among qualified experts (*5,906 boxes, supra,* 745 F.2d at 119 n. 22; United *4,680 Pails, supra,* 725 F.2d at 990; *Coli-Trol 80, supra,* 518 F.2d at 746; *Promise Toothpaste, supra,* 624 F.Supp. at 782). For example, FDA would evaluate a single published report questioning the safety of use of a substance in food in the context of all the publicly available and corroborative information rather than conclude that such a report automatically disqualifies the substance from satisfying the GRAS standard (*Cf. Coli-Trol 80, supra,* 518 F.2d at 746).

D. The GRAS Petition Process

The rulemaking process in § 170.35(c) whereby manufacturers may petition FDA to affirm that a substance is GRAS under certain conditions of use was designed as a voluntary administrative process whose purpose was to provide a mechanism for official recognition of lawfully made GRAS determinations. To the extent that a person elected to submit a GRAS petition, the process could facilitate an awareness, by the agency as well as the domestic and international food industry, of independent GRAS determinations. However, GRAS affirmation involves the resource-intensive rulemaking process, including: (1) Publishing a filing notice in the **Federal Register**; (2) requesting comment on the petitioned request; (3) conducting a comprehensive review of the petition's data and information and comments received to the filing notice to determine whether the evidence establishes that the petitioned use of the substance is GRAS; (4) drafting a detailed explanation of why the use is GRAS (as opposed to simply being safe); and (5) publishing that explanation in the **Federal Register**. FDA believes that, in practice, this resource-intensive process deters many persons from petitioning the agency to affirm their independent GRAS determinations.

II. Scope of the Proposed Regulations

Based on its experience applying the provisions of § 170.30, FDA is proposing to clarify when use of a substance is exempt from the act's premarket approval requirements because such use is GRAS. In proposing these changes, FDA is: (1) Emphasizing that a GRAS substance is distinguished from a food additive by the common knowledge about the safety of the substance for its intended use rather than by what the substance is, or on the basis of the types of data and information that are necessary to establish its safety; (2) identifying the types of technical evidence of safety that could form the basis of a GRAS determination; and (3) clarifying the role of publication in satisfying the general recognition standard. For consistency with the proposed changes to § 170.30, FDA is also proposing to amend the definition in § 170.3(h) of ''scientific procedures.''

In addition, in keeping with the Reinventing Food Regulations, FDA is proposing to replace the current GRAS affirmation petition process (§ 170.35(c)) with a notification procedure (proposed § 170.36) whereby any person may notify FDA of a determination that a particular use of a substance is GRAS. The submitted notice would include a ''GRAS exemption claim'' that would provide specific information about a GRAS determination in a consistent format. This GRAS exemption claim would include a succinct description of the ''notified substance'' (i.e., the substance that is the subject of the notice), the applicable conditions of use, and the basis for the GRAS determination (i.e., through scientific procedures or through experience based on common use in food) and would be dated and signed by the notifier. The GRAS exemption claim also would include a statement that the information supporting the GRAS determination was available for FDA review and copying or would be sent to FDA upon request. In addition to the GRAS exemption claim, the notice would include detailed information about the identity and properties of the notified substance and a detailed discussion of the basis for the notifier's GRAS determination.

Under the proposed notification procedure, the agency intends to evaluate whether the notice provides a sufficient basis for a GRAS determination and whether information in the notice or otherwise available to FDA raises issues that lead the agency to question whether use of the substance is GRAS. Within 90 days of receipt of the notice, FDA would respond to the notifier in writing and could advise the notifier that the agency has identified a problem with the notice. Although information in a notice would be publicly available consistent with the Freedom of Information Act (FOIA), FDA would make readily accessible to the public the notice's GRAS exemption claim, as well as the agency's response to the notice. However, FDA does not intend to conduct its own detailed evaluation of the data that the notifier relies on to support a determination that a use of a substance is GRAS or to affirm that a substance is GRAS for its intended use.

FDA has tentatively concluded that the proposed notification procedure has advantages over the current petition process because the resource-intensive rulemaking that is associated with a petition would be eliminated. This streamlining would allow FDA to redirect its resources to questions about GRAS status that are a priority with respect to public health protection. In addition, the proposed notice is simpler than a GRAS affirmation petition and therefore conceivably would provide an incentive for manufacturers to inform FDA of their GRAS determinations. This would result in increased agency awareness of the composition of the nation's food supply and the cumulative dietary exposure to GRAS substances. FDA has also tentatively concluded that the public health would be better served if some resources that are currently directed to the GRAS petition process were redirected to the preparation of documents that would provide the industry with guidance on certain food safety issues for complex substances (e.g., macroingredients or biological polymers, such as proteins, carbohydrates, and fats and oils). Finally, the reduction in resources devoted to the evaluation of GRAS substances would allow FDA to shift resources to its statutorily mandated task of reviewing food and color additive petitions.

In light of its experience in reviewing GRAS petitions, FDA believes that the substitution of the proposed notification procedure for the current GRAS petition process would not adversely affect the public health because the agency would be replacing one voluntary administrative process with a different voluntary administrative procedure that would utilize FDA's resources more effectively and efficiently. Under both the current and the proposed procedures, a manufacturer may market a substance that the manufacturer determines is GRAS without informing the agency or, if the agency is so

informed, while the agency is reviewing that information. Thus, from a legal and regulatory perspective, this substitution is neutral.

FDA is also proposing to remove § 170.30(f), which expresses the agency's intent to review the GRAS status of certain food substances, because § 170.30(f) is redundant with the provisions of § 170.35 (a) and (b) that the agency may, on its own initiative, affirm the GRAS status of substances that directly or indirectly become components of food (§ 170.35(a)) or publish a notice announcing its conclusion that there is a lack of convincing evidence that the substance is GRAS and that it should be considered a food additive (§ 170.35(b)).

FDA's regulations regarding the eligibility of substances used in animal food or feeds for classification as GRAS, and the procedures for affirmation of GRAS status for such substances, are codified at §§ 570.30 and 570.35 (21 CFR 570.30 and 570.35), respectively. FDA is proposing the following: (1) To amend the provisions of § 570.30 that are parallel to the provisions of current § 170.30 (i.e., § 570.30 (a) and (b)); (2) to eliminate the GRAS affirmation petition process provided for in § 570.35 (a) and (c); and (3) to provide the option of a GRAS notification procedure for animal food or feeds that would be parallel to proposed § 170.36. FDA is proposing these changes because the regulations in part 570 (21 CFR part 570) implement the same statutory provisions as the regulations in part 170 (21 CFR part 170).

Finally, FDA is proposing to make certain conforming amendments to §§ 170.38, 184.1, 186.1, and 570.38.

As FDA gains experience with the questions raised by industry in preparing notices, FDA expects, from time to time, to prepare guidance documents on issues of particular interest. However, such guidance documents are not a subject of this proposal.

III. Proposed Revisions to § 170.30—Eligibility for Classification as GRAS

A. General Criteria

FDA is proposing to expand the description of the general criteria provided in current § 170.30(a) for a GRAS determination. FDA is not proposing any changes to the first two sentences of current § 170.30(a), which reflect the language of the GRAS exemption as set out in section 201(s) of the act.

The final sentence of current § 170.30(a) provides that general recognition of safety requires that there be common knowledge about the substance throughout the scientific community knowledgeable about the safety of substances directly or indirectly added to food. FDA is proposing to amend this provision to define what that common knowledge is (i.e., that there is reasonable certainty that the substance is not harmful under the intended conditions of use). In other words, proposed § 170.30(a) would clarify that the safety standard for a GRAS substance is identical to the safety standard in § 170.3(i) and that a GRAS substance is neither more safe nor less safe than an approved food additive. Rather, the distinction between a GRAS substance and an approved food additive is that, for a GRAS substance, there is common knowledge of safety within the expert community.

B. Scientific Procedures GRAS Determination

1. Establishing General Recognition of Safety

Current § 170.30(b) describes the technical element of a scientific procedures GRAS determination (i.e., that it requires the same quantity and quality of scientific evidence as is required to obtain approval of the substance as a food additive). Current § 170.30(b) also describes the common knowledge element of a scientific procedures GRAS determination (i.e., that it ordinarily is based upon published studies, which may be corroborated by unpublished studies and other data and information).

FDA is proposing two changes to the description of the common knowledge element in current § 170.30(b). First, FDA is proposing to broaden this description to clarify the types of technical evidence of safety (currently described only as ''studies'') that could form the basis of a GRAS determination. FDA is proposing this change because the quantity and quality of scientific evidence required to obtain approval of a substance as a food additive vary considerably depending upon the estimated dietary exposure to the substance and the chemical, physical, and physiological properties of the substance; there can likewise be a comparable variation in the scientific evidence that forms the basis of a GRAS determination. Second, FDA is proposing to amend this description to clarify the role of publication in satisfying the common knowledge element. FDA is proposing this change because publication is ordinarily required, but may not always be sufficient, to satisfy the common knowledge element of the GRAS standard.

Specifically, FDA is proposing to revise § 170.30(b) to provide that general recognition of safety through scientific procedures be based upon generally available and accepted scientific data, information, methods, or principles, which ordinarily are published. Thus, under proposed § 170.30(b), ''studies'' would be one of several types of scientific ''data and information'' that could support the technical element of a scientific procedures GRAS determination. However, depending on the circumstances, other scientific data and scientific information such as that relating to chemical identity or characteristic properties of a substance, as well as methods of manufacture, could support, and in some cases be sufficient to satisfy that element.

In addition, under this proposed revision of § 170.30(b), generally available and accepted scientific principles could be applied to, and relied on as part of, the technical element of a scientific procedures GRAS determination. *Webster's New World Dictionary of the American Language* defines a ''principle'' as ''a fundamental truth, law, doctrine or motivating force upon which others are based.'' For example, the common scientific principle ''the dose makes the poison,'' underlies a determination that a substance is safe for use in food at certain levels even if it exhibits toxicity when present at higher levels. A related scientific principle is that the toxicity of a substance may vary between animal species. FDA relies on both of these scientific principles when determining whether the proposed use of a substance added to food is safe within the meaning of section 409 of the act.

For consistency with this proposed amendment, FDA is also proposing to amend the current definition of ''scientific procedures'' in § 170.3(h). Under the current definition, scientific procedures include those human, animal, analytical, and other scientific studies, whether published or unpublished, appropriate to establish the safety of a substance. FDA is proposing to amend § 170.3(h) by broadening it so that scientific procedures would include scientific data (such as human, animal, analytical, and other scientific studies), information, methods, or principles, whether published or unpublished, appropriate to establish the safety of a substance. In both this proposed definition and the proposed amendment to § 170.30(b), the descriptor ''scientific'' applies equally to ''data,''

''information,'' ''methods,'' and ''principles.''

FDA is proposing to clarify the role of publication in satisfying the common knowledge element of the GRAS standard by adding the phrases ''generally available and accepted'' and ''which ordinarily are published'' as descriptors of ''scientific data, information, methods, or principles'' in proposed § 170.30(b). Thus, under proposed § 170.30(b), publication of data and information about a GRAS substance is usually necessary, but may not always be sufficient, to satisfy the common knowledge element of the GRAS standard.

The descriptor ''which ordinarily are published'' reflects that the usual mechanism to establish that scientific information is generally available is to show that the information is published in a peer-reviewed scientific journal. This descriptor maintains the explicit emphasis of current § 170.30(b) on the importance of publication in satisfying the common knowledge element. However, current § 170.30(b) does not explicitly emphasize the second facet of the common knowledge element (i.e., that there is a basis to conclude that there is the requisite expert consensus that the generally available data and information establish the safety of the substance for its intended use). For example, there could be a basis to conclude that there is expert consensus that the published results of a particular safety study (i.e., the primary scientific literature) establish the safety of a substance for its intended use if the study raises no safety questions that experts would need to interpret and resolve. On the other hand, the published results of a particular safety study may not be sufficient to satisfy the common knowledge element if the study raises safety questions that require additional data to be resolved. In such cases, the general recognition standard usually requires more than a publication in the primary scientific literature. As mentioned, the basis for concluding that there is expert consensus historically has included publication in secondary sources, convening an expert panel, or relying on an opinion or recommendation of an authoritative body.

The body of information published in secondary sources (such as review articles, articles describing scientific methods, general reference materials, and textbooks) can be more useful than the primary scientific literature for showing a basis for a conclusion that the necessary expert consensus exists because the existence of the secondary sources implies that the primary scientific literature has been evaluated after its publication. For example, FDA sometimes relies on generally available and accepted compendia such as *Bergey's Manual of Systematic Bacteriology* (Ref. 4) when evaluating the common knowledge element of the GRAS standard for food substances derived from a bacterial source.

The opinion of a specially-convened expert panel can provide a basis for showing expert consensus when an individual published study raises safety questions. The opinion of an expert panel is also useful when multiple studies bearing on the safety of a substance are published but there are no secondary sources that evaluate these studies and draw general conclusions based on this comprehensive body of knowledge. For example, during the agency-initiated GRAS review, FDA commissioned, through the Life Sciences Research Office of the Federation of American Societies for Experimental Biology, the ''Select Committee on GRAS Substances'' (the Select Committee). The charge to the Select Committee was to summarize the available scientific literature and to provide a recommendation as to what restrictions, if any, on the use of the substance would be needed to ensure its safe use in food.

In FDA's view, the common knowledge element of the GRAS standard precludes a GRAS determination if the data and information evaluated by such an expert panel are only available in files that are not publicly accessible, such as in confidential industry files. For example, in response to GRAS petitions requesting that FDA affirm the GRAS status of lactase from *Kluyveromyces lactis* entrapped in cellulose triacetate fibers for use in reducing the lactose content of milk, FDA affirmed that the lactase enzyme was GRAS (49 FR 47384, December 4, 1984) but issued a food additive regulation authorizing the secondary direct food additive use of cellulose triacetate as an immobilizing agent because the information that the petitioner relied on to establish the safety of the cellulose triacetate was not generally available (59 FR 36935, July 20, 1994).

The opinions or recommendations of an authoritative body such as NAS or CON/AAP frequently bear on an issue that is related to a GRAS determination. For example, CON/AAP may recommend the use in infant formula of a food substance whose regulatory status is not explicitly identified in FDA's regulations. Similarly, NAS's *Recommended Dietary Allowances* (Ref. 5) are useful in establishing the safe level of an added nutrient source in foods, particularly when the safe level of intake is a narrow range because the difference between the recommended dietary intake and the intake at which the substance exhibits toxic properties is small. In cases such as these, the opinions or recommendations of the authoritative body may provide a basis for concluding that there is expert consensus regarding the safety of a substance for its intended use in food.

2. Corroboration of Safety

FDA is proposing to retain the concept in current § 170.30(b) that unpublished data and information that bear on safety may be used to corroborate published data and information that establish general recognition of safety. FDA is proposing to amend current § 170.30(b) by removing the phrase ''unpublished studies and other data and information'' and substituting the phrase ''unpublished scientific data, information, or methods.'' This proposed revision is comparable to the proposed broadening of the description of the common knowledge element of the GRAS standard and likewise reflects the variation in the nature of the scientific evidence that would be required to obtain approval of the substance as a food additive.

C. Common Use GRAS Determination

FDA is not proposing any changes to current § 170.30(c)(1), which sets out criteria for a common use GRAS determination. However, FDA is proposing to amend current § 170.30(c)(2), which sets out these criteria in the more narrow circumstance of that use occurring exclusively or primarily outside of the United States. FDA is proposing to revise the final sentence of current § 170.30(c)(2) by replacing the recommendation that persons who claim GRAS status on such basis obtain FDA concurrence that the use of the substance is GRAS (*i.e.*, through submission of a GRAS affirmation petition) with a recommendation that persons who assert such a claim for a substance notify FDA of that claim in accordance with proposed § 170.36. This revision is a necessary conforming amendment because, as discussed in sections V and VI of this document, FDA is proposing to replace the current affirmation process in § 170.35(c)(1) with a notification procedure (proposed § 170.36). The recommendation in proposed § 170.30(c)(2) is appropriate because notice will facilitate the lawful entry of GRAS substances into the United States. FDA will be aware that a

substance offered for import is the subject of a GRAS exemption claim and will also be aware of the basis for such claim. Absent notice, the substance may appear to be adulterated and thus, be detained under section 801(a) of the act (21 U.S.C. 381(a)). Therefore, it is prudent for an individual who claims that a substance is GRAS through experience based on its common use in food outside of the United States to notify FDA of that claim. The language of proposed § 170.30(c)(2) is comparable to the language of current § 170.30(c)(2) in that it is not a requirement.

D. Other Provisions of Current § 170.30

FDA is not proposing any changes to the remainder of current § 170.30, except § 170.30(f) as discussed below, because the changes that the agency is proposing in this document require no conforming amendments to those sections.

Current § 170.30(f) was issued under the auspices of the agency-initiated GRAS review (36 FR 12093, June 25, 1971) and expresses the agency's intent to review the GRAS status of certain food substances. As discussed in section V of this document), FDA is proposing to remove the provision in § 170.35(a) that the Commissioner of Food and Drugs (the Commissioner), on the petition of an interested person, may affirm the GRAS status of substances that directly or indirectly become components of food. The agency is proposing to retain, however, the provision in § 170.35(a) that the Commissioner, on his/her own initiative, may affirm the GRAS status of such substances. In addition, the agency is proposing no changes to the provision in § 170.35(b) that if the Commissioner concludes that there is a lack of convincing evidence that a substance is GRAS and that it should be considered a food additive, he/she shall publish a notice thereof in the **Federal Register** in accordance with § 170.38. Therefore, § 170.30(f) is redundant with § 170.35 (a) and (b). Accordingly, in keeping with the agency's goals for the Reinventing Food Regulations, FDA is proposing to remove current § 170.30(f).

IV. The Technical Element of a GRAS Determination Through Scientific Procedures

A GRAS substance is distinguished from a food additive on the basis of the common knowledge about the safety of the substance for its intended use rather than on the basis of what the substance is or the types of data and information that are necessary to establish its safety. Nonetheless, FDA is frequently asked about the types of data and information that are appropriate to establish the safety of a GRAS substance. Accordingly, FDA discusses below two topics that pertain to the technical element of a scientific procedures GRAS determination: (1) The importance of dietary exposure; and (2) the role of substantial equivalence.

A. Consideration of Dietary Exposure

Section 409(c)(5) of the act requires that, in evaluating the proposed use of a food additive, FDA consider the probable consumption of the substance and of any substance formed in or on food because of its use, as well as the cumulative effect of the substance in the diet, taking into account any chemically or pharmacologically related substance or substances in such diet. FDA has incorporated this requirement into the definition of ''safe'' and ''safety'' with respect to substances added to food (§ 170.3(i)). Thus, the technical element of a scientific procedures GRAS determination must consider the probable consumption and cumulative effect of the substance in the diet because a scientific procedures GRAS determination requires the same quantity and quality of evidence as is required to obtain approval of the substance as a food additive. If the dietary exposure to the substance under the intended conditions of use presents a basis for concern about the safety of its use, data or information addressing those concerns are necessary to satisfy the technical element. As with other data and information that support a GRAS determination, data or information addressing a safety question raised by dietary exposure must also satisfy the common knowledge element by being generally available to, and accepted by, qualified experts.

In some cases, dietary exposure is unlikely to present a basis for a safety concern. For example, dietary exposure to an enzyme preparation that is derived from a controlled fermentation of a nonpathogenic, nontoxigenic microorganism that does not produce antibiotics, and that is processed using substances that are acceptable for use in foods generally, would not ordinarily present a basis for a safety concern. On the other hand, consumption of a component of a commonly consumed food may present a basis for a safety concern if the dietary exposure to the isolated component under its intended conditions of use is many times greater than its dietary exposure when consumed as a component of food.

For example, a fiber may be extracted from a vegetable that has a relatively low dietary exposure (such as beets) and added, at the same level, to other foods that have a relatively high dietary exposure. The probable cumulative intake of the fiber likely will be many times higher from the consumption of the foods to which it is added than from the consumption of beets. The probable intake of the fiber from consumption of foods to which it is added may present a basis for a safety concern, especially if the foods containing the added beet fiber will not replace beets in the diet. Likewise, in the case of a chemically synthesized substance that is structurally identical to a naturally occurring substance in commonly consumed food, technical evidence of safety would include consideration of whether the cumulative exposure to both the synthetic and the natural substance exceeds the exposure to the natural substance and whether the combined exposure presents a basis for a safety concern.

B. Substantial Equivalence to a GRAS Substance

A report of a joint Food and Agriculture Organization (FAO) and World Health Organization (WHO) consultation (the 1996 FAO/WHO report) recommended that ''[s]afety assessment based on the concept of substantial equivalence * * * be applied in establishing the safety of foods and food components derived from genetically modified organisms'' (Ref. 6). The 1996 FAO/WHO report stated that:

> [s]ubstantial equivalence embodies the concept that if a new food or food component is found to be substantially equivalent to an existing food or food component, it can be treated in the same manner with respect to safety (i.e. the food or food component can be concluded to be as safe as the conventional food or food component). Account should be taken of any processing that the food or food component may undergo as well as the intended use and the intake by the population.

The 1996 FAO/WHO report relied, in part, on previous expert reports that had discussed the concept of substantial equivalence, including the 1990 joint FAO/WHO consultation, ''[s]trategies for assessing the safety of foods produced by biotechnology'' (Ref. 7); a report prepared by an expert group of the Organization for Economic Co-operation and Development (OECD), ''[s]afety evaluation of foods produced by modern biotechnology: Concepts and principles'' (Ref. 8); and a report of a WHO workshop, ''[a]pplication of the principles of substantial equivalence to the safety evaluation of foods or food components from plants derived by modern biotechnology'' (Ref. 9).

FDA believes that in certain instances the concept of substantial equivalence may have applicability to the technical element of a GRAS determination, and the agency has already applied this concept when evaluating the safety of new or modified food substances. For example, the agency's approach (57 FR 22984 and Ref. 10) to assessing the safety of foods derived from new plant varieties, including the safety of newly introduced substances in the food (primarily proteins, carbohydrates, and fatty acids) and unintended changes in the food's composition, is similar to the concept of substantial equivalence posited by FAO, WHO, and OECD.[2] As another example, FDA has applied this concept in affirming the GRAS status of several microbially-derived chymosin (i.e., rennet) enzyme preparations (55 FR 10932 at 10935, March 23, 1990; 57 FR 6476 at 6479, February 25, 1992; 58 FR 27197 at 27202, May 7, 1993) and several animal-and plant-derived enzyme preparations (60 FR 32904 at 32911, June 26, 1995).

However, the concept of substantial equivalence may be of minimal relevance in circumstances where the differences between two substances outweigh the similarities. Thus, a critical factor that must be considered when applying the concept of substantial equivalence is any difference in composition or characteristic properties between the substances being compared. In the example of a microbially-derived enzyme preparation, its principal enzyme component may show substantial equivalence in structure and function to that of a GRAS enzyme preparation derived from an animal source but exhibit different properties such as specific activity (i.e., the rate at which the enzyme catalyzes a reaction) or optimum reaction conditions of pH and temperature because of changes, either through natural selection or through selective chemical modification, in the particular amino acid sequence of the enzyme's active site. Such differences, which are common when comparing enzyme preparations derived from different sources, generally do not outweigh the similarities between the enzyme preparations.

[2] In the plant policy statement, FDA used the term ''substantial similarity,'' rather than ''substantial equivalence,'' to avoid possible confusion with the agency's use of the concept of ''substantial equivalence'' with respect to the premarket notification process for medical devices. For consistency with current thinking from international expert groups such as the FAO/WHO and OECD consultation groups, FDA is now using the term ''substantial equivalence'' with respect to food products.

On the other hand, the product resulting from the chemical reaction of two or more GRAS substances is a discrete new substance that may have properties that are distinctly different from the individual GRAS substances from which it is synthesized or from a simple mixture of those GRAS substances. The concept of substantial equivalence may not be relevant here unless the reaction product is widely recognized to be metabolized in the same way as the individual components from which it is synthesized. Likewise, in the case of a chemically synthesized substance that is structurally identical to a naturally occurring substance in commonly consumed food, compositional differences between the synthesized and naturally occurring substance may include the presence of any residues of potentially harmful chemicals carried over to the synthetic substance from the manufacturing process.

FDA invites comment on the applicability of the concept of substantial equivalence to the technical element of a GRAS determination.

V. Proposed Revisions to § 170.35—Affirmation of GRAS Status

As a result of the agency's experience in processing FAP's and GRAS affirmation petitions, FDA has tentatively concluded that the petition process, which is the statutorily mandated process for food additives, should no longer be applied to GRAS substances, where the conditions of safe use of a substance have already been recognized by qualified experts. FDA believes that the lengthy rulemaking associated with the GRAS petition process deters many persons who independently determine that use of a substance is GRAS from informing the agency of such determinations. Moreover, FDA believes that the current commitment of its resources to the GRAS petition process provides limited public health benefit because manufacturers who submit an affirmation petition frequently market the substance at issue before FDA reaches a decision on the GRAS status of its intended use.

Accordingly, FDA is proposing to amend current § 170.35(a) to remove the provision that FDA may review the GRAS status of a substance added to food in response to a petition from an interested party. FDA has tentatively concluded that the elimination of the GRAS petition process would not adversely affect public health because the agency is simultaneously proposing to establish a notification procedure for GRAS substances. FDA has also tentatively concluded that the proposed notification procedure, discussed more fully in section VI of this document, would allow the agency to direct its resources to the more significant questions about GRAS status.

Proposed § 170.35(a) would continue to provide a mechanism whereby FDA, on its own initiative, may affirm the GRAS status of the use of a substance that directly or indirectly becomes a component of food. FDA proposes to retain the option of agency-initiated affirmations for those circumstances where such action is necessary or useful. For example, FDA may propose to revise an existing regulation affirming the GRAS status of a use of a substance if the agency determines that the current regulation is confusing or unnecessarily restrictive. In addition, the agency may choose to complete a rulemaking already begun as part of the agency-initiated GRAS review.

Proposed § 170.35(a) includes a technical revision that amends current § 170.35(a) to place it in the singular. For consistency with the language of the statute, proposed § 170.35(a) also has been revised to clarify that the Commissioner might affirm the GRAS status of a use of a substance, rather than the substance itself.

In light of the increasing complexity of the food supply, FDA recognizes that members of the food industry may wish to engage in discussions with the agency concerning novel issues that accompany the technical element of some GRAS determinations. FDA believes that the elimination of the GRAS petition process will not constrain industry from consulting with the agency about such novel issues. Rather, FDA believes that the substitution of the proposed notification procedure for the current petition process will encourage industry to consult with FDA early in development of food substances to identify the critical aspects of the safety determination that would need general recognition to qualify for a GRAS exemption.

FDA is also proposing to remove current § 170.35(c), which prescribes the procedure for the submission of a GRAS affirmation petition. Under proposed § 170.35(a), FDA will no longer be bound to review such a petition. Therefore, if proposed § 170.35(a) becomes final, current § 170.35(c) will become obsolete.

VI. Proposed Establishment of a Notification Procedure

A. General Requirements

Proposed § 170.36(a)(1) provides that any person may notify FDA of a claim

that a particular use of a substance is exempt from the statutory premarket approval requirements based on the notifier's determination that such use is GRAS. The agency encourages manufacturers and developers of food substances and of new processes for producing food substances to use this notification procedure to inform FDA if such manufacturers or developers conclude that there is general recognition that use of a substance is safe.[3]

Current agency regulations concerning the eligibility of a substance for a health claim (§ 101.14(b)(3)(ii)) (21 CFR 101.14(b)(3)(ii)) require that a substance that is to be consumed as a component of conventional food at other than decreased dietary levels be a food, food ingredient, or a component of a food ingredient, whose use, at the levels necessary to justify a claim, be demonstrated by the proponent of the claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act. In the final rule establishing § 101.14(b)(3)(ii) (58 FR 2478 at 2502, January 6, 1993), FDA explained that the preliminary requirement that a substance be safe and lawful was necessary in the health claim regulation because FDA's authorization of a health claim places the agency's imprimatur on the claim. FDA further stated that it would be a violation of the agency's responsibility under the act to authorize a health claim for a substance without the agency being satisfied that the particular use of the substance is safe. As discussed in detail in section VI.D of this document, an agency response to a GRAS notice would not be equivalent to an agency affirmation of GRAS status. Therefore, if adopted, the GRAS notification procedure proposed in this notice will not satisfy a health claim petitioner's responsibilities under § 101.14(b)(3)(ii).

In addition, FDA recently proposed that good manufacturing practice for infant formula requires that only substances whose use in infant formula is safe and suitable under the applicable food safety provisions of the act be used to make this product; that is, that the substance be GRAS for such use, used in accordance with the agency's food additive regulations, or authorized for such use by a prior sanction (proposed § 106.40(a); 61 FR 36154 at 36212, July 9, 1996). FDA also proposed that a ''new infant formula'' submission required under section 412 (c) and (d) of the act (21 U.S.C. 350a (c) and (d)) include the basis on which each ingredient meets the requirements of proposed § 106.40(a), and that any claim that an ingredient is GRAS be supported by a citation to the agency's regulations or by an explanation as to why there is general recognition of the safety of the use of the ingredient in infant formula (proposed § 106.120(b)(6)(ii); 61 FR 36154 at 36217). Again, as discussed in detail in section VI.D of this document, an agency response to a GRAS notice would not be equivalent to an agency affirmation of GRAS status or place an agency imprimatur on the substance that is the subject of the notice. Therefore, if adopted, this proposed GRAS notification program will not substitute for the requirements proposed for new infant formula submissions.

The fact that the proposed GRAS notification program will not satisfy the requirements of either § 101.14(b)(3)(ii) or proposed § 106.120(b)(6)(ii) is reflected in proposed § 170.36(a)(2). Under proposed § 170.36(a)(2)(i), any person who submits a health claim petition under § 101.14 must comply in full with § 101.14(b)(3)(ii), regardless of whether the agency has been notified under proposed § 170.36 about a relevant GRAS determination and regardless of the nature of the agency's response to that notice. Similarly, proposed § 170.36(a)(2)(ii) provides that any person who makes a new infant formula submission under § 106.120 must comply in full with § 106.120(b)(6)(ii), regardless of whether the agency has been notified under proposed § 170.36 about a relevant GRAS determination and regardless of the nature of the agency's response to that notice.

Proposed § 170.36(b) requires that notice of a GRAS exemption claim be submitted in triplicate and provides the address for such a submission. FDA plans to use one copy of the notice for the agency's administrative record. FDA anticipates that at least two agency scientists, with food safety expertise relating to identity, dietary exposure and health effects, will evaluate most notices. Thus, for efficient administration of the notification procedure, FDA is stipulating that three copies of a notice be submitted.

FDA is aware that there is increasing interest in submitting an electronic copy of information prepared for regulatory purposes. FDA requests comment on whether it would be appropriate to require or recommend that the submission include an electronic copy in addition to the three paper copies required under proposed § 170.36(b).

B. Specific Requirements

Proposed § 170.36(c) provides details on information that must be included in a notice. FDA recognizes that a decision to submit a notice is voluntary. However, as discussed (see discussion of proposed § 170.36(e)), under the proposed notification procedure, FDA would respond to a notice within 90 days. In order for the agency to meet this timeframe, the information in the notice needs to be presented in an orderly and consistent fashion. Moreover, FDA believes that a prescribed format and a description of information that the agency considers important in supporting a GRAS determination would simplify the notifier's task of preparing the notice.

1. GRAS Exemption Claim

A GRAS determination must comply with the provisions of § 170.30 and the person making such determination is responsible for ensuring such compliance, regardless of whether that person notifies the agency about the determination. Accordingly, proposed § 170.36(c)(1) requires that the notice include a claim (hereinafter referred to as the ''GRAS exemption claim''), dated and signed by the notifier, that a particular use of a substance is exempt from the premarket approval requirements of the act because the notifier has determined that such use is GRAS. Proposed § 170.36(c)(1) would distinguish the notification procedure, in which the notifier explicitly accepts responsibility for the GRAS determination, from the GRAS petition process, in which the notifier is requesting that the agency affirm the GRAS status of use of a substance.

Proposed § 170.36 (c)(1)(i) through (c)(1)(iv) identify specific information required in a GRAS exemption claim in a prescribed format. This requirement will simplify the notifier's task of preparing this section of a notice and will enable the agency to use this section of a notice to effectively and efficiently inform the public about received notices (see discussion of proposed § 170.36(f)(2)).

FDA has requested comment on whether proposed § 170.36(b) should require or recommend that an electronic copy of the entire notice be submitted

[3] FDA considers that the current voluntary procedure whereby developers of new plant varieties modified through the use of rDNA techniques notify the agency about food derived from the plant is parallel to, and has some overlapping provisions with, the proposed GRAS notification procedure but is nonetheless distinct from this proposed procedure. For example, current notices to the agency concerning new plant varieties generally are broader in scope than the regulatory status of substances introduced into the new plant variety and usually include a safety and nutritional assessment of food derived from the new plant variety in addition to a basis for the notifier's determination that an FAP is not required for any of the substances introduced into that food.

in addition to three paper copies. In particular, receiving electronic copies of the GRAS exemption claim may make FDA's administration of the GRAS notification procedure more efficient, especially if the agency uses an electronic means to make those claims readily accessible to the public. Accordingly, FDA specifically requests comment on whether the regulation should include a recommendation or requirement that the notice include an electronic copy of the GRAS exemption claim required by proposed § 170.36(c)(1).

a. *Notifier.* Proposed § 170.36(c)(1)(i) requires that the GRAS exemption claim include the name and address of the notifier. This is necessary for full identification of the person who accepts responsibility for the claim. This is also necessary so that the agency can both acknowledge receipt of the notice (proposed § 170.36(d)) and inform the notifier of the agency's response to the notice (proposed § 170.36(e)).

b. *Name of notified substance.* Proposed § 170.36(c)(1)(ii) requires that the GRAS exemption claim include the common or usual name of the notified substance. This is necessary to identify the notified substance as well as to identify whether there are any labeling issues that need to be addressed. The notifier may include in the GRAS exemption claim additional information, such as that described in proposed § 170.36(c)(2), concerning the identity of the substance if such information is appropriate or necessary to fully and unambiguously describe it.

The agency recognizes that notifiers may have questions concerning the common or usual name for a notified substance. FDA advises that in such circumstances, a notifier should consult with the Office of Food Labeling in FDA's Center for Food Safety and Applied Nutrition (CFSAN).

c. *Conditions of use.* Proposed § 170.36(c)(1)(iii) requires that the GRAS exemption claim identify the applicable conditions of use of the notified substance, including the foods in which the substance is to be used, levels of use in such foods, and the purposes for which the substance is used, including, when appropriate, a description of the population expected to consume the substance (e.g., if the substance is intended for use in a limited population, such as ingredients used mainly in infant formula, medical foods, or in specially designed food products typically consumed as a sole source of the diet by persons who are unable to consume food in conventional form). Information describing the conditions of use is necessary to delineate the boundaries of the GRAS exemption claim consistent with section 201(s) of the act, which states that a GRAS substance must be generally recognized as safe ''under the conditions of its intended use.'' This information is also necessary to determine whether dietary exposure to the substance presents a basis for concern about the safety of its use.

d. *Basis for the GRAS determination.* Proposed § 170.36(c)(1)(iv) requires that the GRAS exemption claim identify the basis for the GRAS determination as either scientific procedures or experience based on common use in food. The act differentiates between these two bases for GRAS determination and, under § 170.30, the requirements for a scientific procedures GRAS determination are different from the requirements for a common use GRAS determination. The basis for a GRAS determination is thus fundamental to the GRAS exemption claim.

e. *Availability of information.* A GRAS determination must comply with the provisions of § 170.30 and the person making such determination is responsible for ensuring such compliance, regardless of whether that person notifies the agency about the determination. As discussed more fully below (see discussion of proposed § 170.36(c)(4)), and in keeping with the agency's commitment to achieving the goals for Reinventing Food Regulations, FDA is proposing to require that a notifier supply a detailed summary of the information that is the basis for a GRAS determination rather than the information itself. Proposed § 170.36(c)(1)(v) provides a mechanism for FDA to verify the information that supports a GRAS determination by requiring that the GRAS exemption claim include a statement that the data and information that are the basis for the determination are available for review and copying by FDA or will be sent to FDA upon request. Notifiers who voluntarily choose to notify FDA of a GRAS determination receive as a benefit a response that documents the agency's awareness of the determination. As a condition of that benefit, the notifier must consent to grant FDA access to the data and information that are the basis of the GRAS determination.

There is no burden on the notifier for developing the data and information that are the basis for the GRAS determination because such data and information must already be generally available in order to satisfy the common knowledge element of a GRAS determination. Additionally, any person who determines that a substance is GRAS should have assembled and evaluated the evidence that forms the basis of such a determination, regardless of whether the person subsequently notifies the agency about the claim. Therefore, FDA believes that the burden to the notifier of the proposed rule is the minimal burden of maintaining the information. Such preservation of the data and information that are the basis for the GRAS determination also represents prudent practice for those who claim an exemption from a statutory requirement.

The new procedure that FDA is proposing to establish will involve the submission of a detailed summary of the information that forms the basis for an exemption from a statutory requirement rather than the submission of the information itself. It therefore is prudent that FDA monitor compliance with the essence of the statutory requirement (i.e., that there is common knowledge among qualified experts that there is reasonable certainty that the substance is not harmful under the intended conditions of use). Accordingly, FDA intends to conduct random audits of data and information maintained by the notifier. Moreover, because the proposed substitution of a notification procedure for the current petition process would allow FDA to direct its resources to priority questions about GRAS status, FDA might conduct an audit on a broad issue or class of products if the issue or use of a class of products raises important public health issues.

2. Identity and Specifications

Proposed § 170.36(c)(2) requires that the notice include detailed information about the identity of the notified substance, including, as applicable, the chemical name, Chemical Abstracts Service (CAS) registry number, Enzyme Commission (EC) number, empirical formula, structural formula, quantitative composition, method of manufacture (excluding any trade secret information), characteristic properties, any potential human toxicants, and specifications for food-grade material. This detailed information, which would be in addition to the substance's common or usual name that would be included under proposed § 170.36(c)(1)(ii), is necessary to describe accurately the notified substance using commonly accepted scientific nomenclature and practice.

For some substances, such as calcium acetate (21 CFR 184.1185), the most relevant information concerning identity may be chemical information such as its CAS registry number and empirical formula. For other substances, such as whey (21 CFR 184.1979), a

chemical formula cannot be used for identification; instead, source and quantitative composition (e.g., percent of protein, fat, ash, lactose, and moisture) appropriately describe the substance.

In many cases, the method of manufacture provides important identity information. For example, an enzyme preparation that is derived from an animal source and contains the enzyme chymosin as its principal enzyme component (§ 184.1685(a)(1) (21 CFR 184.1685(a)(1))) is chemically different from an enzyme preparation that is derived from a microbial source and contains the enzyme chymosin as its principal enzyme component (§ 184.1685(a)(2)) because the components and contaminants derived from the source material are distinctly different.

In some cases, the characteristic properties of a substance may be important when defining the conditions under which the substance may safely be used. For example, if an isolated or chemically processed fiber is intended for use as a replacement for part of the flour used in baked goods, information about its physicochemical properties, such as its ability to swell due to high water absorption or to bind physiologically important ions, may be important in establishing a safe level of the fiber in baked goods.

The proposed requirement that information relating to identity include any potential human toxicants in the notified substance derives from the known presence of such toxicants in substances of natural biological origin. For example, it is well known that potatoes contain the naturally occurring toxicant, solanine. In the plant policy statement (57 FR 22984 at 22987), FDA discussed the importance of ensuring that new plant varieties do not contain significantly higher levels of toxicants than are present in other edible varieties of the same species. This consideration applies to all food products that derive from a source known to contain naturally occurring toxicants.

Specifications are an important factor in establishing food-grade quality for any substance intended for use in food. Substances that do not meet the specifications may not be suitable for use in food. Specifications may be general or particular and may relate to identity, purity, or both.

General specifications governing both identity and purity are common for GRAS substances. For example, the regulations for microbially-derived GRAS substances usually stipulate, as a general identity specification, that the source microorganism be a nontoxigenic, nonpathogenic strain. Similarly, the regulations for many GRAS substances stipulate, as a general purity specification, the maximum permissible level of a heavy metal toxicant such as lead.

In addition, GRAS substances frequently require a particular identity specification to adequately define the substance whose safety is generally recognized. For example, in affirming that canola oil (i.e., low erucic acid rapeseed oil) is GRAS for use as an edible fat and oil, FDA only considered the GRAS status of oil that contains levels of a specific fatty acid (erucic acid) that are no more than 2 percent of the component fatty acids. Therefore, the identity specification for low erucic acid rapeseed oil (21 CFR 184.1555(c)(1)) stipulates that, chemically, the oil is a mixture of triglycerides, composed of both saturated and unsaturated fatty acids, with an erucic acid content of no more than 2 percent of the component fatty acids.

In some cases, FDA expects that the specifications for a notified substance may be generally available in a standard reference such as the Food Chemicals Codex (FCC), which contains general and specific requirements for more than 900 substances used in food. In other cases, the specifications for the notified substance may be the same as, or similar to, specifications in the agency's GRAS regulations but not available in any other standard reference. For example, the specifications for an oil that is substantially similar to hydrogenated and partially hydrogenated menhaden oil, which FDA has affirmed as GRAS for use as an edible fat or oil, could be based on the specifications in 21 CFR 184.1472.

3. Self-limiting Levels of Use

Proposed § 170.36(c)(3) requires that the notice include any self-limiting levels of use of the substance. If a substance is added to food above its technologically self-limiting level, the food becomes unpalatable, unappealing or otherwise unfit for consumption. Information on a technologically self-limiting level of use of a substance would be important in addressing concerns about the level of use of the substance as a food component. For example, it is generally known that the taste associated with many GRAS synthetic flavoring substances limits the levels at which the flavoring substances can be used to levels below those known to exhibit toxic properties.

4. Scientific Procedures GRAS Determination

The technical element of a scientific procedures GRAS determination requires that information about the substance show that there is reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. The nature of the information that the notifier relies on to establish the technical element of the GRAS standard may vary from substance to substance. Such information may include, but is not limited to, the identity, characteristic properties, and methods of manufacture of the notified substance, applicable toxicological studies, and information relating to dietary exposure.

The common knowledge element requires both that the information relied on be generally available and that there be a basis to conclude that there is expert consensus about the safety of the substance for its intended use. A notice summary that fully describes the technical evidence of safety, but does not provide a basis to conclude that the technical evidence is generally available and accepted, would be incomplete. The common knowledge element applies to all of the evidence that is the basis for the safety determination.

a. *Technical evidence of safety.* Proposed § 170.36(c)(4)(i)(A) requires that the notice include a detailed summary of the basis for the notifier's determination that a particular use of the substance is GRAS through scientific procedures. This summary would include a comprehensive discussion of, and citations to, generally available and accepted scientific data, information, methods, or principles that the notifier relies on to establish safety.

Proposed § 170.36 (c)(2) and (c)(3) of the notice would require that information relating to the identity, characteristic properties, and methods of manufacture of the notified substance be described in detail; therefore, the comprehensive discussion in the notice summary should focus on how that information is relevant to the GRAS determination. Under proposed § 170.36(c)(4), the comprehensive discussion in the notice summary of any applicable toxicological studies should fully describe such studies, identify the conclusions drawn from such studies, and explain how these conclusions are relevant to the GRAS determination. FDA is not proposing to require that the notice include the raw data supporting the conclusions of applicable toxicological studies because the agency does not intend, in most cases, to conduct its own detailed evaluation of those data.

Proposed § 170.36(c)(4)(i)(A) specifies that the discussion in the notice summary include a consideration of the probable consumption of the substance and the cumulative effect of the substance in the diet, taking into account any chemically or pharmacologically related substances in such diet. This consideration of dietary exposure is mandated for food additives by section 409(c)(5) of the act; § 170.30(b) further provides that a scientific procedures GRAS determination requires the same quantity and quality of scientific evidence as would be required to approve a food additive. Thus, such information should be included in the notice summary. Several technical documents that discuss the practical details of estimating consumer exposure to a food substance are available from the agency.[4]

The notice summary may also include a comprehensive discussion of scientific data, information, and methods that, in the notifier's view, corroborate the GRAS determination. For example, for a substance whose safety is established based on its identity, method of manufacture, and characteristic properties, a notifier may describe a toxicological study and rely on these data as corroborative. However, as with studies that are relied on to support a GRAS determination, the comprehensive discussion should fully describe such studies, identify the conclusions drawn from such studies, and explain how these conclusions are relevant to the GRAS determination.

b. *General availability of information supporting safety.* The inclusion of citations to published articles is customary scientific practice and is the simplest way to demonstrate the general availability of the information on which the notifier relies. Proposed § 170.36(c)(4)(i)(A) does not require that a notifier submit copies of published information identified in the notice summary because, in most cases, the agency does not intend to conduct its own detailed evaluation of the data that the notifier relies on to support a determination that a use of a substance is GRAS. Rather, the agency intends to evaluate whether the notice summary establishes a basis to conclude that there is expert consensus regarding the safety of use of the substance.

Under proposed § 170.36(c)(4)(i)(A), notifiers should limit published information citations to those that the notifier discusses and relies on to support a GRAS determination or that are appropriately discussed and explained because they may appear to be inconsistent with a GRAS determination (see discussion of proposed § 170.36(c)(4)(i)(B)). Accordingly, the notifier should not cite published information unless the cited information bears directly on the GRAS determination. For example, a bibliography describing an exhaustive literature search about a notified substance is of limited or no value in supporting the common knowledge element of a GRAS determination if the relevance of the cited literature is not readily apparent or fully discussed. Moreover, such a bibliography would not, absent a discussion of the relevance of the material cited to the GRAS determination in question, fulfill the technical element of a GRAS determination.

c. *Unfavorable information.* Proposed § 170.36(c)(4)(i)(B) requires that the notice summary of a scientific procedures GRAS determination include a comprehensive discussion of any reports of investigations or other information (e.g., adverse event reports and consumer complaints) that may appear to be inconsistent with the GRAS determination. FDA is proposing this requirement as a prelude to proposed § 170.36(c)(4)(i)(C), which would require that the notice summary include a basis to conclude that there is expert consensus regarding the safety of use of the substance. In other words, in order to meet the act's general recognition standard, all information, both favorable and unfavorable, that bears on the safety of the substance for its intended use must be considered.

Proposed § 170.36(c)(4)(i)(B) is consistent with the provision in current § 170.35(c)(1)(iv) and (c)(1)(v) (which are proposed for deletion) that a GRAS affirmation petition include adverse information or consumer complaints and be a representative and balanced submission that includes known information, both favorable and unfavorable. Proposed § 170.36(c)(4)(i)(B) is also consistent with a similar provision (§ 171.1(c) (21 CFR 171.1(c))) in the FAP regulations, which requires that the petition must not omit without explanation any reports of investigations that would bias an evaluation of the safety of the food additive. Thus, the requirement in proposed § 170.36(c)(4)(i)(B) is appropriate because general recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence required to obtain approval of the substance as a food additive.

d. *Basis for concluding expert consensus.* Proposed § 170.36(c)(4)(i)(C) requires that the notice summary of a scientific procedures GRAS determination include the basis for concluding, in light of the data and information described in the notice, that there is a consensus among qualified experts that there is reasonable certainty that the substance is not harmful under the intended conditions of use. Thus, the notice summary must consider the totality of the publicly available and corroborative evidence about the safety of the substance for its intended use, including both favorable and potentially unfavorable information.

As discussed in section I.C of this document, the bases for concluding that there is the requisite expert consensus may be quite varied. For example, there could be a basis to conclude that the necessary expert consensus exists if data published in the primary scientific literature establish the safety of a substance for its intended use and such data raise no safety questions that experts would need to resolve. On the other hand, data published in the primary scientific literature may not provide a basis for expert consensus if those data raise unresolved safety questions. Alternatively, the opinions of a specially convened expert panel or of an authoritative body such as NAS may provide a basis for expert consensus. However, an ongoing scientific discussion or controversy about safety concerns raised by available data would make it difficult to provide a basis for expert consensus about the safety of a substance for its intended use.

5. Common Use GRAS Determination

a. *Technical evidence of safety.* Proposed § 170.36(c)(4)(ii)(A) requires that the notice summary of a common use GRAS determination include a comprehensive discussion of, and citations to, generally available data and information that the notifier relies on to establish safety, including evidence of a substantial history of consumption of the substance by a significant number of consumers. Under current § 170.30(c)(1), in evaluating whether use of a substance is GRAS through experience based on common use in food prior to January 1, 1958, FDA relies on information documenting that the ''common use in food'' of a substance satisfies the definition in § 170.3(f) such that adverse health effects, if they occurred, could be noted. In other words, a substance is not eligible for the

[4] For example, ''Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions'' (1993); ''Estimating Exposure to Direct Food Additives and Chemical Contaminants in the Diet'' (1995); and ''Recommendations for Chemistry Data for Indirect Food Additive Petitions'' (1995).

GRAS exemption merely because it was used in food before January 1, 1958, if such use were not sufficiently widespread.[5]

The fact that GRAS status is determined through experience based on common use in food does not preclude, in addition to information documenting that a substance has a substantial history of consumption for food use by a significant number of consumers, a discussion of relevant data or information that bears on the safety of the substance under its intended conditions of use. Thus, the notice summary may also include a comprehensive discussion of scientific data or information that, in the notifier's view, corroborates the common use GRAS determination. With respect to toxicological studies that are viewed as corroborative, the comprehensive discussion should fully describe the studies, identify the conclusions drawn from such studies, and explain how these conclusions are relevant to the GRAS determination.

As discussed in section I.A of this document, it is the use of a substance, rather than the substance itself, that is eligible for the GRAS exemption. In addition, section 201(s) of the act makes a clear distinction between qualifying for the GRAS exemption through scientific procedures and qualifying for the GRAS exemption through common use in food. Many substances that are GRAS for a specific use through a common use GRAS determination could become the subject of GRAS determinations for additional uses. It is important to note, however, that an evaluation of whether an additional use of a substance that is GRAS through experience based on common use in food is also GRAS requires a scientific procedures GRAS determination when the use in question was not common prior to January 1, 1958.

b. *General availability.* As discussed for notifiers of a scientific procedures GRAS determination, notifiers of a common use GRAS determination should limit citations to published information to those that the notifier discusses and relies on to support a GRAS determination or that are appropriately discussed and explained because they appear to be inconsistent with the GRAS determination.

c. *Unfavorable information.* Proposed § 170.36(c)(3)(ii)(B) requires that the notice summary of a common use GRAS determination include a comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the GRAS determination. The legislative history of the 1958 amendment demonstrates that Congress believed that there was no reason to conduct specific tests to establish the safety of substances commonly used in food because their history of common use established a presumption of such safety (Ref. 1). However, nothing in the legislative history suggests that Congress intended that subsequent reports of adverse effects associated with the use of a substance in food be ignored in the safety evaluation. A notice summary of a common use GRAS determination should also address whether use was/is sufficiently widespread that any substance-related adverse effects would be observed and recorded. Where a substance has been used by a limited population,[6] for a limited period of time, or under circumstances that do not lend themselves to the observation and recording of adverse effects, the lack of reported adverse effects may not be meaningful.

d. *Basis for concluding expert consensus.* Proposed § 170.36(c)(4)(ii)(C) requires that the notice summary of a common use GRAS determination include the basis for concluding, in light of the data and information described in the notice, that there is a consensus among qualified experts and that there is reasonable certainty that the substance is not harmful under the intended conditions of use. Thus, the notice summary must consider the totality of the publicly available and corroborative evidence about the safety of the substance for its intended use, including both favorable information and potentially unfavorable information.

FDA has previously discussed the common knowledge element as it applies to a common use GRAS determination which reads as follows:

> For a substance to be GRAS on the basis of a history of common use in food, there must be a consensus among the community of qualified experts that the use of the substance is safe. For such a consensus to be possible, information about the use of the substance must be generally available. General availability is the result of documentation of the information, usually by publication.

(50 FR 27294 at 27295, July 2, 1985)

In addition, under § 170.30(c)(2), when the common use in food occurred exclusively or primarily outside of the United States, a common use GRAS determination requires that such use be documented by published or other information and be corroborated by information from a second, independent, source that confirms the history and circumstances of use of the substance. Such information must be widely available in the country in which the use occurred and readily accessible to interested qualified experts in the United States.

C. Agency Response

1. Acknowledgment of Receipt

Proposed § 170.36(d) requires that, within 30 days of receipt of a notice, FDA acknowledge receipt of the notice by informing the notifier in writing of the date on which the notice was received. This acknowledgment would serve as a means to establish the date of receipt, which FDA is proposing to couple with certain aspects of the agency response (see discussion of proposed § 170.36 (d), (e), and (f) of this document).

2. 90-Day Response Letter

Under the proposed notification procedure, FDA would not receive the detailed data and information that support a GRAS determination. Therefore, FDA would not be in a position to affirm a notifier's conclusion that a use of a substance is GRAS, and the rulemaking part of the GRAS affirmation process would not be necessary or appropriate. Rather, FDA would evaluate whether the notice provides a sufficient basis for the notifier's GRAS determination. For example, FDA may question the GRAS status of use of a substance if the information provided in a notice: (1) Does not adequately establish technical evidence of safety; (2) is not generally available; (3) does not convince the agency that there is the requisite expert consensus about the safety of the substance for its intended use; or (4) is so poorly presented that the basis for the GRAS determination is not clear. FDA also may be aware of information that is not included in the notice but raises important public health issues that lead the agency to question GRAS status of use of the substance.

FDA believes that this narrow agency evaluation would not have a negative impact on public health because the agency is replacing a voluntary

[5] For example, subsequent to the 1958 amendment, FDA required that food additive petitions be submitted for several substances, such as polysorbates (25 FR 1727, February 27, 1960), even though those substances had been used in food prior to January 1, 1958, because the pre-1958 consumption alone was not sufficient to establish safety (24 FR 11079, December 31, 1959).

[6] An exception is the use of a food substance in a limited population such as infants, where such limited use may be part of a demonstration of the safety of the substance for use by the limited population (e.g., as an ingredient in an infant formula).

administrative process that was developed to provide official recognition of a lawfully made GRAS determination with a different voluntary administrative procedure. From a legal and regulatory perspective, this substitution is neutral.

This narrow evaluation would facilitate FDA's rapid response to the notifier. Accordingly, under proposed § 170.36(e), FDA would respond to the notifier in writing within 90 days of receipt of the notice. In some circumstances, the agency's response would not question the GRAS determination. This response, however, would not be equivalent to an agency affirmation of GRAS status because FDA would neither receive nor review the detailed data and information that support the GRAS determination. In addition, consistent with proposed § 170.36(a)(2), any response from FDA would not constitute compliance with § 101.14(b)(3)(ii) or with the requirements that the agency has proposed (61 FR 36154) for new infant formula submissions.

In other circumstances, the agency's response could include identification of a problem with the notice. However, whether FDA chooses to advise a notifier that the agency has identified a problem with the notice, where the notice raises no important public health issues, is a matter committed to the agency's discretion.

FDA is proposing to respond in writing to a notifier in all circumstances for the following reasons. First, a written response would make clear that the agency's evaluation of a notice has come to closure. Second, as discussed more fully in section X of this document, FDA believes that a written response would facilitate international trade. Third, as discussed more fully in section VI.F of this document, FDA believes that a written response would be a useful element of any file that the agency makes publicly accessible or any inventory that the agency prepares of notices received under proposed § 170.36.

However, under a notification procedure, an agency response is not imperative in those circumstances in which the agency chooses to raise no question about the GRAS status of the intended use of the substance. As discussed in sections I.A and II of this document, a manufacturer may market a substance that the manufacturer determines is GRAS without informing the agency or, if the agency were so informed, while the agency is reviewing that information. Thus, FDA's proposal to respond to a notifier in all circumstances does not alter a notifier's prerogative under the statute to market a GRAS substance. Nonetheless, as an alternative approach, the notification program could be structured so that FDA responds to the notifier only when the agency questions the GRAS status of the intended use of the substance. FDA specifically requests comment on whether the agency should, in all cases, provide a notifier with a letter at the conclusion of the agency's evaluation of a notice. Such comments may result in a modification to proposed § 170.36(e).

FDA has also considered whether the time for the agency's response should be longer than 90 days, and specifically requests comment on whether the proposed 90-day timeframe for an agency response should be lengthened, e.g., to 120 days or 150 days. FDA's proposal to respond within 90 days reflects both a commitment to operational efficiency and a belief that the agency's evaluation of whether a notice provides a sufficient basis for a GRAS determination could likely be accomplished in such a period. However, FDA's expectation that it could respond within 90 days is in part predicated on its estimate, which is discussed more fully in the agency's analysis of the information collection requirements of this document, that the agency would receive approximately 50 notices per year. Accordingly, although comments on the information collection requirements of this document are submitted directly to the Office of Information and Regulatory Affairs, OMB, the agency also requests comment directly to FDA on the number of notices that manufacturers anticipate submitting on an annual basis. Such information may result in a modified timeframe for the agency's response.

3. Subsequent Agency Action

FDA is continuously evaluating the safety of substances in the food supply. In some cases, FDA may consider whether an emerging body of scientific knowledge raises questions about the continued safe use of a food additive or of a substance whose use was listed as GRAS, affirmed as GRAS, or commonly considered to be GRAS by the food industry. Likewise, FDA may consider whether specific information brought to the agency's attention (e.g., through routine correspondence from interested parties or through a citizen petition) raises such safety questions. In most cases, the information that comes to FDA's attention does not demonstrate a health hazard, and the scientific issues are resolved upon consideration by the agency. Thus, the agency does not routinely publicize safety issues that it is considering, or reconsidering, concerning the safety of a substance or class of substances that is used in food unless action by the agency is necessary for public health protection.

Similarly, FDA may direct resources to exploring issues raised by a GRAS notice even though such issues do not, on their face, appear to be significant public health issues. Alternatively, FDA may, at some point after its 90-day response to the notifier, receive additional information about a notified substance that raises questions about the safety of that substance. If, after issuing a 90-day response letter, questions develop for the agency regarding the GRAS status of a use of a substance, FDA may subsequently advise the notifier and other interested parties of those questions.

In such circumstances, FDA ordinarily expects to advise a notifier by letter that the agency has subsequently identified a problem with the notice. As discussed more fully in section VI.F of this document, such a letter would be placed in a publicly accessible file so that other interested parties would become aware of the agency's position. Alternatively, FDA may, in accordance with §§ 170.35(b)(4) and 170.38, publish a notice in the **Federal Register** determining that use of a substance is not GRAS and is a food additive subject to section 409 of the act. Importantly, however, when faced with a public health hazard, the existence of such rulemaking authority would not preclude other agency action, including seizure and injunction, to remove from the market a product that is an unapproved food additive.

As discussed in section VI.A of this document, FDA has recently proposed that a ''new infant formula'' submission required under section 412 (c) and (d) of the act include the basis on which each ingredient is determined to be safe and suitable under the food safety provisions of the act (proposed § 106.120(b)(6)(ii); 61 FR 36154 at 36217). The agency could receive a notice under proposed § 170.36 concerning a GRAS determination for a broad use of a substance in foods and subsequently receive a new infant formula submission that lists the substance as an ingredient in a new infant formula and asserts that the use of the substance in infant formula is GRAS. In such circumstances, FDA could choose to reexamine the notice previously received under proposed § 170.36. If, following such reexamination, the agency questions whether use of the substance in infant formula is GRAS, the agency could so inform the person who submitted the GRAS notice under proposed § 170.36.

D. Appeals

FDA recognizes that in some cases a notifier may disagree with the agency if the notifier receives a response advising that FDA has identified a problem with the notice. FDA has recently reviewed the vehicles, provided in part 10 (21 CFR part 10) of its regulations, that any person or firm may use to appeal an agency employee's decision (61 FR 9181 at 9184, March 7, 1996). Although an agency response to a notice under proposed § 170.36 does not constitute an agency decision on the GRAS status of a substance, FDA is advising that it will consider any of the existing appeals processes that are described below as an appropriate vehicle to engage the agency in cases where a notifier disagrees with a response received under proposed § 170.36.

Under § 10.75, an interested person may request internal agency review of an agency decision made by anyone other than the Commissioner. Such review ordinarily would be by the employee's supervisor, but may move up the management ranks to the Center Director or to the Office of the Commissioner if the issue cannot be resolved, important policy matters are present, or it would be in the public interest. Sections 10.25 and 10.33 permit an interested person to petition the Commissioner to review any administrative action. The regulations also include less formal methods of appeal. For example, under § 10.65, an interested person may correspond or meet with FDA about any matter under FDA's jurisdiction. Finally, any person with concerns about an agency response to a notice received under proposed § 170.36 may contact FDA's Office of the Chief Mediator and Ombudsman (the Ombudsman's Office). The Ombudsman's Office, which reports directly to the Commissioner, works on resolving issues and conflicts that arise in any FDA component. The Ombudsman's staff is available to discuss options, explain FDA's practices and procedures, and suggest approaches for resolution. When appropriate, the staff of the Ombudsman's Office may contact FDA's staff involved in the issue and mediate a dispute.

E. Public Disclosure and Accessibility

1. Public Disclosure

Proposed § 170.36(f)(1) provides that any GRAS exemption claim submitted under proposed § 170.36(c)(1) of this section be immediately available for public disclosure on the date the notice is received. As discussed in section VI.B.1 of this document, any person who makes a GRAS determination is responsible for ensuring that the determination complies with the provisions of § 170.30, regardless of whether that person notifies the agency about the determination. Further, the common knowledge element of a GRAS determination signifies that neither the common or usual name of the substance, the intended use of the substance, nor the basis for the GRAS determination can be confidential.

Proposed § 170.36(f)(1) further provides that all remaining data and information in a notice be available for public disclosure, in accordance with part 20 (21 CFR part 20), on the date the notice is received. The common knowledge element of a GRAS determination signifies that neither the detailed information about the identity of the substance nor the information needed to establish technical evidence of safety can be confidential. Therefore, FDA assumes that a notice will not contain any information that is protected from public disclosure. Moreover, because a GRAS substance may be marketed without prior approval, FDA assumes that, in most cases, submission of a notice will not reflect the notifier's plans about the timing of commercialization, which is arguably confidential commercial information (§ 20.61(b)).

A notifier who considers that certain information in a submission should not be available for public disclosure should identify as confidential the relevant portions of the submission for FDA consideration. FDA will review the identified information, determine whether that information is exempt from public disclosure under part 20, and release or protect the information in accordance with that determination. FDA advises that, in most cases, the agency is likely to determine that all information submitted to support a GRAS determination is available for public disclosure.

2. Public Accessibility

The food industry's basic need to know whether a food substance is in compliance with applicable provisions of the act originally persuaded the agency to clarify the regulatory status of a multitude of food substances by publishing the GRAS list. Under this proposal, the current GRAS list (i.e., current part 182) and the regulations listing uses of a substance that FDA has affirmed as GRAS (i.e., current parts 184 and 186 (21 CFR parts 184 and 186)) would remain in the agency's codified regulations. In addition, FDA is retaining the process whereby the agency may, on its initiative, review the GRAS status of a substance and, if appropriate, establish a regulation in part 184 or part 186 affirming such use as GRAS. However, if this proposal becomes final, the existing process whereby an interested person may petition FDA to affirm the GRAS status of use of a substance and list such affirmed uses in part 184 or part 186 would be eliminated.

FDA believes that there would be considerable interest, from a broad segment of the public, including members of the regulated industry, other Federal, State, and local government agencies, international government agencies, and public interest groups, in notices received under proposed § 170.36. Such groups likely would want to know whether FDA is aware that a substance is being used in food on the basis of the GRAS exemption and whether FDA has advised the notifier that it has identified a problem with the notice. Therefore, FDA is proposing to establish a procedure whereby all members of the public could readily access such information. Moreover, such a procedure would be in keeping with the agency's goals in meeting the Reinventing Food Regulations.

All GRAS petitions are currently on public display at the Dockets Management Branch (DMB) because the petition process includes informal rulemaking and DMB is the usual repository for information that is publicly available during informal rulemaking. However, FDA sees no need to place the entire GRAS notice on public display at DMB because, under the proposed notification procedure, the agency will no longer be engaged in rulemaking. Moreover, a process of maintaining a copy of all notices at DMB would require that an additional copy be submitted and that an administrative copy be maintained at two locations (i.e., CFSAN as well as DMB). Such a process would be administratively inefficient.

Nonetheless, FDA has considered the best way to make the information from the proposed notification procedure readily accessible to the public. FDA has tentatively concluded that making both the GRAS exemption claim provided under proposed § 170.36(c)(1) and all letters issued by the agency relevant to each claim easily accessible to the public is the most direct and administratively efficient way of meeting the needs of the public. Accordingly, under proposed § 170.36(f)(2), the following information would be readily accessible for public review and copying: (1) A copy of all GRAS exemption claims received under proposed § 170.36(c)(1); (2) a copy of all

letters issued by the agency under proposed § 170.36(e); and (3) a copy of any subsequent letter issued by the agency.

FDA considered whether the agency should only make a GRAS exemption claim readily accessible if the agency has not advised a notifier that it has identified a problem with the notice. The agency decided to make all claims and responses readily accessible because such a system will properly underscore the notifier's acceptance of responsibility for the determination. Proposed § 170.36(f)(2) makes explicit to notifiers that their notice to the agency about a GRAS determination is a public claim.

Initially, FDA intends to prepare a file containing the information specified by proposed § 170.36(f)(2) and to place that file on public display at DMB. FDA is planning this approach because DMB is a common repository for publicly available files. Alternatively, FDA could make the file accessible for inspection at the agency's Freedom of Information Office or, in keeping with the current procedures for public inspection of the information FDA considered and relied on to reach a decision on an FAP, at CFSAN. Although FDA has tentatively concluded that it would be best to provide for public accessibility at DMB because the public is already accustomed to obtaining information relating to GRAS substances at that location, the agency requests comment on this matter.

FDA is not proposing to codify how or where the information prescribed by proposed § 170.36(f)(2) would be made accessible because any mechanism that appears in the agency's regulations will bind the agency to its provisions. In keeping with the agency's goals in meeting the Reinventing Food Regulations, FDA wishes to maintain flexibility to improve the process for public accessibility, particularly as the agency gains experience with electronic modes of information dissemination. FDA is aware that the public review of hard copy (i.e., paper) files in a public reading room may become obsolete as electronic technology for public dissemination of information advances.

FDA requests comment on whether proposed § 170.36(f)(2) is an effective and efficient means to provide the public with ready access to information from the proposed notification procedure.

F. Inventory

Proposed § 170.36(f)(2) would not require that FDA maintain an inventory of the information retained in the publicly accessible file. Consequently, such an inventory would be a new record within the meaning of § 20.24 and FDA would not be required to prepare such an inventory in response to a FOIA request. However, FDA recognizes the utility and importance of an inventory of notices received under proposed § 170.36 and of the agency's response to those notices, particularly for persons without ready access to the agency's DMB. FDA also recognizes that many members of the public would prefer to access basic information relevant to GRAS notices in a streamlined format. FDA further recognizes that the agency itself can most efficiently carry out its own responsibilities (e.g., with respect to monitoring imports of food products) by having basic information relevant to GRAS notices available in such a format.

Therefore, FDA intends to maintain an inventory of notices received, the agency's response, and any subsequent relevant agency correspondence. Such an inventory would be an administratively efficient mechanism of accounting for the information residing in the publicly accessible file. Such an inventory also would complement the current agency regulations tabulating substances that are listed (part 182) or affirmed (parts 184 and 186) as GRAS.

FDA has tentatively concluded that any inventory of notices received should be an adjunct to proposed § 170.36(f)(2), rather than the sole means of distributing the information available from the notification procedure, because the agency could place the GRAS exemption claims and the letters issued by the agency in the publicly accessible file faster than it could amend an inventory. However, FDA is not proposing to codify the inventory as an adjunct to proposed § 170.36(f)(2) because such an inventory would require continuous amendment and the administrative procedures required to amend a codified inventory would be too cumbersome to meet the needs of the public and the agency efficiently.

FDA is also not proposing to mention the availability of the inventory in its codified regulations. In keeping with the agency's goals in meeting Reinventing Food Regulations, FDA believes that refraining from codifying any aspect of the inventory will provide the agency with maximum flexibility to improve the process by which the inventory is updated and maintained.

Initially, FDA intends that such an inventory would be publicly accessible in any file maintained in accordance with proposed § 170.36(f)(2), e.g., at DMB. FDA could also make such an inventory available through prevailing publicly accessible electronic modes, such as the agency's home page on the contemporary World Wide Web. FDA requests comment on making any inventory prepared by the agency available through such electronic modes.

VII. Effect of the Proposed Notification Procedure on Existing GRAS Petitions

Under the current GRAS affirmation process, the agency conducts a preliminary examination of the data and information submitted in the petition. If FDA finds that the submitted information conforms to the requirements established under §§ 170.30 and 170.35, FDA makes an administrative decision to file the petition and publishes a notice in the **Federal Register** to that effect.

At this time, approximately 60 filed GRAS affirmation petitions are pending at FDA. These petitions were filed with the agency under an administrative process that the agency is proposing to remove. Therefore, if this proposal becomes final, the administrative process that FDA would use to bring these petitions to closure will no longer be operative. Moreover, FDA is proposing to eliminate the GRAS affirmation process in order to increase effectiveness and efficiency. The continued commitment of agency resources to complete the GRAS petition process for pending petitions would be contrary to one of the agency's goals in this rulemaking.

FDA recognizes that persons who have a pending GRAS affirmation petition have invested time and resources in those petitions. Therefore, proposed § 170.36(g)(1) stipulates that any GRAS affirmation petition filed under § 170.35 prior to the date that a final rule based on this proposal becomes effective, and still pending as of such effective date, will be presumptively converted to a GRAS notice under proposed § 170.36. This conversion will allow the agency to bring filed GRAS affirmation petitions to closure, albeit under a different process than the one to which they were submitted.

However, the proposed notification procedure has certain requirements that have no specific counterpart in the petition process. In particular, under the notification procedure a notifier explicitly accepts full responsibility for the GRAS determination by signing a GRAS exemption claim (under proposed § 170.36(c)(1)). In contrast, under the petition process a petitioner requests that FDA attest to a GRAS determination. Thus, FDA cannot assume that all persons who submitted

a GRAS petition would in fact be willing to accept full responsibility for the determination.

Moreover, the GRAS exemption claim in proposed § 170.36(c)(1) would be a complete and separate section of a GRAS notice that could stand alone and would contain basic information in a consistent format. As discussed, under proposed § 170.36(f)(2) the agency would use the GRAS exemption claim to effectively and efficiently inform the public about received notices. Thus, logic compels that a GRAS exemption claim filed under proposed § 170.36(g) include all elements of the claim required under proposed § 170.36(c)(1), rather than only those elements that have no counterpart in the GRAS affirmation petition process.

Accordingly, proposed § 170.36(g)(2) provides that any person who submitted a GRAS affirmation petition that is converted to a notice under the provisions of proposed § 170.36(g)(1) may amend such converted petition to satisfy the requirements of proposed § 170.36 by submitting to the agency a claim, dated and signed by the notifier (i.e., the former petitioner), that a particular use of a substance is exempt from the premarket approval requirements of the act because the notifier has determined that such use is GRAS. Proposed § 170.36 (g)(2)(i) through (g)(2)(vi) describe the format of the GRAS exemption claim that would amend a converted GRAS affirmation petition to satisfy the requirements of a notice under proposed § 170.36. This claim format is similar to that required under proposed § 170.36(c)(1) but has been modified in two particulars (i.e., proposed § 170.36 (g)(2)(ii) and (g)(2)(vi)) to take into account the fact that the data and information to support the GRAS determination have already been submitted to the agency in the applicable GRAS petition.

Proposed § 170.36(g)(2)(i) requires that the GRAS exemption claim include the name and address of the notifier. As with proposed § 170.36(c)(1)(i), this is necessary for full identification of the person who accepts responsibility for the claim. This also is necessary so that the agency can administer the amendment to the converted petition according to the provisions of proposed § 170.36 (d) and (e) (see proposed § 170.36(g)(3)(i)).

Proposed § 170.36(g)(2)(ii) requires that the GRAS exemption claim include the applicable GRAS affirmation petition number. The petition number is the simplest way to identify the converted petition that is being amended.

Proposed § 170.36(g)(2)(iii) requires that the GRAS exemption claim include the common or usual name of the substance that was the subject of the converted GRAS affirmation petition (i.e., the notified substance). As with proposed § 170.36(c)(1)(ii), this is necessary to identify the notified substance as well as to identify whether there are any labeling issues that need to be addressed. FDA is satisfied that detailed identity information, such as that described in proposed § 170.36(c)(2), will be present in the referenced petition because, under current § 170.35(c)(1)(i), FDA requires that a GRAS petition contain such information as a prerequisite to filing the petition.

Proposed § 170.36(g)(2)(iv) requires that the GRAS exemption claim include the applicable conditions of use that are supported by data and information in the referenced GRAS petition, including the foods in which the notified substance is to be used, levels of use in such foods, and the purposes for which the notified substance is used, including, when appropriate, a description of the population expected to consume the substance. As with proposed § 170.36(c)(1)(iii), this information describing the conditions of use is necessary to delineate the boundaries of the GRAS exemption claim consistent with section 201(s) of the act, which states that a GRAS substance must be generally recognized as safe ''under the conditions of its intended use.'' Importantly, a petitioner who amends a converted GRAS affirmation petition to satisfy the requirements of a notice may do so only for the intended use that was the subject of the GRAS affirmation petition. Any additional use(s) would be the subject of a separate notice under proposed § 170.36(c).

Proposed § 170.36(g)(2)(v) requires that the GRAS exemption claim identify the basis for the GRAS determination as scientific procedures or experience based on common use in food. As discussed in section I.B.4 of this document, under § 170.30, the requirements for a scientific procedures GRAS determination are different from those for a common use GRAS determination. The basis for a GRAS determination is thus fundamental to the GRAS exemption claim.

Proposed § 170.36(g)(2)(vi) requires that the GRAS exemption claim include either a statement that the complete record that supports the GRAS determination has already been submitted to the agency in the relevant GRAS petition (proposed § 170.36(g)(2)(vi)(A)) or a statement that all data and information that are the basis for the GRAS determination are available for FDA review and copying or will be sent to FDA upon request (proposed § 170.36(g)(2)(vi)(B)). Proposed § 170.36(g)(2)(vi) takes into account the fact that, in many cases, a petitioner has already submitted the complete record that supports the GRAS determination. Alternatively, proposed § 170.36(g)(2)(vi) provides to the person who submitted a GRAS petition the option of agreeing to provide upon request any additional information that supports the GRAS determination but was not included in the GRAS petition. As discussed with respect to proposed § 170.36(c)(1)(v), FDA might conduct random audits of such data and information or conduct an audit on a broad issue or class of products if the issue or use of a class of products raises important public health issues.

FDA requests comment on proposed § 170.36(g) as a mechanism for administering pending GRAS affirmation petitions if the proposed notification procedure becomes final. Proposed § 170.36(g) would not preclude any person who had a filed GRAS petition prior to the effective date of a final GRAS notification rule from submitting a notice of a claim for exemption according to the provisions of proposed § 170.36(c) or from submitting an FAP under § 171.1 and requesting that FDA cross reference the information contained in the filed GRAS petition in accordance with § 171.1(b).

VIII. Interim Policy

Between the time of publication of this proposal and any final rule based on this proposal, FDA invites interested persons who determine that a use of a substance is GRAS to notify FDA of such GRAS determinations as described in proposed § 170.36 (b) and (c). In general, the agency would administer the notices as described in proposed § 170.36 (d) through (f) (i.e., FDA would acknowledge receipt of the notice, respond in writing to the notifier, and make publicly accessible a copy of all GRAS exemption claims and the agency's response). However, although FDA would make a good faith effort to respond within the proposed 90-day timeframe, the agency would not be bound by such a timeframe. FDA will determine whether its experience in administering such notices suggests modifications to the proposed procedure.

FDA realizes that some individuals who have a filed GRAS affirmation petition pending at the agency may be interested in converting such petition to a notice under proposed § 170.36(g) or

in submitting a complete notice for the petitioned use under proposed § 170.36 (b) and (c). FDA invites such petitioners to submit an amendment in accordance with proposed § 170.36(g)(2) or to submit a complete notice for the petitioned use in accordance with proposed § 170.36 (b) and (c). FDA would administer such notice or amendment as described in proposed § 170.36 (d) through (f). However, during the interim period FDA would not continue to commit resources to review of a GRAS affirmation petition if the agency receives an amendment in accordance with proposed § 170.36(g)(2) or receives a complete notice concerning the petitioned use.

FDA will consult upon request with interested persons who seek additional guidance in preparing a notice because such consultation may identify sections of the proposed procedure that may require clarification in any final rule based on the proposal.

IX. Conforming Amendments

This proposal would eliminate the GRAS petition process set out in § 170.35(c). Therefore, FDA is proposing conforming amendments to revise current §§ 184.1(b)(1) and 186.1(b)(1) by removing the last sentence of each paragraph. These sentences provide that persons seeking FDA approval of an independent determination that a use of a food substance is GRAS may submit a petition in accordance with § 170.35.

Consistent with the proposed elimination of the GRAS petition process set out in § 170.35(c), FDA is also proposing a conforming amendment to revise current § 170.38(a) to: (1) Remove the provision that the Commissioner may, in accordance with § 170.35(c)(5), publish a notice in the **Federal Register** determining that a substance is not GRAS and is a food additive subject to section 409 of the act and (2) retain the provision in § 170.38(a) that the Commissioner may, in accordance with § 170.35(b)(4) (i.e., on his/her own initiative), publish such a notice in the **Federal Register**. Importantly, however, when faced with a public health hazard, the existence of such rulemaking authority would not preclude other agency action, including seizure and injunction, to remove from the market a product that is an unapproved food additive.

X. International Harmonization

FDA is committed to international harmonization of regulatory requirements and guidelines that preserve and enhance the agency's ability to accomplish its public health mission, enhance regulatory effectiveness by providing more consumer protection with scarce government resources, and increase worldwide access to safe and high quality food products (60 FR 53078, October 11, 1995). FDA is not aware of a provision in the laws of any other country that is equivalent to the GRAS exemption. On the other hand, the laws of other countries provide exemptions (e.g., for ''natural'' products) that have no equivalent under the act. Thus, the international community is already accustomed to operating in accordance with a variety of regulatory approaches for substances added to food. FDA's proposed substitution of a GRAS notification procedure for the current GRAS petition process would not impose any new requirements that would affect imported food products.

Under the current petition process, FDA makes a public announcement that a petition has been filed and incorporates an affirmed use of a substance into a codified list. Under the proposed notification procedure, FDA would make readily accessible to the public, including international agencies and firms, the notice's ''GRAS exemption claim,'' which would include a succinct description of the notified substance, the applicable conditions of use, and the basis for the GRAS determination (i.e., through scientific procedures or through experience based on common use in food). FDA would also make readily accessible to the public the agency's response to the notice. Further, under the act, a variety of substances that must be declared on the food label are exempt from premarket approval on the basis of the GRAS exemption and are not included on any government list or inventory of substances that are used lawfully in the U.S. food supply. Operation of either the petition process or the proposed notification procedure does not change that fact.

FDA recognizes that interested persons may want to know the official regulatory status of a food substance in the United States prior to using that substance in foods that will enter international commerce. FDA also recognizes that the proposed agency response to a GRAS notice may have less weight in the international community than the agency's affirmation of GRAS status. However, as a practical matter, FDA has announced only approximately 30 GRAS affirmations in the 10 years preceding this proposed rule. This small number of GRAS affirmations has a minimal impact on considerations of international trade.

For these reasons, FDA does not anticipate that the proposed substitution of a GRAS notification procedure for the GRAS petition process will have any impact on international trade. Nevertheless, the agency invites comment on this matter from the international community and from firms who import food products into the United States or who export U.S. made food products.

XI. Food Substances Used in Animal Feed

FDA's regulations regarding the eligibility of substances used in animal food or feeds for classification as GRAS, and the procedures for affirmation of GRAS status for such substances, are codified at §§ 570.30 and 570.35, respectively. The requirements described in these regulations are parallel to the requirements for GRAS substances that are used in human food, although some requirements of § 170.30 have no corresponding requirement in § 570.30. As an example relevant to this rulemaking, the requirements of § 570.30(c) are identical to the requirements of § 170.30(c)(1), but § 570.30(c) has not been amended to describe the requirements for a common use GRAS determination based on history of use when that history of use occurred primarily or exclusively outside the United States. In addition, the agency's GRAS review did not extend to the use of food substances in animal food or feeds. Thus, § 570.30 does not contain provisions analogous to § 170.30 (e) and (f).

The general provisions in subpart A of part 184 were issued under the auspices of the agency's comprehensive review of GRAS substances. Because this agency review did not extend to the use of food substances in animal food or feeds, the agency did not issue a corresponding subpart A in part 584 (21 CFR part 584). Therefore, any proposed rule to modify §§ 570.30 and 570.35 would require no conforming amendments in part 584.

FDA is also proposing to amend the provisions of § 570.30 that are parallel to the provisions of current § 170.30 (i.e., § 570.30 (a) and (b)) because §§ 170.30 and 570.30 implement the same statutory provisions. Therefore, it is important for the agency's standards concerning GRAS substances to be consistent with respect to substances used in human food and substances used in animal food or feeds.

FDA is also proposing to eliminate the GRAS affirmation petition process provided for in § 570.35 (a) and (c) because the corresponding process for substances used in human food is being eliminated. Although the GRAS

affirmation process has rarely been employed for substances used in animal food or feeds, FDA believes that it is appropriate to provide the option of a GRAS notification procedure for animal food or feeds that would be parallel to proposed § 170.36. Therefore, in proposed § 570.36 the agency is proposing a GRAS notification procedure for substances used in animal food or feeds. Finally, FDA is proposing to revise current § 570.38(a) as a conforming amendment required by removing the current GRAS affirmation petition process for substances used in animal food or feeds.

With regard to the notification procedure, FDA's proposal for substances that would be used in animal food or feeds is for practical purposes identical to FDA's proposal for substances that would be used in human food. As discussed in more detail throughout this document, FDA is specifically requesting comment on the following issues concerning the proposed regulations for substances that would be used in human food: (1) Whether it would be appropriate to require or recommend that the submission include an electronic copy, in addition to three paper copies, of some or all of the notice; (2) the proposed requirement that, in all cases, FDA respond to the notifier; (3) whether the agency should be permitted more than 90 days to respond to a GRAS notice; (4) the number of notices that notifiers anticipate submitting on an annual basis; (5) the agency's proposal to provide the public with ready access to information from the proposed notification procedure and the location for such information; (6) whether any inventory prepared by the agency should be available through electronic modes; (7) its proposal for administering pending GRAS affirmation petitions if the proposed notification procedure becomes final; and (8) whether the proposed substitution of a GRAS notification procedure for the GRAS petition process would have any impact on international trade. FDA specifically requests comments on these same issues for the proposed regulations concerning substances that would be used in animal foods or feed.

In the case of substances that would be used in animal feed, FDA is particularly concerned about the practical implications of a 90-day response period, because, to date, the agency has received fewer than 10 GRAS affirmation petitions for substances that would be used solely in animal food or feed. Should the number of notices received under a GRAS notification program exceed more than a few notices per year, agency resources devoted to the animal feed program likely would be insufficient to evaluate, within the proposed 90-day timeframe, whether the notice provides a sufficient basis for a GRAS determination. Thus, comments to the proposal may justify that the agency adopt, in a final rule, a longer timeframe for notifications concerning substances used in animal feed.

The agency recognizes that notifiers may have questions concerning the common or usual name for a substance that would be used in animal feeds. FDA advises that, in such circumstances, a notifier should consult with the Division of Animal Feeds in FDA's Center for Veterinary Medicine.

XII. Summary of the Proposal

FDA is proposing to clarify current § 170.30 regarding the eligibility of the use of a substance for exemption from the act's premarket approval requirements based on a GRAS determination. Specifically, FDA is proposing to amend current § 170.30(a) to clarify that general recognition of safety requires that there be common knowledge among the qualified expert community that there is reasonable certainty that the substance is not harmful under the intended conditions of use. This amendment would also clarify that a GRAS substance is neither more safe nor less safe than an approved food additive, and that the distinction between a GRAS substance and an approved food additive is in the common knowledge of, and expert consensus about, that safety.

In addition, FDA is proposing two changes to current § 170.30(b). First, FDA is proposing to clarify the types of technical evidence of safety that ordinarily would constitute common knowledge about a substance that is GRAS through scientific procedures. FDA is proposing this change because the quantity and quality of scientific evidence required to obtain approval of a substance as a food additive vary considerably depending upon the estimated dietary exposure to the substance and the chemical, physical, and physiological properties of the substance. Second, FDA is proposing to clarify the role of publication in satisfying the common knowledge element of the GRAS standard because publication is ordinarily required, but may not always be sufficient, to satisfy this element. For consistency with these proposed amendments, FDA is also proposing to amend the definition of ''scientific procedures'' in § 170.3(h).

In keeping with the Reinventing Food Regulations, FDA is proposing to replace the current voluntary GRAS affirmation process with a voluntary procedure whereby any person may notify FDA of a GRAS determination. The notice would include a ''GRAS exemption claim,'' dated and signed by the notifier, that would provide, in a consistent format, specific information about a GRAS determination. This claim would include a succinct description of the notified substance, the applicable conditions of use, and the basis for the GRAS determination. The GRAS exemption claim would also include a statement that the information supporting the GRAS determination was available for FDA review and copying or would be sent to FDA upon request. In addition to the GRAS exemption claim, the notice would include detailed information about the identity of the notified substance and a detailed discussion of the basis for the notifier's GRAS determination.

FDA would evaluate whether the notice provides a sufficient basis for a GRAS determination and whether information in the notice or otherwise available to FDA raises issues that lead the agency to question whether use of the substance is GRAS. Within 90 days from the date of receipt of the notice, FDA would respond to the notifier in writing and could advise the notifier that the agency has identified a problem with the notice. A response that does not advise that the agency has identified a problem with the notice would not be equivalent to an affirmation of GRAS status by the agency.

For each notice received, FDA would make readily accessible to the public the GRAS exemption claim and the agency's response. Although FDA would maintain a readily accessible inventory of notices received and the agency's response to them, this inventory would be neither codified nor referenced in the agency's regulations.

Under the proposal, all GRAS affirmation petitions that were filed by FDA under § 170.35 prior to the effective date of a GRAS notification final rule and still pending as of that date would be presumptively converted to a notice on that date. Any person who had submitted a GRAS affirmation petition that is converted to a notice could: (1) Amend such converted petition to satisfy the requirements of the notification procedure by submitting to the agency a modified GRAS exemption claim; (2) submit an FAP for the substance and request that FDA cross reference the information in the GRAS affirmation petition; or (3) submit a complete notice in accordance with the notification procedure.

FDA's regulations in part 570 concerning GRAS substances for use in animal food or feeds implement the same statutory provisions as the regulations in part 170 concerning GRAS substances for use in human food. Accordingly, FDA is proposing: (1) To amend the provisions of § 570.30 that are parallel to the provisions of current § 170.30 (*i.e.*, § 570.30(a) and (b)); (2) to eliminate the GRAS affirmation petition process provided for in § 570.35(a) and (c); and (3) to provide the option of a GRAS notification procedure for substances used in animal food or feeds that would be parallel to proposed § 170.36.

FDA is also proposing several amendments to parts 170, 184, 186, and 570 of its regulations as conforming amendments.

XIII. Paperwork Reduction

This proposed rule contains information that is subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Therefore, in accordance with 44 U.S.C. 3506(c)(2)(B) and 5 CFR part 1320, FDA is providing below the title, description, and respondent descriptions for the information collections contained in this proposal, along with an estimate of the resulting annual information collection burden. Included in the estimate is the time needed to review instructions, to gather the required information, and to disclose the information.

FDA invites comments on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, where appropriate, or other forms of information technology.

Title: Notice of a Claim for GRAS Exemption Based on a GRAS Determination

Description: Section 409 of the act establishes a premarket approval requirement for ''food additives;'' section 201(s) of that act provides an exemption from the definition of ''food additive'' and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the FOIA and other Federal disclosure statutes.

Description of Respondents: Manufacturers of Substances Used in Food and Feed

FDA estimates the total annual burden for this information collection to be 9,900 hours.

ESTIMATED ANNUAL REPORT BURDEN

21 CFR	Number of respondents	Annual frequency per response	Total annual response	Hours per response	Total hours
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500

There are no operating or maintenance costs or capital costs associated with this collection.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR	Number of record-keepers	Annual frequency of record-keeping	Total annual records	Hours per record-keeper	Total hours
170.36(c)(v)	50	1	50	15	750
570.36(c)(v)	10	1	10	15	150

There are no operating or maintenance costs or capital costs associated with this collection.

FDA tentatively concludes that there are no anticipated capital costs or operating and maintenance costs associated with the proposed information collection requirements. However, the agency welcomes comments on any such anticipated costs.

The agency has submitted copies of the proposed rule to OMB for review of the portions of the proposal that are subject to the Paperwork Reduction Act of 1995. Interested persons are requested to send comments regarding information collection by May 19, 1997 to the Office of Information and Regulatory Affairs, OMB (address above).

XIV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant economic impact on a

substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities.

FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866, and finds under the Regulatory Flexibility Act that this proposed rule will not have a significant impact on a substantial number of small entities. Finally, FDA, in conjunction with the Administrator of OMB, finds that this proposed rule is not a major rule for the purpose of congressional review (Pub. L. 104–121).

A. Regulatory Options

FDA has the following primary options:

(1) Take no action;

(2) Adopt proposed GRAS notification procedure;

(3) Adopt a GRAS notification procedure allowing FDA feedback on independent GRAS determinations of either a higher or lower level of authoritativeness than the proposed notification system; and

(4) Eliminate agency participation in independent GRAS determinations.

B. Costs and Benefits

1. Option One: Take No Action

Neither costs nor benefits are associated with taking no action. This option is the baseline case in comparison with which the costs and benefits of the other options are determined.

The existing GRAS petition process is a government service provided to industry by which firms may voluntarily submit information to FDA for agency review and affirmation of the GRAS status of the use of a substance in food. Although FDA does not charge a fee to review material submitted under the GRAS petition process, participation in that process is not without cost because the required information must either be generated or gathered, and submitted to FDA. The fact that some firms participate in this voluntary process implies that for some firms, the benefit of participation must be greater than the cost of participation, and also that the net benefit of participation must be greater than the net benefit of existing alternatives, such as private third-party review of independent GRAS determinations. However, the fact that the cost of participation does not reflect the costs involved in actually administering the GRAS petition process means that participation in that process cannot support inferences regarding the net social benefits of the petition process.

The benefit firms receive from participation in the existing GRAS petition process appears to involve a reduction in the cost of marketing foods containing substances independently determined to be GRAS because FDA affirmation of GRAS status would likely facilitate marketing of such substances. Manufacturers of these foods and retail establishments buying these foods for subsequent resale to consumers may be reluctant to offer them for sale in the absence of assurance that FDA will not subsequently conclude that ingredients independently determined to be GRAS are unapproved food additives. If these substances were subsequently found not to be GRAS, any ensuing seizure of foods containing the unapproved food additive might damage the credibility of those manufacturers and retail establishments, and might lead to economic losses. If there were no process for agency GRAS affirmation, firms making independent GRAS determinations may attempt to substitute for GRAS affirmations by doing additional research, contracting with third party research organizations, or taking other steps to provide adequate assurances to other firms that FDA will probably not subsequently challenge their independent GRAS determinations.

In addition to providing a desired good or service, the GRAS petition process may result in some benefit in terms of reducing the health risks from substances independently determined to be GRAS if FDA review of the information supporting independent GRAS determinations uncovers an erroneous determination which, if undetected, could lead to health risks.

2. Option Two: Adopt Proposed GRAS Notification Procedure

The chief benefit of eliminating the existing GRAS petition process and replacing it with the proposed GRAS notification procedure is that the notification procedure will enable industry to obtain a limited degree of FDA feedback on independent GRAS determinations more quickly and at lower cost, to both industry and FDA, than the GRAS petition process. Under the proposed notification procedure, FDA will determine whether the notice provides a sufficient basis for a GRAS determination or whether information in the notice, or otherwise available to FDA, raises issues that lead the agency to question whether use of the substance is GRAS.

The proposed notification procedure will come to closure more quickly and generate less uncertainty than the GRAS petition process because the notification procedure is based on a 90-day review period rather than on the open-ended review period of the GRAS petition process. In some cases, the GRAS petition process involves a number of iterative steps in which FDA asks for and receives additional supporting information. Under the notification procedure, FDA will base its response on the notifier's initial submission.

In addition to the time advantage, the cost of participation in the proposed notification procedure will probably be less than the cost of participation in the GRAS petition process because the notification procedure will require the submission of only a summary of the information used to support the independent GRAS determination, rather than the full supporting information required under the GRAS petition process. For example, the notification procedure will not require the submission of references or material relating to methods of detection in foods, which are required under the GRAS petition process. Submissions under the notification procedure will probably be about 25 to 30 pages, while submissions under the current GRAS petition process can have hundreds or even thousands of pages.

On the other hand, the same underlying information will be required under the notification procedure as under the GRAS petition process, so the potential cost savings will be confined to the relatively modest costs of assembling, copying, and mailing information. The more significant cost of generating or locating the requisite underlying information will not be affected. In addition, the summary required under the proposed notification procedure may fairly be viewed as a step beyond simply providing the supporting information as required under the GRAS petition process. Therefore, although participation in the proposed notification procedure will probably be somewhat less costly than participation in the GRAS petition process, the cost reduction is likely to be relatively modest.

The primary cost of replacing the existing GRAS petition process with the proposed notification procedure is that it reduces the options available to industry for obtaining FDA feedback on independent GRAS determinations at a level of authoritativeness comparable to that currently offered under the GRAS petition process. Currently, feedback at this level of authoritativeness is available through both the GRAS petition process and the FAP process. The fact that FDA receives both GRAS petitions and FAP's suggests that some

firms find participation in the GRAS petition process less costly than participation in the FAP process. However, this difference in cost is probably relatively modest because the systems are quite similar. For example, substances that are GRAS may be marketed without prior agency approval and thus may be marketed during the period in which either a GRAS petition or an FAP on that substance is under review.

The net benefit or cost of the proposed notification procedure will depend largely on whether the value of participation in the proposed notification procedure is or is not comparable to that of participation in the GRAS petition process. If the value of participation in the two systems is roughly comparable, then the time and cost advantages of the proposed notification procedure will probably lead to modest net benefits. However, if participation in the proposed notification procedure is significantly less valuable than participation in the GRAS petition process because of the lower level of authoritativeness of FDA feedback available through the notification procedure, then the proposed procedure could lead to net costs because firms may submit relatively more costly FAP's or take other steps to compensate for the lack of more authoritative FDA feedback on independent GRAS determinations.

3. Option Three: Adopt a GRAS Notification Procedure Allowing FDA Feedback on Independent GRAS Determinations of Either a Higher or Lower Level of Authoritativeness Than the Proposed Notification System

The benefits and costs of replacing the existing GRAS petition process with notification procedures allowing FDA feedback on independent GRAS determinations at either higher or lower levels of authoritativeness than the proposed notification procedure are qualitatively similar to the benefits and costs of adopting the proposed notification procedure.

The net benefits or costs of notification procedures allowing more or less authoritative FDA feedback depend largely on the cost of participation in those systems and the value of the feedback provided to participating firms under those systems. The value of FDA feedback to participating firms involves the degree to which that feedback facilitates the marketing of substances that have been subject to independent GRAS determinations. A system providing more authoritative feedback than the proposed GRAS notification procedure would either require submission of more information or more detailed information, or would involve more detailed agency review of the same amount of information. Thus, participation in such a system would arguably provide more valuable feedback than participation in the proposed notification procedure but would also be more costly than participation in the proposed notification procedure. A system providing less authoritative feedback than the proposed GRAS notification procedure would either require submission of less information or less detailed information, or would involve less detailed agency review of the same amount of information. Thus, participation in such a system would arguably provide less valuable feedback than participation in the proposed notification procedure but would probably also be less costly than participation in the proposed notification procedure.

In both cases, it is difficult to determine whether the resulting changes in the value of FDA feedback available through the notification procedure would compensate firms for the resulting changes in the cost of participation in such procedures, or to compare the net social benefits of offering such procedures with the net benefits of the existing GRAS petition process.

4. Option Four: Eliminate Agency Participation in Independent GRAS Determinations

The costs and benefits of this option are qualitatively similar to those of adopting a notification procedure allowing FDA feedback of only a minimal level of authoritativeness. In general, the same results will occur if the value of participation in a notification procedure drops below the costs involved in participation, or if a notification procedure is not available. In both cases, industry will either submit relatively costly FAP's or take other steps to compensate for the lack of a GRAS notification procedure or petition process, or simply forgo government oversight of their independent GRAS determinations.

If FDA no longer participates in independent GRAS determinations, FDA will not be aware of substances that have been the subject of independent GRAS determinations unless firms choose to submit FAP's for those substances. Any public health benefits associated with FDA awareness of these substances will be lost. However, if firms take other steps to confirm independent GRAS determinations, then these other steps will be associated with countervailing public health benefits.

Again, it is difficult to determine whether this option would result in net social costs or benefits because of the difficulty of estimating the value of various levels of FDA and non FDA feedback on independent GRAS determinations. However, the distinctive role of FDA in GRAS issues suggests that FDA feedback may be more valuable to industry than other, equally costly, activity designed to confirm independent GRAS determinations. Therefore, it is likely that the availability of some type of notification procedure will lead to greater net benefits than no notification procedure.

C. Regulatory Flexibility Analysis

The proposed action will affect any firm that may have chosen to participate in the existing GRAS petition process or may choose to participate in the proposed GRAS notification process, including manufacturers of both human and animal food, food additives, and feed additives. The Dun's Market Identifiers database lists 27,989 firms in Standard Industry Code (SIC) 20, Food and Kindred Products. This includes dog and cat food, and prepared feeds not elsewhere classified. In addition, this database lists 113 firms in SIC 2869, Industrial Organic Chemicals, Not Elsewhere Classified, the SIC code that includes manufacturers of food additives. Therefore, a total of 28,102 firms will potentially be affected by this proposed rule.

The Small Business Administration (SBA) guidelines on the definition of a small business for SIC 20 identify a small business as being a business having no more than 1,000, 750, or 500 employees, depending on the more precise four-digit SIC code associated with the firm in question. However, there is no easy way to distribute the total number of firms in SIC 20 into the appropriate four-digit SIC categories because more than one primary four-digit SIC code may be associated with any given firm. To avoid missing any small firms, the least restrictive size definition of 1,000 or fewer employees was used for all firms. The SBA definition of a small business in SIC 2869 is a business with 1,000 or fewer employees. Based on these definitions, and assuming that the distribution of employment for firms for which no employee data are available is the same as the distribution for firms for which data are available, a total of 27,531 firms could potentially be affected by this proposed rule.

Although this proposal may affect a substantial number of firms that manufacture food or food additives, many of which are small firms, this proposal will not have a significant impact on these firms for two reasons. First, this proposal replaces one voluntary program with another voluntary program. Therefore, small firms will not be required to undertake any additional activity or bear any additional costs. Second, participation in the proposed GRAS notification procedure should be somewhat less costly than participation in the GRAS petition process. Therefore, small firms should be better able to participate in the notification procedure than the petition process.

D. Conclusions

In accordance with Executive Order 12866, FDA has analyzed this proposed rule and finds that this proposed rule is neither economically significant nor a significant action, as defined by that order. FDA has also analyzed this proposed rule in accordance with the Regulatory Flexibility Act and finds that this proposed rule will not have a significant impact on a substantial number of small businesses. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The net costs and benefits of replacing the GRAS petition process with the proposed GRAS notification procedure are indeterminate. However, any increase in net costs or benefits relative to the current system will probably be modest. FDA requests comments on the costs and benefits of replacing the GRAS petition process with the proposed GRAS notification procedure.

XV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XVI. References

The following references have been placed on display at DMB (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. House Report No. 2284, July 28, 1958.

2. Price, J. M., C. G. Biava, B. L. Oser, E. E. Vogin, J. Steinfeld, and H. L. Ley, ''Bladder Tumors in Rats Fed Cyclohexylamine or High Doses of a Mixture of Cyclamate and Saccharin,'' *Science*, 167:1131–1132, 1970.

3. New York Times, p. 22, October 31, 1969.

4. Sneath, P. H. A. et. al., *Bergey's Manual of Systematic Bacteriology*, Williams & Wilkins, Baltimore, 1984.

5. Subcommittee on the 10th Edition of the Recommended Dietary Allowances, Food and Nutrition Board, Commission on Life Sciences, National Research Council, *Recommended Dietary Allowances*, 10th ed., Washington, DC, National Academy Press, 1989.

6. ''Biotechnology and Food Safety,'' (Food and Agriculture Organization, Rome, 1996).

7. ''Strategies for Assessing the Safety of Foods Produced by Biotechnology'' (World Health Organization, Geneva, 1991).

8. ''Safety Evaluation of Foods Derived by Modern Biotechnology: Concepts and Principles'' (Organization for Economic Cooperation and Development, Paris, 1993).

9. ''Application of the Principles of Substantial Equivalence to the Safety Evaluation of Foods or Food Components from Plants Derived by Modern Biotechnology'' (World Health Organization, Geneva, 1995).

10. Kessler, D. A., M. R. Taylor, J. H. Maryanski, E. L. Flamm, and L. S. Kahl, ''The Safety of Foods Developed by Biotechnology,'' *Science*, 256:1747–1749 and 1832, 1992.

List of Subjects

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 184

Food ingredients.

21 CFR Part 186

Food ingredients, Food packaging.

21 CFR Part 570

Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 170, 184, 186, and 570 be amended as follows:

PART 170—FOOD ADDITIVES

1. The authority citation for 21 CFR part 170 is revised to read as follows:

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

2. Section 170.3 is amended by revising paragraph (h) to read as follows:

§ 170.3 Definitions.

* * * * *

(h) *Scientific procedures* include scientific data (such as human, animal, analytical, or other scientific studies), information, methods, and principles, whether published or unpublished, appropriate to establish the safety of a substance.

* * * * *

3. Section 170.30 is amended by revising the last sentence of paragraphs (a), (b), and (c)(2); and by removing and reserving paragraph (f) to read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

(a) * * * General recognition of safety requires common knowledge throughout the scientific community knowledgeable about the safety of substances directly or indirectly added to food that there is reasonable certainty that the substance is not harmful under the intended conditions of use.

(b) * * * General recognition of safety through scientific procedures shall be based upon generally available and accepted scientific data, information, methods, or principles, which ordinarily are published and may be corroborated by unpublished scientific data, information, or methods.

(c)(1) * * *

(2) * * * Persons who claim that use of a substance is GRAS through experience based on its common use in food outside of the United States should notify FDA of that claim in accordance with proposed § 170.36.

* * * * *

4. Section 170.35 is amended by revising paragraph (a) and by removing paragraph (c) to read as follows:

§ 170.35 Affirmation of generally recognized as safe (GRAS) status.

(a) The Commissioner, on his own initiative, may affirm the GRAS status of the use of a substance that directly or indirectly becomes a component of food.

* * * * *

5. New § 170.36 is added to subpart B to read as follows:

§ 170.36 Notice of a claim for exemption based on a GRAS determination.

(a)(1) Any person may notify FDA of a claim that a particular use of a substance is exempt from the statutory premarket approval requirements based on the notifier's determination that such use is generally recognized as safe (GRAS).

(2) Notice to the agency of this section shall not constitute compliance with:

(i) Section 101.14(b)(3)(ii) of this chapter. Any person who submits a health claim petition under § 101.14 of this chapter shall comply in full with § 101.14(b)(3)(ii) regardless of whether

the agency has been notified under this section about a substance and regardless of the nature of the agency's response.

(ii) Section 106.120(b)(6)(ii) of this chapter. Any person who submits a new infant formula submission under proposed § 106.120 of this chapter shall comply in full with proposed § 106.120(b)(6)(ii) regardless of whether the agency has been notified under this section about a substance and regardless of the nature of the agency's response.

(b) A notice of a GRAS exemption claim shall be submitted in triplicate to the Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(c) Notifiers shall submit the following information:

(1) A claim, dated and signed by the notifier, or by the notifier's attorney or agent, or (if the notifier is a corporation) by an authorized official, that a particular use of a substance is exempt from the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act (the act) because the notifier has determined that such use is GRAS. Such GRAS exemption claim shall include:

(i) The name and address of the notifier;

(ii) The common or usual name of the substance that is the subject of the GRAS exemption claim (i.e., the ''notified substance'');

(iii) The applicable conditions of use of the notified substance, including the foods in which the substance is to be used, levels of use in such foods, and the purposes for which the substance is used, including, when appropriate, a description of the population expected to consume the substance;

(iv) The basis for the GRAS determination (i.e., through scientific procedures or through experience based on common use in food); and

(v) A statement that the data and information that are the basis for the notifier's GRAS determination are available for the Food and Drug Administration's (FDA) review and copying at reasonable times at a specific address set out in the notice or will be sent to FDA upon request.

(2) Detailed information about the identity of the notified substance, including, as applicable, its chemical name, Chemical Abstracts Service (CAS) Registry Number, Enzyme Commission number, empirical formula, structural formula, quantitative composition, method of manufacture (excluding any trade secrets and including, for substances of natural biological origin, source information such as genus and species), characteristic properties, any content of potential human toxicants, and specifications for food-grade material;

(3) Information on any self-limiting levels of use; and

(4) A detailed summary of the basis for the notifier's determination that a particular use of the notified substance is exempt from the premarket approval requirements of the act because such use is GRAS. Such determination may be based either on scientific procedures or on common use in food.

(i) For a GRAS determination through scientific procedures, such summary shall include:

(A) A comprehensive discussion of, and citations to, generally available and accepted scientific data, information, methods, or principles that the notifier relies on to establish safety, including a consideration of the probable consumption of the substance and the probable consumption of any substance formed in or on food because of its use and the cumulative effect of the substance in the diet, taking into account any chemically or pharmacologically related substances in such diet;

(B) A comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the GRAS determination; and

(C) The basis for concluding, in light of the data and information described under paragraphs (c)(1), (c)(2), (c)(3), (c)(4)(i)(A), and (c)(4)(i)(B) of this section, that there is consensus among experts qualified by scientific training and experience to evaluate the safety of substances added to food that there is reasonable certainty that the substance is not harmful under the intended conditions of use.

(ii) For a GRAS determination through experience based on common use in food, such summary shall include:

(A) A comprehensive discussion of, and citations to, generally available data and information that the notifier relies on to establish safety, including evidence of a substantial history of consumption of the substance by a significant number of consumers;

(B) A comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the GRAS determination;

(C) The basis for concluding, in light of the data and information described under paragraphs (c)(1), (c)(2), (c)(3), (c)(4)(ii)(A), and (c)(4)(ii)(B) of this section, that there is consensus among experts qualified by scientific training and experience to evaluate the safety of substances added to food that there is reasonable certainty that the substance is not harmful under the intended conditions of use.

(d) Within 30 days of receipt of the notice, FDA shall acknowledge receipt of a notice by informing the notifier in writing of the date on which the notice was received.

(e) Within 90 days of receipt of the notice, FDA shall respond to the notifier in writing.

(f)(1) Any GRAS exemption claim submitted under paragraph (c)(1) of this section shall be immediately available for public disclosure on the date the notice is received. All remaining data and information in the notice shall be available for public disclosure, in accordance with part 20 of this chapter, on the date the notice is received.

(2) For each GRAS notice submitted under this section, the following information shall be readily accessible for public review and copying:

(i) A copy of the GRAS exemption claim submitted under paragraph (c)(1) of this section.

(ii) A copy of any letter issued by the agency under paragraph (e) of this section.

(iii) A copy of any subsequent letter issued by the agency regarding such notice.

(g)(1) Any GRAS affirmation petition that was filed by FDA under § 170.35 prior to (date the final rule becomes effective) and is still pending as of (date the final rule becomes effective) shall be presumptively converted to a notice under the provisions of this section on (date the final rule becomes effective).

(2) Any person who submitted a GRAS affirmation petition that is converted to a notice under paragraph (g)(1) of this section may amend such converted petition to meet the requirements of this section by submitting to the agency a claim, dated and signed by the notifier (i.e., the former petitioner), or by the notifier's attorney or agent, or (if the notifier is a corporation) by an authorized official, that a particular use of a substance is exempt from the premarket approval requirements of the act because the notifier has determined that such use is GRAS. Such GRAS exemption claim shall include:

(i) The name and address of the notifier;

(ii) The applicable GRAS affirmation petition number;

(iii) The common or usual name of the substance that was the subject of the converted GRAS affirmation petition (i.e., the notified substance);

(iv) The applicable conditions of use of the notified substance that are

supported by data and information in the referenced GRAS petition, including the foods in which the substance is to be used, levels of use in such foods, and the purposes for which the substance is used, including, when appropriate, a description of the population expected to consume the substance;

(v) The basis for the GRAS determination (i.e., through scientific procedures or through experience based on common use in food); and

(vi)(A) A statement that the complete record that supports the GRAS determination has been submitted to the agency in the applicable GRAS petition; or

(B) A statement that the data and information that are the basis for the notifier's GRAS determination are available for FDA review and copying at reasonable times at a specific address set out in the claim or will be sent to FDA upon request.

(3)(i) A petition that is converted to a notice under the provisions of paragraph (g)(1) of this section and that is amended according to the provisions of paragraph (g)(2) of this section shall be reviewed and administered according to the provisions of paragraphs (d), (e), and (f) of this section. For the purposes of paragraphs (d), (e), and (f) of this section, the date of receipt of the amendment described in paragraph (g)(2) of this section shall be the date of receipt of the notice.

(3)(ii) After (date 90 days after date of publication of the final rule), FDA will inform any person who submitted a GRAS affirmation petition that is converted to a notice under the provisions of paragraph (g)(1) of this section, and who has not amended such petition according to the provisions of paragraph (g)(2) of this section, that the converted petition is inadequate as a notice under this section.

6. Section 170.38 is amended by revising paragraph (a) to read as follows:

§ 170.38 Determination of food additive status.

(a) The Commissioner may, in accordance with § 170.35(b)(4), publish a notice in the **Federal Register** determining that a substance is not GRAS and is a food additive subject to section 409 of the act.

* * * * *

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

7. The authority citation for 21 CFR part 184 continues to read as follows:

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

§ 184.1 [Amended]

8. Section 184.1 *Substances added directly to human food affirmed as generally recognized as safe (GRAS)* is amended in paragraph (b)(1) by removing the last sentence.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

9. The authority citation for 21 CFR part 186 continues to read as follows:

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

§ 186.1 [Amended]

10. Section 186.1 *Substances added indirectly to human food affirmed as generally recognized as safe (GRAS)* is amended in paragraph (b)(1) by removing the last sentence.

PART 570—FOOD ADDITIVES

11. The authority citation for 21 CFR part 570 is revised to read as follows:

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

12. Section 570.3 is amended by revising paragraph (h) to read as follows:

§ 570.3 Definitions.

* * * * *

(h) *Scientific procedures* include scientific data (such as human, animal, analytical, or other scientific studies), information, methods, and principles, whether published or unpublished, appropriate to establish the safety of a substance.

* * * * *

13. Section 570.30 is amended by revising the last sentence of paragraphs (a) and (b) to read as follows:

§ 570.30 Eligibility for classification as generally recognized as safe (GRAS).

(a) * * * General recognition of safety requires common knowledge throughout the scientific community knowledgeable about the safety of substances directly or indirectly added to food that there is reasonable certainty that the substance is not harmful under the intended conditions of use.

(b) * * * General recognition of safety through scientific procedures shall be based upon generally available and accepted scientific data, information, methods, or principles, which ordinarily are published and may be corroborated by unpublished scientific data, information, or methods.

* * * * *

14. Section 570.35 is amended by revising paragraph (a) and by removing paragraph (c) to read as follows:

§ 570.35 Affirmation of generally recognized as safe (GRAS) status.

(a) The Commissioner, on his own initiative, may affirm the GRAS status of the use of a substance that directly or indirectly becomes a component of food.

* * * * *

15. New § 570.36 is added to subpart B to read as follows:

§ 570.36 Notice of a claim for exemption based on a GRAS determination.

(a) Any person may notify FDA of a claim that a particular use of a substance is exempt from the statutory premarket approval requirements based on the notifier's determination that such use is generally recognized as safe (GRAS).

(b) A notice of a GRAS exemption claim shall be submitted in triplicate to the Division of Animal Feeds (HFV–220), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

(c) Notifiers shall submit the following information:

(1) A claim, dated and signed by the notifier, or by the notifier's attorney or agent, or (if the notifier is a corporation) by an authorized official, that a particular use of a substance is exempt from the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act (the act) because the notifier has determined that such use is GRAS. Such GRAS exemption claim shall include:

(i) The name and address of the notifier;

(ii) The common or usual name of the substance that is the subject of the GRAS exemption claim (i.e., the notified substance);

(iii) The applicable conditions of use of the notified substance, including the foods in which the substance is to be used, levels of use in such foods, and the purposes for which the substance is used, including, when appropriate, a description of the population expected to consume the substance;

(iv) The basis for the GRAS determination (i.e., through scientific procedures or through experience based on common use in food); and

(v) A statement that the data and information that are the basis for the notifier's GRAS determination are available for the Food and Drug Administration's (FDA) review and copying at reasonable times at a specific address set out in the notice or will be sent to FDA upon request.

(2) Detailed information about the identity of the notified substance, including, as applicable, its chemical name, Chemical Abstracts Service (CAS) Registry Number, Enzyme Commission number, empirical formula, structural formula, quantitative composition, method of manufacture (excluding any trade secrets and including, for substances of natural biological origin, source information such as genus and species), characteristic properties, any content of potential human or animal toxicants, and specifications for feed-grade material;

(3) Information on any self-limiting levels of use; and

(4) A detailed summary of the basis for the notifier's determination that a particular use of the notified substance is exempt from the premarket approval requirements of the act because such use is GRAS. Such determination may be based either on scientific procedures or on common use in food.

(i) For a GRAS determination through scientific procedures, such summary shall include:

(A) A comprehensive discussion of, and citations to, generally available and accepted scientific data, information, methods, or principles that the notifier relies on to establish safety, including a consideration of the probable consumption of the substance and the probable consumption of any substance formed in or on food because of its use and the cumulative effect of the substance in the diet, taking into account any chemically or pharmacologically related substances in such diet;

(B) A comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the GRAS determination; and

(C) The basis for concluding, in light of the data and information described under paragraphs (c)(1), (c)(2), (c)(3), (c)(4)(i)(A), and (c)(4)(i)(B) of this section, that there is consensus among experts qualified by scientific training and experience to evaluate the safety of substances added to food that there is reasonable certainty that the substance is not harmful under the intended conditions of use.

(ii) For a GRAS determination through experience based on common use in food, such summary shall include:

(A) A comprehensive discussion of, and citations to, generally available data and information that the notifier relies on to establish safety, including evidence of a substantial history of consumption of the substance by a significant number of consumers;

(B) A comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the GRAS determination;

(C) The basis for concluding, in light of the data and information described under paragraphs (c)(1), (c)(2), (c)(3), (c)(4)(ii)(A), and (c)(4)(ii)(B) of this section, that there is consensus among experts qualified by scientific training and experience to evaluate the safety of substances added to food that there is reasonable certainty that the substance is not harmful under the intended conditions of use.

(d) Within 30 days of receipt of the notice, FDA shall acknowledge receipt of a notice by informing the notifier in writing of the date on which the notice was received.

(e) Within 90 days of receipt of the notice, FDA shall respond to the notifier in writing.

(f)(1) Any GRAS exemption claim submitted under paragraph (c)(1) of this section shall be immediately available for public disclosure on the date the notice is received. All remaining data and information in the notice shall be available for public disclosure, in accordance with part 20 of this chapter, on the date the notice is received.

(2) For each GRAS notice submitted under this section, the following information shall be readily accessible for public review and copying:

(i) A copy of the GRAS exemption claim submitted under paragraph (c)(1) of this section.

(ii) A copy of any letter issued by the agency under paragraph (e) of this section.

(iii) A copy of any subsequent letter issued by the agency regarding such notice.

(g)(1) Any GRAS affirmation petition that was filed by FDA under § 570.35 prior to (date the final rule becomes effective) and is still pending as of (date the final rule becomes effective) shall be presumptively converted to a notice under the provisions of this section on (date the final rule becomes effective).

(2) Any person who submitted a GRAS affirmation petition that is converted to a notice under paragraph (g)(1) of this section may amend such converted petition to meet the requirements of this section by submitting to the agency a claim, dated and signed by the notifier (i.e., the former petitioner), or by the notifier's attorney or agent, or (if the notifier is a corporation) by an authorized official, that a particular use of a substance is exempt from the premarket approval requirements of the act because the notifier has determined that such use is GRAS. Such GRAS exemption claim shall include:

(i) The name and address of the notifier;

(ii) The applicable GRAS affirmation petition number;

(iii) The common or usual name of the substance that was the subject of the converted GRAS affirmation petition (i.e., the notified substance);

(iv) The applicable conditions of use of the notified substance that are supported by data and information in the referenced GRAS petition, including the foods in which the substance is to be used, levels of use in such foods, and the purposes for which the substance is used, including, when appropriate, a description of the population expected to consume the substance;

(v) The basis for the GRAS determination (i.e., through scientific procedures or through experience based on common use in food); and

(vi)(A) A statement that the complete record that supports the GRAS determination has been submitted to the agency in the applicable GRAS petition; or

(B) A statement that the data and information that are the basis for the GRAS determination are available for FDA's review and copying at reasonable times at a specific address set out in the claim or will be sent to FDA upon request.

(3)(i) A petition that is converted to a notice under the provisions of paragraph (g)(1) of this section and that is amended according to the provisions of paragraph (g)(2) of this section shall be reviewed and administered according to the provisions of paragraphs (d), (e), and (f) of this section. For the purposes of paragraphs (d), (e), and (f) of this section, the date of receipt of the amendment described in paragraph (g)(2) of this section shall be the date of receipt of the notice.

(ii) After (date 90 days after date of publication of the final rule), FDA will inform any person who submitted a GRAS affirmation petition that is converted to a notice under the provisions of paragraph (g)(1) of this section, and who has not amended such petition according to the provisions of paragraph (g)(2) of this section, that the converted petition is inadequate as a notice under this section.

§ 570.38 [Amended]

16. Section 570.38 *Determination of food additive status* is amended in paragraph (a) by removing ''or (c)(5)''.

Dated: April 8, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–9706 Filed 4–16–97; 8:45 am]

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federal register

Thursday
April 17, 1997

Part IV

Department of Health and Human Services

Administration for Children and Families

Early Head Start Program Grant Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS–93600–97–03]

Early Head Start Program Grant Availability

AGENCY: Administration on Children, Youth and Families (ACYF), ACFD, HHS.

ACTION: Announcement of financial assistance to be competitively awarded to public and non-profit private entities—including Head Start grantees, Parent and Child Centers and Comprehensive Child Development Programs—to provide child and family development services for low-income families with children under age three and pregnant women.

SUMMARY: Section 645A of the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*, requires that, beginning in fiscal year 1995, the Secretary of Health and Human Services award grants competitively to agencies and organizations to implement programs which we call ''Early Head Start.'' These programs provide early, continuous, intensive, and comprehensive child development and family support services on a year-round basis to low-income families with children under age three and pregnant women. The purpose of the program is to enhance children's physical, social, emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency. Thus, the goals for Early Head Start are to:

- Promote the physical, cognitive, social and emotional growth of infants and toddlers and prepare them for future growth and development;
- Support parents—mothers, fathers, and guardians—in their role as the primary caregivers and educators of their children, and in meeting family goals and achieving self-sufficiency across a wide variety of domains;
- Strengthen community supports for families with young children; and
- Develop highly-trained, caring and adequately compensated program staff, because the quality of staff and their relationships with children and parents are critical to achieving all the other goals.

DATES: The CLOSING TIME AND DATE FOR RECEIPT of applications is 4:30 pm (Eastern Time Zone), June 16, 1997. Applications received after 4:30 pm will not be accepted.

Applications transmitted to ACF in any electronic form will not be accepted regardless of date of time of submission and time of receipt. All applications must be in hard copy form to be considered acceptable.

ADDRESSES: Applications may be mailed to:

Early Head Start Program Category _____, ACYF Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Virginia 22201.

Hand Delivered, Courier or Overnight delivery applications are received during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at the above address.

If you plan to submit an application, we ask that you send a postcard or call in the following information: the name, address, and telephone number of the contact person; the name of the organization; and the category of funding for which you may submit an application, within two weeks of receipt of this announcement to: Early Head Start, Administration on Children, Youth and Families Operations Center, 3030 Clarendon Boulevard, Suite 240, Arlington, VA 22201. The telephone number is 1–800–351–2293. This information will be used to determine the number of expert reviewers needed and to update the mailing list of persons to whom the program announcement is sent.

FOR FURTHER INFORMATION CONTACT: For questions related to the Program Announcement, please contact the Administration on Children, Youth and Families Operations Center, Technical Assistance Team at 1–800–351–2293. Staff at this Center will answer questions regarding the application requirements or refer you to the appropriate contact person in ACYF for programmatic questions. You may also locate frequently asked questions about this program announcement on the ACYF website at http://www.acf.dhhs.gov.

For a copy of the application kit, or for another copy of the program announcement, please call or fax your request to the ACYF Operations Center at 1–800–351–2293 (phone) or 1–800–351–4490 (fax).

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Introduction

This program announcement is divided into five sections:

- Part I contains general information and an introductory section which contains the history and background of the Early Head Start program and the principles and program description that will guide the development, implementation and operation of the program.
- Part II contains key program information such as a description of competitive categories, eligible applicants, project periods, applicable Head Start regulations, and Early Head Start as a learning community.
- Part III presents requirements for information that must be included in each application.
- Part IV presents the criteria upon which applications will be reviewed and evaluated.
- Part V contains instructions for preparing the fiscal year 1997 application. This section notes that the Commissioner of the Administration on Children, Youth and Families, depending on the availability of funds and an adequate number of acceptable applications, may choose to fund a fiscal year 1998 cohort of programs out of the pool of applications submitted as a response to this program announcement.

Appendix A—ACF Uniform Discretionary Grant Application Form—This material includes the relevant forms, certifications, disclosures and assurances necessary for completing and submitting the application.

Appendix B lists the Single Points of Contact for each State and Territory.

Appendix C is The Statement of the Advisory Committee on Services for Families with Infants and Toddlers.

Appendix D—Category One—New Early Head Start Awards provides a list of the geographic areas not open for competition under Category One.

Appendix E—Category Two—New Awards to Communities Served by Parent and Child Centers provides a list of geographic areas open to competition under Category Two.

An application kit containing the ACF Uniform Discretionary Grant Application Form, applicable Head Start Regulations, State Contact lists (e.g., Part H Lead Agency Coordinators) and other useful information should be obtained by applicants. (See address listed earlier in this announcement under ''For Further Information.'')

B. Program Purpose

With the reauthorization of the Head Start Act in 1994, Congress established a new program for low-income families with infants and toddlers and pregnant women which is called Early Head Start. Beginning in fiscal year 1995, 68 grants were awarded and, in fiscal year 1996, an additional 75 grants were selected from among competing

agencies and organizations to implement Early Head Start programs which provide early, continuous, intensive, and comprehensive child development and family support services.

In creating this program, the Congress acted upon evidence from research and practice which illustrates that early intervention through high quality programs enhances children's physical, social, emotional, and cognitive development; enables parents to be better caregivers and teachers to their children; and helps parents meet their own goals, including economic independence. Such programs answer an undeniable need. As pointed out in ''The Report of the Carnegie Task Force on Meeting The Needs of Young Children,'' many of the 12 million children under three and their families in the United States today face a ''quiet crisis.'' The numerous indicators of this crisis include: one in four infants and toddlers live in families with incomes below the poverty line; nine out of every thousand infants die before the age of one; and, more than five million children under three receive child care from other adults while their parents work, much of that care being of poor quality.

The Early Head Start program provides resources to community programs to address such needs and to achieve the purposes set forth by Congress. The local programs funded through Early Head Start operate as a national laboratory to demonstrate the impact that can be gained when early, continuous, intensive and comprehensive services are provided to pregnant women and very young children and their families.

Programs participating in this demonstration effort will:

- Ensure quality by meeting the requirements in the Head Start Program Performance Standards and other applicable regulations;
- Provide early, individualized child development and parent education services to low-income infants and toddlers and their families according to a plan developed jointly by the parents and staff;
- Provide these services through an appropriate mix of home visits, experiences at the Early Head Start center, and experiences in other settings such as family-or center-based child care;
- Provide early opportunities for infants and toddlers with and without disabilities to grow and develop together in nurturing and inclusive settings;
- Ensure that the Early Head Start program is supportive and nurturing of families;
- Respond to the needs of families, including the need for full-time child care for working families;
- Connect with other service providers at the local level to ensure that a comprehensive array of health, nutrition, and other services is provided to the program's pregnant women, very young children, and their families;
- Recruit, train, and supervise high quality staff to ensure the kind of warm and continuous relationships between caregivers and children that are crucial to learning and development for infants and toddlers;
- Ensure parent involvement in policy and decision making; and
- Coordinate with local Head Start and other child development programs in order to ensure continuity of services for these children and families.

C. History and Background

1. Legislation

In May 1994, the President signed into law the bipartisan Head Start Reauthorization Act of 1994. This reauthorization established within the Head Start Bureau a new program for low-income pregnant women and families with infants and toddlers. The reauthorization sets aside funds from the total Head Start budget for the subsequent four years at a rate of three percent in FY 1995; four percent in FY 1996 and 1997; and five percent in FY 1998. Consolidated into the new initiative were the Parent and Child Centers Program and the Comprehensive Child Development Program.

This section of the legislation had a number of sources, including the recommendations of the Advisory Committee on Head Start Quality and Expansion, as well as recent lessons from research and practice.

2. The Advisory Committee on Head Start Quality and Expansion

In June 1993, the Secretary of the Department of Health and Human Services formed an Advisory Committee to look at Head Start quality and expansion. The recommendations of that Committee centered around:

- Striving for excellence in staffing, management, oversight, facilities, and research;
- Expanding to better meet the needs of children and families; and
- Forging new partnerships with communities, schools, the private sector, and other national initiatives.

Included in the report was a recommendation that the Department develop a new initiative for expanded Head Start supports to families with infants and toddlers, as well as convene a high-level committee charged with developing guidelines for this new effort. This recommendation was fueled by relevant research findings and recognition in the field that much more could be accomplished with earlier, more sustained support for very young children and their families.

3. Relevant Research

Findings from more than three decades of research in child and family development illustrate that the time from conception to age three is critical for human development. The basic cognitive, social, and emotional foundation is established in these early years. The research also indicates that, to develop optimally, infants and toddlers must have healthy beginnings and the continuity of responsive and caring relationships. Together, these supports help promote optimal cognitive, social, emotional, physical, and language development. When these supports are missing, the immediate and future development of the child may be compromised. Recent research identifies the characteristics of effective programs that enhance both child and family development. This growing body of knowledge provides a foundation upon which the Early Head Start program is based.

A more detailed discussion about the research in maternal and infant health, child-caregiver relationships, and the characteristics of successful programs can be found in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers, which is included as Appendix C.

In FY 1995 a contract was awarded to Mathematica Policy Research, Inc. to conduct a cross-site evaluation of Early Head Start. In FY 1996, 16 university partners of the initial 68 Early Head Start grantees were selected to conduct site-specific research. Thus, those 16 sites became the participants in the national cross-site evaluation conducted by Mathematica. Results are not yet available. Because the evaluation of Early Head Start is already underway, the FY 1997–1998 Cohort of Early Head Start grantees will not participate in the cross-site evaluation.

4. Precursor Program Experiences

In enacting Early Head Start, Congress was building on lessons learned through Federal, State, and community programs that serve some of our country's very young children and their families.

Most notable among the early Federal efforts include the following:

• The Maternal and Child Health Services Block Grant has its roots in Title V of the Social Security Act, which was enacted in 1935. It is administered by the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration in HHS which provides leadership for building the infrastructure for health care services delivery to all mothers and children in the U.S., with particular responsibility for serving those low-income or isolated populations who would otherwise have limited access to care.

• The Parent and Child Centers Program (PCC) was established in 1967 to provide an array of services for pregnant women, infants/toddlers, parents, and families as a whole. Services include health, education, personal and interpersonal development, and family assistance. There are currently 58 PCCs across the country. Thirty-four others have been competitively selected and converted into Early Head Start programs.

• The Migrant Head Start program was established in 1969 to meet the needs of mobile farmworker children and their families. The program provides age-appropriate infant, toddler and preschool programming, full-day services (8 to 12 hours per day), and full week services (five to seven days per week) based on the needs of working families. These services are offered in center-based and family child care settings during peak agricultural seasons. There are currently 25 Migrant Head Start grantees and 42 delegate agencies operating in 39 States. Infants and toddlers comprise over 40 percent of the children served annually.

• The Child and Family Resource Program (CFRP) operated as a demonstration from 1973 to 1983. Ten CFRP programs linked community resources in efforts to enhance families' abilities to provide safe, stable, nurturing environments for their children.

• Part H of the Individuals with Disabilities Education Act was initiated in 1986 as an early intervention program for children birth to age three who have or are at risk for developmental disability. Part H supports comprehensive, statewide programs which identify and coordinate needed services within the context of a family-centered services delivery model.

• The Comprehensive Child Development Program (CCDP) was enacted in 1988 to provide and coordinate a wide range of services to children and families including child development, health care, education, economic self-sufficiency, mental health, substance abuse treatment and prevention and other services to strengthen the home and family. There are currently 19 CCDPs in communities throughout the country. Eighteen others have been competitively selected to become Early Head Start programs.

• The Even Start Literacy Program, administered by the Department of Education, integrates early childhood education and adult education for parents into a unified program.

• The Healthy Start Initiative, administered by the Maternal and Child Health Bureau in HHS, started in 1991 as a demonstration program to combat infant mortality through community coalitions.

In addition to these Federal efforts, many States and foundations are focusing on the special needs of very young children and their families. Carnegie and Ford are among the foundations addressing the needs of pregnant women and families with infants and toddlers.

D. Consultation

In the statute establishing the new program called Early Head Start, Congress called on the Secretary to develop program guidelines in consultation with experts in early childhood development, health, and family services; and take into consideration the knowledge and experience gained from other early childhood programs that serve large numbers of infants and toddlers including the Comprehensive Child Development Program, Head Start Parent and Child Centers and the Migrant Head Start program. As a result, the Secretary formed the Advisory Committee on Services for Families with Infants and Toddlers. The Committee was charged with advising the Department on the development of program approaches for the Early Head Start initiative. In September 1994, the Advisory Committee unanimously agreed to a statement that sets forth the vision, goals, principles, and program cornerstones for Early Head Start (the Statement, which includes the Advisory Committee membership list, is included as Appendix C).

In addition, Federal staff conducted approximately 30 focus groups during the summer of 1994 to hear from parents, practitioners, researchers, advocates, and representatives of professional organizations. Federal staff also met with or received materials and recommendations from a number of other parents, practitioners, and researchers. The suggestions, guidance, and information received through this consultation process helped shape the development of the original fiscal year 1995 program announcement as well as this announcement.

The results of this consultation contributed significantly to the recently revised Head Start Program Performance Standards (45 CFR Part 1304), which address services to infants, toddlers, and pregnant women as well as to preschool children and their families.

E. Principles Recommended by the Field

The Advisory Committee on Services for Families with Infants and Toddlers identified nine principles that are characteristic of successful programs for families with very young children. These principles are consistent with the themes that emerged from the broader consultation conducted by the Department. Therefore, applicants are expected to take into consideration these principles in designing their programs.

1. High Quality: Programs will ensure high quality in both the services provided to children and families directly, and the services provided through referrals. Programs will recognize that the conception-to-three age period is unique both in the rate of development and in the way young children's physical and mental growth reflects and absorbs experiences with caregivers and the surroundings. Because of this, the experiences and environments provided need to be of highest quality to promote child development.

2. Prevention and Promotion: Recognizing that windows of opportunity open and close quickly for very young children and their families, programs will seek out opportunities to promote the physical, social, emotional, cognitive and language development of young children and families before conception, prenatally, upon birth, and during the early years. Program staff will seek to prevent and detect problems at their earliest stages, rallying the services needed to help the child and family anticipate and overcome problems before they interfere with healthy development.

3. Positive Relationships and Continuity: Programs will support and enhance strong, caring, continuous relationships among the child, parents, family, and caregiving staff. Programs will support the mother-child, father-child bond by recognizing each parent as his or her child's first and primary source of love, nurturance and guidance. Programs will ensure that relationships between caregiving staff and young children support infant and toddler attachment to a limited number of skilled and caring individuals, thus

maintaining relationships with caregivers over time and avoiding the trauma of loss experienced with frequent turnover of key people in the child's life.

4. Parent Involvement: Programs will ensure the highest level of partnership with parents, both mothers and fathers. Programs will support parents as primary nurturers, educators, and advocates for their children; assure that each parent has opportunities for experiences that support his or her own growth and goals, including that of parenting; encourage independence and self-sufficiency for parents; and provide a policy-making and decision-making role in the program for parents.

5. Inclusion: Programs will develop services and create an environment which builds upon and responds to the unique strengths and needs of each child and family. Further, programs will support participation in community life by young children with disabilities and their families; and families of very young children with significant disabilities will be fully included in all program services.

6. Culture: Programs will demonstrate an understanding of, respect for, and responsiveness to the home culture of children and families as culture is the context for healthy identity development in the first years of life.

7. Comprehensiveness, Flexibility, Responsiveness, and Intensity: Programs will respond in flexible ways to the unique strengths, abilities, and needs of the children, families and communities they serve. Developmental opportunities provided to each infant and toddler will address the whole child and be continually adapted to keep pace with his or her developmental growth. Programs also need to be responsive to the distinct needs and experiences of parents whose children are disabled and those parents who have disabilities.

8. Transition: Programs will be responsible for ensuring the smooth transition of children and their families into Head Start or other preschool or child development programs which are of high quality and provide consistent and responsive caregiving.

9. Collaboration: Recognizing that no one program will be able to meet all of a child's and family's needs, programs will build strong connections to other service providers and to community sources of support for families. These efforts will foster a caring, comprehensive and integrated community-wide response to families with young children, maximize scarce financial resources, and avoid duplication of agency effort.

These principles are explained in more detail in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers, which is attached as Appendix C.

F. Program Description

In addition to the principles outlined above, a description of the Early Head Start program also emerged during consultation with the field. The Advisory Committee members conceptualized the program as having four cornerstones: child development; family development; community building; and staff development.

1. Child Development

To develop fully, children need individualized support that honors the unique characteristics and pace of their physical, social, emotional, cognitive and language development. Critical to this development are the promotion of child health; positive relationships between the child and parents and other significant caregivers; opportunities for children's active involvement in appropriately stimulating environments; and enhancement of each parent's knowledge about the development of their child within healthy, safe environments. The services that programs must provide to support the child development cornerstone include:

- High quality early education services provided both in and out of the home in a range of developmentally appropriate settings for infants and toddlers;
- Home visits (especially for families with newborns and other infants, as needed);
- Parent education, including parent-child activities;
- Comprehensive health and mental health services for children; and
- Part-and full-day child care services, as needed by children and families.

In addition, Early Head Start programs will be responsible for helping the family identify and access the services of a consistent health professional who can provide ongoing care for the family, child and pregnant woman. Further, Early Head Start programs will be responsible for coordinating with programs providing services in accordance with Part H of the Individuals with Disabilities Education Act so that children and families served by these two programs can experience a seamless system of services.

2. Family Development

Healthy child development depends on the ability of parents and families to support and nurture children while, at the same time, meeting other critical social and economic needs. Therefore, programs must work to help parents set and achieve goals for themselves and their children through individualized family development plans, which are collaboratively designed and updated by families and staff, and are responsive to the goals and ideals of the families. When families are served by additional programs which also require an individualized family development or service plan, such as a family employability plan or a plan under Part H of the Individuals with Disabilities Education Act, then a single coordinated plan should be developed so families experience a seamless system of services.

The types of services that programs must provide directly or through referrals include:

- Ongoing support to parents through case management, peer support groups, or other approaches;
- Child development information and services;
- Health services, including services for women prior to, during, and after pregnancy;
- Mental health services;
- Services to improve health behavior such as smoking cessation and substance abuse treatment;
- Services to adults to support progress towards economic independence, such as adult education and basic literacy skills, job training, job placement services, assistance in obtaining income support, child support or related assistance, food, and decent, safe housing, and emergency cash or in-kind assistance; and
- Transportation to program services.

Programs also must directly provide opportunities for parent involvement in the program so that parents can be involved as decision-makers, volunteers, and/or employees. Additional services not listed above, but identified by families through community assessments and mappings, may be provided either directly or through referral at local option.

3. Community Building

Children develop within the context of the family and the family develops within the context of the community. Therefore, to support children's development, Early Head Start programs must establish collaborative relationships with other community providers to create an environment that shares responsibility for the healthy development of its children and their families.

The goal of these community relationships is three-fold: increasing access to high quality services for program families; assuring that the program's approach to serving pregnant women and families with infants and toddlers fits into the existing constellation of services in the community so that there is a coherent, integrated approach to supporting families with very young children; and encouraging systemic improvements in service delivery for all the families in a community.

All programs will be required to conduct an in-depth assessment of existing community resources and needs and engage in an ongoing collaborative planning process with a range of stakeholders, including parents and residents of the community. If the community recently conducted such an assessment, the program would be able to use the results from that study and then proceed with the collaborative planning process.

4. Staff Development

Programs are only as good as the individuals who staff them. Thus, staff development is a key element of Early Head Start programs.

To ensure the recruitment and development of high quality staff, all programs will be required to:

- Select staff who, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide high quality, comprehensive, inclusive, culturally appropriate, and family-centered services to young children and their families;
- Select staff who are capable of entering into one-to-one caregiving relationships with infants and toddlers, and caring, respectful and empowering relationships with families and other coworkers;
- Select program directors who possess the above characteristics and are highly skilled administrators who exemplify leadership qualities such as integrity, warmth, intuition and holistic thinking;
- Provide ongoing staff training, supervision and mentoring for both line staff and supervisors that reflects an interdisciplinary approach and an emphasis on relationship building and employs techniques and opportunities for practice, feedback and reflection;
- Provide training so that staff are ''cross-trained'' in the areas of child development, family development and community building in addition to the areas of home visiting, caregiving relationships, effective communication with parents, family literacy, healthy/safe environments and caregiving practices, early identification of unhealthy behaviors or health problems, service coordination, and the provision of services and support to diverse populations, including families and children with disabilities and developmental delays; and
- Recognize that high quality performance and development occur when they are linked to rewards such as salary, compensation, and career advancement.

These cornerstones are explained in more detail in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers, which is attached as Appendix C. Applicants are expected to take into consideration these four cornerstones, the Head Start Program Performance Standards and other applicable regulations when designing their programs.

Part II. Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 et seq.

B. Grant Competition

The funds available for Early Head Start grants in fiscal years 1997–1998 will be awarded through competitions in two categories:

1. Category One—New Awards to Unserved Areas

Grants will be competitively awarded to eligible applicants to operate Early Head Start programs in geographic areas not currently served by Head Start Parent and Child Centers (PCC) and existing Early Head Start (EHS) programs. See Appendix D for a list of the geographic areas not open to competition under Category One. Applicants in Category One will compete on a national basis with all other organizations that apply to serve currently unserved areas.

In awarding grants in this category, ACYF shall ensure an equitable geographic distribution of the grants. ACYF will consider the benefit to communities of funding new providers.

2. Category Two—New Awards to Communities Served by PCCs

Grants will be competitively awarded to operate Early Head Start programs in geographic areas currently served by existing Head Start Parent and Child Centers (PCCs). See Appendix E for a list of the geographic areas. In awarding grants in this category, ACYF is interested in assuring that communities currently served by PCCs will have an opportunity to continue receiving services to low-income families with infants and toddlers through Early Head Start programs after the authority for funding the PCCs expires in FY 1997.

Applicants in each geographic area will compete for funds against other applicants wishing to serve the same geographic area. There are 58 such competitive areas (see Appendix E).

C. Eligible Applicants

Applicants eligible to apply to become an Early Head Start program are public agencies and private non-profit agencies. Eligible applicants include agencies that operate Comprehensive Child Development Programs (CCDPs). Before applications are reviewed, each application will be screened to determine whether the applicant organization is eligible as specified under this section. Applications from organizations which do not meet eligibility requirements will not be considered or reviewed in this competition and the applicant will be so informed. In addition, inadequate preparation or omission of essential components of the application or failure to comply with format specifications as described in Parts III and IV will result in applications being withdrawn from further consideration.

On all applications developed jointly by more than one organization, the application must identify only one organization as the lead organization and official applicant. The lead organization must meet the criteria of an ''Eligible Applicant.'' The other participating agencies and organizations can be included as co-participants such as contractors or delegate agencies. Only organizations, not individuals, are eligible to apply under this announcement.

D. Eligible Participants

Persons who may participate in the Early Head Start program include pregnant women and families with children under age three who have incomes at or below the poverty line. Head Start regulations permit, however, up to 10 percent of children in local programs to be from families which do not meet these low-income criteria. Head Start regulations also require that a minimum of 10 percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of services and activities in inclusive settings with their non-disabled peers and to receive individualized services as needed. The report from Congress discussing the creation of this program encouraged that participants in programs funded

through this initiative be identified while pregnant or while their children are infants.

E. Target Populations

Target populations are those that are specified in Part II, Section D. Within these categories, applicants may choose to focus on special populations, such as teen parents, or to design a program linked to welfare reform initiatives if they wish.

F. Project Period, Funding and Project Sizes

We estimate that a total of approximately $25,800,000 in ACYF funds will be available for funding new Early Head Start programs in fiscal year l997.

A considerable amount of additional funds may be available in FY 1998 because the Head Start Act increases funding for Early Head Start projects from four percent of total Head Start funding in FY 1997 to five percent in FY 1998. If the Administration's FY 1998 budget requests were appropriated, a total of approximately $89,000,000 in funds for Early Head Start would be available. As previously noted, the selecting official may decide to select some or all of the awardees of FY 1998 funds from among the applicants to this announcement. The amount that will be awarded will be dependent on the amount of funds available and the nature and quality of applications received.

Applicants are encouraged to apply for projects that will serve between 32 and 120 infants, toddlers and pregnant women. It is felt that projects serving fewer than 32 children and pregnant women would have difficulty providing high quality services while being cost effective. The recommended upper limit is intended to ensure that projects are of a manageable size and will also allow funds to be distributed among more communities. Applicants may propose projects outside of these recommended sizes, but must justify doing so. Examples of such justifications might be a project to serve an isolated or sparsely populated community with a small number of eligible families. Conversely, a project from a high population area that can demonstrate that it has the capacity to serve a larger number of children and pregnant women would be considered.

There are no pre-determined cost per child amounts for which applicants must apply. It is expected that there may be considerable variation in amounts applicants receive depending on a number of factors, including the way in which the program is structured, the size of the program, the costs of operating in different communities and the amount of support that is provided from non-federal sources or through partnerships with other community agencies and funding sources, such as child care providers.

Each applicant is encouraged to request an amount of funds that would allow it to carry out an effective, high quality program that is cost-effective and meets the needs of its community.

Awards, on a competitive basis, will be for a one-year budget period, although project periods will be for five-years. Applications for continuation grants funded under these awards beyond the first one-year budget period, but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. Continuation funds will be available to serve eligible infants, toddlers and pregnant women who were initially enrolled and those eligible children and pregnant women who replace starting infants, toddlers and pregnant women who left the program during any single year.

Allowable costs for developing and administering an Early Head Start program may not exceed 15 percent of the total approved costs of the program. Costs classified as development and administrative costs are those costs related to the overall management of the program. Additional information pertaining to limitations of costs on development and administration of Early Head Start programs can be found in Head Start regulation 45 CFR 1301.32, Limitations on Costs of Development and Administration of a Head Start Program, which is available in the application kit.

All programs will be reviewed at the end of the first year of operation to determine their suitability for receiving continued funding. Programs will be expected to submit an ongoing operational plan and revised budget. Federal staff also may ask for additional material as part of the review.

Given the importance of planning, selecting high quality staff and setting in place training mechanisms, and coordinating with other programs within the community, we expect that programs will spend some portion of their first year focusing on start-up activities.

Programs are required to begin serving children, families and pregnant women within the first year. Programs must be fully operational no later than one year from the date of their grant award. Because the first year is unlikely to include 12 months of full operation, it is assumed that first year budgets will be lower than budgets for future years. Applicants are expected to submit a first year budget which will include a start-up budget and a prorated operational budget as well as an on-going annualized budget.

G. Required Match

Grantees that operate Early Head Start programs must provide at least 20 percent of the total approved costs of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, fairly evaluated, including facilities, equipment or volunteer services. Therefore, a project requesting $100,000 in Federal funds (based on an award of $125,000 per budget period), must include a match of at least $25,000 (20 percent of the total project costs). Applicants are encouraged to provide more than the minimum 20 percent non-Federal share. In certain instances, the requirement for a 20 percent non-federal match may be waived in part or in whole, if the circumstances described in Section 640(b) of the Head Start Act exist.

H. Applicable Head Start Standards

Agencies that receive funding under this announcement must adhere to the standards set forth in certain regulations that govern Head Start programs in addition to Department of Health and Human Services' regulations that govern discretionary grants generally. The relevant Head Start regulations are: Head Start Grants Administration, 45 CFR Part 1301; Program Performance Standards for Operation of Head Start Programs by Grantee and Delegate Agencies, 45 CFR Part 1304; and Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start, 45 CFR Part 1305; and Head Start Program Performance Standards on Services for Children with Disabilities, 45 CFR Part 1308.

On November 5, 1996, the final version of the revised Head Start Program Performance Standards (45 CFR Part 1304) was published in the **Federal Register** [61 FR 57186]. In addition to revising the standards for Head Start services to preschool children and their families, these regulations provide, for the first time, performance standards for Early Head Start programs serving pregnant women and families with infants and toddlers. The effective date for these regulations is January 1, 1998. At that time, all Head

Start and Early Head Start programs will be expected to comply with the revised Performance Standards. Applications for Early Head Start grants must provide evidence of the applicant's knowledge of and capacity to meet the relevant Head Start regulations, including the requirements of the revised Performance Standards.

The Head Start Program Performance Standards prescribe the program requirements that grantees must meet as they administer Early Head Start programs. The four cornerstones and nine principles identify the factors that must be considered in designing an Early Head Start program. The cornerstones and principles are embedded in the Head Start Program Performance Standards which are critical in the implementation of an Early Head Start program.

I. Early Head Start as a Learning Community

1. Overview

On both the local and national level, Early Head Start is envisioned as a learning community for how quality services should be delivered to low-income pregnant women and families with infants and toddlers. Thus, continuous improvement, evaluation, research and dissemination activities play a critical role in this initiative. These activities include, but are not limited to:

- Continuous review and measurement of program processes to determine progress toward stated objectives and for the purpose of program improvement;
- Studies of program processes including services offered to and received by families and descriptions of how the services are delivered;
- Qualitative studies of individual families and programs;
- Studies of child, family, program and community variables that contribute to program outcomes;
- Studies of program quality and the relationship of quality to program outcomes;
- Studies of program variations and their relationship to impacts;
- National impact studies, conducted by a national contractor;
- Establishment of longitudinal research in a sample of Early Head Start national impact study sites; and
- Documentation of the program models and development of materials for dissemination purposes.

2. Requirement on the Use of an Automated Information System

All Early Head Start programs will be required to use an automated information system to collect program information on infants, toddlers and pregnant women, services, collaborative arrangements, staff, training, services utilization and costs. The Head Start Family Information System (HSFIS) is currently being modified to accommodate the needs of Early Head Start. The HSFIS software and User's Manual will be made available to Early Head Start grantees at the time of grant award. Grantees will be responsible for coordinating the collection of data for and management of HSFIS.

3. Continuous Improvement Requirements

In order to enter fully into the learning community environment on both the national and local level, all Early Head Start programs will be required to:

- Conduct a local assessment of progress toward stated objectives and program improvement using the automated information system and other sources of data which measure progress toward stated objectives and contribute to a process of continuous improvement within the program and sponsoring agency; and
- Provide information from the Early Head Start automated information system as approved by OMB.

Part III. Application Requirements

Applicants must address the following requirements in their applications for financial assistance. For the convenience of applicants, these requirements have been organized according to the evaluation criteria presented in Part IV.

A. Objectives and Need for Assistance

1. State the objectives for the program and indicate how these objectives relate to the Head Start Program Performance Standards (see Section II. H of this Announcement) and demonstrate that there is a need for the program that relates to these standards and is based on an assessment of need in the community. Describe the method used to undertake the community assessment and consumer consultation process that led the applicant to conclude that there is a need for the proposed program. An applicant need not conduct an independent assessment of the community if such an assessment already exists. In this case, the applicant should describe the method used in the recently conducted assessment and explain any additional consultation with consumers as it relates to the development of the proposed program. Provide letters of support for your program from community leaders and residents.

2. Identify the population to be served by the project and explain why this population is most in need of the program. Identify the target enrollment size (the estimated number of infants, toddlers and pregnant women) and provide assurances that the population the program intends to recruit and enroll will meet Early Head Start eligibility criteria.

3. Identify the geographic location to be served by the program. Describe the key characteristics of the targeted area and explain what makes the area an identifiable community or neighborhood. Describe what services and resources are/are not currently available in the area to serve pregnant women, infants and toddlers. Provide demographic and other information on the target area which demonstrates that there are a sufficient number of eligible, unserved infants, toddlers and pregnant women in the area to justify the target enrollment size. For Category One funds only, demonstrate that the geographic area is currently unserved by an Early Head Start program or a Head Start Parent and Child Center. For Category Two, demonstrate that the geographic area is in the same area as that served by the current Parent and Child Center or explain why the boundaries of the service area are proposed to be changed (e.g. as a result of the needs assessment).

B. Results or Benefits

1. Identify the specific results or benefits that could be expected for children, families and pregnant women participating in the program. Identify the specific community-wide results or benefits. Identify the specific results or benefits that could be expected for the staff working in a collaborative partnership with other child development caregivers and family development staff working in a variety of relevant community agencies.

2. Identify the kinds of qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. State how you will determine the extent to which the program has achieved its stated objectives.

3. Provide assurances that the program will collect data on groups of individuals and geographic areas served, types of services provided, service utilization information, types and nature of needs identified and met, and such other information as may be required periodically by the ACF.

C. Approach

In designing the approach, applicants are reminded that, as of January 1, 1998, all Early Head Start (EHS) programs must meet the requirements of the revised Head Start Program Performance Standards, 45 CFR Part 1304. Therefore, all elements of the EHS program should be consistent with these standards.

1. All applicants must describe the planning the program will conduct during the start-up period to prepare for implementation of the program and explain how consumers and other stakeholders in the community will be involved in the planning.

2. Explain the approach to be used to recruit and enroll the number and type of infants, toddlers and pregnant women from the target recruitment area, as discussed in Part III, Section A. Discuss any special efforts you will make to recruit and enroll low-income pregnant women and children under age one.

3. Describe how the program will ensure that at least 10 percent of enrollment opportunities will be made available to children with disabilities (as defined by the IDEA Part H Lead Agency for the State). Describe the policies and practices the program will have in place to assure that a child will not be denied enrollment or participation in the program on the basis of a disability or the severity of such a condition. Describe how the program will work with the Part H local lead agency or, if available, the local Interagency Coordinating Council, to recruit and enroll children with disabilities (and their families) who have been previously identified by the Part H agency, and to collaborate with the Part H agency to arrange and provide for special services needed by these children and their families. Describe how staff will coordinate their efforts with others to ensure children with disabilities and their families receive high quality services.

4. Describe the approach to providing child development services and explain the rationale for choosing the approach. Identify and describe the specific approaches that will be used for assuring the intellectual, social, emotional and physical development of the infants and toddlers served. Describe the philosophy, curricula, staffing patterns, staff qualifications, types and quality of settings and any other relevant information that will comprise the program's model for supporting the growth and development of very young children. Clearly explain how your model will meet the developmental needs of very young children (including children from non-English speaking families).

5. Explain how the program's child development approach will promote parent/guardian-child interaction and support the mother-child and/or father-child bond. Also explain how caregiving will be provided in ways that support infant and toddler attachment to a limited number of skilled and caring individuals.

6. Describe how high quality infant and toddler full-and part-day child care will be provided to children of parents who are working or in training or to children who require out-of-home care due to special parental circumstances such as substance abuse treatment. Discuss the relationship between these resources and the program's overall child development approach. Describe the process the program will use to determine that child care (provided either directly or through referral) will be of high quality. Include the location and description of the proposed child care facilities and describe any improvements and the costs associated with them which may be required to comply with the Head Start Performance Standards. Indicate if the facility is immediately available or indicate the estimated date for occupancy. In addition, describe the program's approach to building capacity in communities where high quality infant/toddler child care is lacking.

7. Describe the efforts the program will make to help assure continuation of developmentally-appropriate services for children, once the children reach the age of three.

8. Describe the specific approaches for providing, either directly or through referrals, ongoing well-baby and well-child health services such as early and periodic screenings, diagnosis, treatment, immunizations, nutritional assessments, developmental surveillance and anticipatory guidance. In addition, describe the approach for ensuring that children are cared for in safe and hygienic environments.

9. Describe the approach for supporting family growth and development and explain the rationale for choosing the approach. Explain the framework of and procedures for developing each family's individualized plan. Explain how you intend to work with other service delivery systems which require a similar plan, such as the Part H Individualized Family Service Plan (IFSP), to ensure that the family only needs to complete one plan and that one plan can be used by all relevant programs to ensure a seamless service delivery system for the child and family. Describe how your family development approach will assist families and individual family members in identifying, pursuing and achieving goals and overcoming obstacles on the way to achieving those goals.

10. Describe how the program will develop relationships with parents which promote their involvement with the program. Describe the strategy and the opportunities for parent involvement, providing assurances that it meets or exceeds the parent involvement standards described in 45 CFR Part 1304, the Head Start Program Performance Standards. Explain what special efforts the program will make to reach out to and to involve fathers.

11. Describe what services the program will provide, either directly or through referrals, to promote adult and family health and wellness. Identify and explain the mental and physical health services which will be made available and accessible to the families of the infants and toddlers served by the program. Describe what the program will do to promote women's health and wellness prior to, during and after pregnancy. In addition, describe what the program will do to facilitate access to substance abuse prevention and treatment services and smoking cessation programs for affected families.

12. Describe what services the program will provide, either directly or through referrals, to promote progress toward economic self-sufficiency for parents. Describe the program's approach to basic literacy training, adult basic eduction, employability skills training, job development and placement services and any other employment and training services that are planned.

13. Describe what assistance the program will provide, either directly or through referrals, to families in obtaining needed income support, child support and related assistance.

14. Identify the existing transportation resources available to families in reaching services provided at the program site and in off-site locations. Describe any transportation arrangements the program will make to ensure that children and pregnant women are able to access needed services.

15. Describe the program's approach to community building and explain the rationale for choosing the approach. Describe how the program will be coordinated with other programs and services in the community which serve pregnant women, infants, toddlers and their families and how the program will assist in the development of local community capability, expertise and commitment to carry out comprehensive

service programs built around the needs of low-income pregnant women and families with very young children. Describe any barriers to collaboration in your community and explain the program's strategy for addressing these. Identify by name specific providers, agencies and organizations with which the applicant will coordinate in order to carry out the requirements of this project. Applicants should furnish formal interagency agreements or contracts (if available) indicating which services will be provided to which program participants and for what periods of time, by each of those provider agencies and/or organizations.

16. Describe linkages with community resources that the program will establish and maintain during the planning, implementation and operation of the program: health and nutrition (e.g., public health departments and other health providers and programs including Title V, Supplemental Food Program for Women, Infants and Children (WIC) and Medicaid prenatal care services and the Medicaid Early and Periodic Screening, Diagnosis and Treatment program (EPSDT)); early intervention (e.g., Part H local lead agency or, if available, local interagency coordinating councils and University Affiliated Programs); mental health and substance abuse prevention and treatment; the agency administering Temporary Assistance for Needy Families (TANF); education (e.g., local preschool, child care, Head Start, and elementary schools); other Early Head Start programs; child care resource and referral agencies and their networks; business (e.g., the local Private Industry Council); parent groups; and other strength-building organizations.

17. Describe the approach to staff selection and explain the rationale for choosing the approach. Describe what staffing patterns and mix of staff qualifications and language/cultural competencies the program will require to ensure that staff, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide quality, comprehensive, inclusive and family-centered services to pregnant women and young children and families. Describe the process the applicant will use to identify and select individual staff—from directors to caregivers to data management staff—who demonstrate the personal characteristics, competencies and skills necessary to provide quality services and promote quality relationships with and among children, families, the community and other staff. Explain how the program will ensure that all infant/toddler caregivers are qualified, with sufficient grounding in infant/toddler development and care and parent/caregiver relations prior to working with children and families enrolled in the program. Please note the revised Head Start Program Performance Standards require that Early Head Start staff working as teachers with infants and toddlers must obtain a Child Development Associate (CDA) credential for infant and toddler caregivers or an equivalent credential that addresses comparable competencies within one year of the effective date of the final rule (January 1, 1998) or, thereafter, within one year, as a teacher of infants and toddlers (45 CFR Part 1304.52(f)).

18. Describe the approach to staff development and the rationale for choosing the approach. Describe the training, technical assistance, and supervision that will be provided to ensure continued enhancement of staff skills and teamwork. Describe how training and technical assistance opportunities will be coordinated with other service providers in the community so that Early Head Start both provides and benefits from the knowledge, expertise, and training opportunities of other relevant community programs and service delivery systems. Describe how the program will ensure that staff are knowledgeable about the rights of children with disabilities and are capable of providing such infants and toddlers with high quality care in a supportive and developmentally appropriate environment.

19. Identify and explain the management and continuous improvement plan(s) for implementing the program. Include: an outline of the timeframes and milestones for all key activities that the program will engage in during the first year of operation, as well as a preliminary outline of timeframes and milestones for key activities in the remaining years of the project; a description of the procedures for assessing progress toward stated objectives, including how the collection of data on results and benefits will contribute to a process of continuous improvement within the program and the sponsoring agency; a description of how an automated information system will become an integral component in the management and continuous improvement of the program; a description of how confidentiality of user data will be maintained; a description of the applicant's capacity (e.g. administrative and support personnel, etc.) to support the program at the proposed target enrollment size; a description of the strategy for minimizing staff turnover; and a description of how the program will go about establishing a Policy Council (as described by 45 CFR Part 1304) and a Health Services Advisory Committee (as described by 45 CFR Part 1304).

20. Identify and describe the proposed site which will be used to serve children and families and include a description of the size and location of classroom, administrative, and food service space, if applicable. If incidental alteration and renovation costs are proposed, include a written estimate and the date by which the proposed facility will be licensed and available to provide child and family services.

D. Collaboration

Describe the collaborative relationships the applicant will develop in order to maximize resources in the community. Include letters of support and commitment from other partner agencies in the community. In the area of child care to meet the needs of low-income parents, describe collaborative approaches to funding and service delivery with other community-based child care agencies and providers or child care funding sources. In partnerships with child care agencies and providers, the child care programs gain the benefit of Early Head Start resources and experience in enhancing the quality of staffing and program services to levels consistent with Head Start Program Performance Standards. Include letters of commitment from child care and early childhood agencies who will assist the grantee in delivering services.

E. Staff Background and Organizational Experience

1. Describe the applicant's experience in providing comprehensive child and family development services to infants and toddlers and their families as well as pregnant women. Describe the applicant's experience in collaborating with local, State and Federal partners. Describe the applicant's history and relationship with the target community. Include a complete discussion of relevant program, administrative and fiscal management experience.

2. If the applicant represents a consortium of partner agencies, explain the relevant background of each partner and its experience in planning and implementing programs to serve children and families. Each partner must provide a letter of commitment which authorizes the applicant to apply on behalf of the consortium.

3. Identify and provide a brief description of key staff who are proposed to work in the program and

indicate their educational training and experience working with similar programs. Provide resumes. Build on the answer to Part III, Section C, Number 17 by explaining how these particular staff comprise a multi-disciplinary team of experts. In addition, explain how the ethnic and racial composition and language proficiencies of these particular staff are reflective of the community where the program will be located.

4. Describe the expertise the organization will utilize in conducting continuous improvement activities. Describe the experience of and provide resumes for the individuals who will assist the program with continuous improvement activities.

F. Budget Appropriateness

1. Provide two detailed, line-item budgets: one budget that separates all relevant start-up costs from a prorated amount of operating costs to be incurred in the first year of the project (e.g. one column for start-up costs and one column for prorated operating costs); and one budget that reflects ongoing annual operating costs. In the proposed budgets, applicants must set aside sufficient funds so that at least two staff can travel to Washington, D.C. for two annual meetings of four days each to be convened by ACYF. In addition, applicants must set aside sufficient funds so that at least one staff can travel to a mid-point in the U.S. for two trips per year of seven days each for intensive training. Each budget should include the required non-Federal share of the cost of the project (See Part II, Section G).

2. Describe how these budgets reflect high quality, ongoing services provided at a reasonable cost. Include discussions on the appropriateness of staff compensation levels and funds set aside to assure ongoing staff development and training; costs associated with special equipment and technological needs and the removal of architectural barriers for persons with disabilities; renovation costs associated with providing environments conducive to the high quality provision of child and family development services; and costs associated with family transportation and emergency resource needs, etc. Explain what efforts the applicant has made or will make to secure other community cash and in-kind resources, besides those shown in the budgets, and what additional resources will be used to support the provision of Early Head Start services to children and families.

3. In providing high quality infant and toddler child care, applicants should describe how a variety of existing community resources will be utilized and maximized. Provide documentation of the additional resources that will be combined with Early Head Start funds to provide high quality child care which meets the Head Start Program Performance Standards. Explain and itemize these resources or services, whether or not these costs are included as part of the non-federal share.

4. Provide information on the facilities the applicant will use, including the estimated cost and scope of any changes that are needed and when such facilities are available. In most cases, it is expected that, given the finite project period for which Early Head Start grants will be funded, applicants will not propose to use Early Head Start grant funds to purchase, construct or undertake a major renovation of a facility. If an applicant, however, believes that such a purchase, construction or major renovation is in the best interests of the government, and can demonstrate this in its application, it may propose to purchase, construct or undertake a major renovation of an Early Head Start facility.

Part IV. Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under Part III of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following six criteria. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

A. Criterion 1. Objectives and Need for Assistance (15 Points)

The extent to which, based on community assessment information, the applicant identifies any relevant physical, economic (e.g., poverty in the community), social, financial, institutional, or other issues which demonstrate a need for the Early Head Start program; in addition, the extent to which the applicant identifies the strengths of the community the project will serve. The extent to which the applicant lists relevant program objectives that adequately address the strengths and needs of the community. The extent to which the applicant describes the population to be served by the project and explains why this population is most in need of services to be provided by the program. The extent to which the applicant gives a precise location and rationale for the project site(s) and area(s) to be served by the proposed project. For Category One funds, the applicant needs to demonstrate that the geographic area is currently unserved. For Category Two funds, the applicant needs to demonstrate that the geographic area chosen is in the same area as that served by the current Parent and Child Center or explain why the service area is proposed to be changed.

Information provided in response to Part III, Section A of this announcement will be used to evaluate applicants on this criterion.

B. Criterion 2. Results or Benefits Expected (10 Points)

The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives. The extent to which the applicant describes the kinds of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Information provided in response to Part III, Section B of this announcement will be used to evaluate applicants on this criterion.

C. Criterion 3. Approach (35 Points)

The extent to which the applicant demonstrates the knowledge and capacity to meet the requirements of the Head Start Program Performance Standards. The extent to which the applicant explains why the approach chosen is effective in light of the needs, objectives, results and benefits described above. The extent to which the approach is grounded in recognized standards and/or guidelines for high quality service provision or is defensible from a research or ''best practices'' standpoint.

The extent to which the applicant's management plan demonstrates sufficient management capacity to implement a high-quality Early Head Start program.

Information provided in Part III, Section C of this announcement will be used to evaluate applicants on this criterion.

D. Criterion 4. Collaboration (10 Points)

The extent to which the applicant presents documentation of efforts (letters of commitment, interagency agreements, etc.) to establish and maintain ongoing collaborative relationships with community partners. The extent and thoroughness of approaches to combining Early Head Start resources and capabilities with those of other local child care agencies and providers to provide high quality child care services to infants and toddlers which meet the Head Start Program Performance Standards.

Information concerning collaboration which is provided in response to Part

III, Section D of this announcement will be used to evaluate applicants on this criterion.

E. Criterion 5. Staff Background and Organizational Experience (20 Points)

The extent to which the proposed program director, proposed key project staff, and the organization's experience and history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope. The extent to which the organization demonstrates an ability to carry out continuous improvement activities. Up to five points will be given based on the organization's experience in providing early, continuous, and comprehensive child and family development services.

Information provided in response to Part III, Section E of this announcement will be used to evaluate applicants on this criterion.

F. Criterion 6. Budget Appropriateness (10 Points)

The extent to which the program's costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes. The extent to which the salaries and fringe benefits reflect the level of compensation appropriate for the responsibilities of staff. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost. The extent to which the program has attempted to and/or succeeded in garnering cash or in-kind resources from other sources in the community. The extent to which costs for facilities are reasonable and cost effective, given the five year project period for the Early Head Start grant.

Information provided in response to Part III, Section F of this announcement will be used to evaluate applicants on this criterion.

Part V. The Application Process

A. Availability of Forms

Eligible applicants interested in applying for funds must submit all the required forms included at the end of this announcement in Appendix A. This material is also included in the application kit provided by contacting the ACF Operations Center at 1–800–351–2293 (phone) or 1–800–351–4490 (fax). Applicants are required to use the Standard Forms, Certifications, Disclosures and Assurances provided under Appendix A—ACF Uniform Discretionary Grant Application Form (ACF/UDGAF). Under the ACF/UDGAF, applications submitted for funds under this announcement are considered NEW APPLICATIONS. Applicants should follow instructions in the ACF/UDGAF for NEW APPLICATIONS.

In order to be considered for a grant under this Announcement, an application must be submitted on the Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0970–0139. A copy has been provided (see Appendix A). Each application must have an original signature by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. A copy of the governing body's authorization for this person to sign this application as official representative must be on file in the applicant's office.

In preparing the program narrative statement, the applicant should provide the information that the panel will use to evaluate and rank the proposal. That information should be concise and complete when addressing the activities for which Federal funds are being requested. Supporting documents should be included where they present information clearly and succinctly. Applicants should respond to the instructions under ACF/UDGAF—Program Narrative—Items A (Project Description—Components) and D (Budget and Budget Justification). Under Project Description—Component, the applicant should address the specific information requested under each area in this program announcement. Some of the following sections of the Program Narrative portion of the ACF/UDGAF do not require a response under this announcement, while information on other sections noted below should be placed under a different section than prescribed in the Program Narrative of the ACF/UDGAF:

Section A.1.—Project Summary/Abstract—This should be a one page or less summary of the project with reference to the funding requested and placed directly under the table of contents or SF424. This page will not count against the page limit for program description.

Section A.5.—Evaluation—Do not address the section as stated in the ACF/UDGAF in this application; it is not required under this announcement.

Section A.6.—Geographic Location—Should be addressed under the Objective and Needs for Assistance section of this announcement (Part III A).

Section A.7.—Additional Information—Should be addressed under the Staff Background and Organizational Experience section of this announcement (Part III E). Letters of Support should be addressed under the appendices to the application.

Section B.—(Non-competing continuation applications) Does not apply to this announcement.

Section C.—(Supplemental requests) Does not apply to this announcement.

Section D.—Budget and Budget Justification—should be addressed under the Budget Appropriateness section of this announcement (Part III F).

Requests to renovate a facility should be addressed under SF 424A—Budget Information Non-Construction Programs. Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their application. SF 424C—Budget Information for Construction Programs and SF424D—''Assurances'' for Construction Programs do not apply to this announcement, unless the applicant is proposing construction under Part III.F.4.

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must sign the disclosure of lobbying activities, if appropriate.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103–227, The Pro-Children's Act of 1994. A copy of the **Federal Register** notice which implements the smoking prohibition is included in the application kit.

B. Application Submission

Applicants submitting proposals should use the following format guidelines: Proposals should be organized according to the evaluation

criteria located in Part IV of this **Federal Register** announcement. For each of the six specified criteria, applicants should provide information in response to the application requirements described in Part III of this announcement. These application requirements are cross-referenced by number in the last paragraph of each criterion. All persons who prepared sections of the proposal should be identified along with those sections, as well as identified according to their responsibilities with regard to the proposed program.

One signed original and two complete copies of the grant application, including all attachments, are required. The program announcement number (ACYF–HS–93600–97–03) must be clearly identified on the application. Each application must be limited to no more than 100 double-spaced pages of program narrative (not including the forms which make up the SF–424 and resumes) excluding the one-page project summary. If the narrative portion of the application is more than 100 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers. The attachments/appendices to each application must be limited to no more than 100 pages, (in addition to the 100 pages permitted for the narrative portion of the application). If the attachments/appendices to each application are more than 100 pages, the other pages will be removed from the application and not considered by the reviewers.

Applicants must indicate on page one of their Application for Federal Assistance, SF 424, whether they are applying for funding under Category One or Category Two (see II B. 1 and 2). Please indicate in the ''applicant identifier'' box at the top of page one of the SF 424, the category for which you are applying (Category One or Two). For Category Two, the applicants must list the number of the Parent and Child Center (PCC) geographic area for which they are applying to serve (see II.B.2 and Appendix E list of PCC geographic areas). Indicate the geographic area number for which you are applying in box # 12, ''areas affected by project'' on page one of the SF 424.

C. Application Considerations

Applicants will be scored against the evaluation criteria described above. The review will be conducted in Washington, DC. or in an HHS Regional office by a panel consisting of experts in the areas of child and family development and other related fields.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, in recommending the projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. An application may be funded in whole or in part, depending on the relative need for services, applicant ranking, geographic location and funds available.

The Commissioner may elect not to fund applicants that have management, fiscal, or other problems and situations that make it unlikely that they would be able to provide effective Early Head Start services.

The Commissioner may decide not to fund projects that would require unreasonably large initial start-up costs for facilities or equipment.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

In awarding grants to eligible applicants, the Commissioner shall ensure an equitable national geographic distribution of the grants and award grants to applicants proposing to serve communities in rural areas and to applicants proposing to serve communities in urban areas.

The Commissioner will consider the benefit to communities of funding new providers.

Subject to the availability of additional resources in FY 1998 and the number of acceptable applications received as a result of this program announcement, the Commissioner may elect to fund grantees in FY 1998 from the pool of applications submitted in response to this announcement.

ACYF will determine when the project period begins for Early Head Start grants.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—The narrative portion of the application does not exceed 100 double-spaced pages in a 12-pitch font with 1½ inch margins at the top and 1 inch at the bottom and both sides.
—Attachments/Appendices to the application do not exceed 100 pages. Attachments/appendices should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent/agreement. Please do not include books or video tapes as they are not easily reproduced and are therefore inaccessible to the reviewers. Each page should be numbered sequentially.
—A complete application consists of the items indicated in the checklist in the ACF/UDGAF.

E. Due Date for the Receipt of Applications

Deadlines: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the ACYF Operations Center, Clarendon Blvd., Suite 240, Arlington, VA 22201, Attention: Application for Early Head Start Category _____. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. Applicants are cautioned that postmarks will *not* be considered as a methodology for meeting the deadline.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting the announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the ACYF Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Virginia 22201, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1995 (P.L. 104–13)

All information collections within this program announcement are approved under the Uniform Discretionary Grant Application Form

under OMB Control Number 0970–0139 (expiration date August 31, 1997). The estimated burden per response is 20 hours. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions areas need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to the ACF, they should be addressed to: Department of Health and Human Services, Administration on Children, Youth and Families, Head Start Bureau, Grants Officer, 330 C Street S.W., Room 2310–B, Washington, D.C. 20201.

A list of Single Points of Contact for each State and territory is included as Appendix B of this announcement.

H. Closing Date

The closing date for submission of applications is June 16, 1997.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: April 14, 1997.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A - ACF Uniform Discretionary Grant Application Form

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction · Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)_____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please Do Not Return Your Completed Form to the Office of Management and Budget, Send It to the Address Provided by the Sponsoring Agency

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State, if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities.)
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C — NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

BILLING CODE 4184-01-C

Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please Do Not Return Your Completed Form to the Office of Management and Budget, Send It to the Address Provided by the Sponsoring Agency

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Sources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

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Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse: (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrinimation provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874, and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

_____

Title

_____

Applicant organization

_____

Date submitted

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a) (1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements

(Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false

certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority of State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are in the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of performance (Street address, city, county, state, zip code):

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions

and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participants certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report_____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* Congressional District, *if known*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*	
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*	
Items 11 through 15 are deleted.		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee'', then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 [e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency]. Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been a award or loan commitment by the Federal agency, enter the Federal amount of the award loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full name(s) of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

(The instructions for items 11 through 15 are removed.)

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046).

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in

chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate (1) the results of your project and (2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include if Applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF 424, SF 424A, SF–424B).

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if category ''other'' is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition

cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identify which construction activity/costs will be contractual and which will be assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (Self explanatory).

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day/or the imposition of an administrative compliance order on the responsible entity:

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Certification Regarding Maintenance of Effort

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under the

_____

Program by

_____

(Applicant Organization)

will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Date

Appendix B—OMB State Single Point of Contact Listing

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Appendix C—The Statement of the Advisory Committee on Services for Families With Infants and Toddlers

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All children from birth to age three need early child development experiences that honor their unique characteristics and provide love, warmth, and positive learning experiences; and all families need encouragement and support from their community so they can achieve their own goals and provide a safe and nurturing environment for their very young children. This recognition is guiding the design of the new Early Head Start program.

Early Head Start marks a turning point in America's commitment to our youngest children and their families. By focusing on child development, family development, community building, and staff development, a new era of support to very young children and their families is born, building on the experiences and lessons learned from existing Head Start programs.

Early Head Start puts resources into a constellation of high quality supports and services that will promote healthy child and family development, and backs them with a Federal commitment to training, standards and monitoring for high quality, research and evaluation, and services coordination at the national level. It enables families and communities to design flexible and responsive programs but requires that, at a minimum, programs provide child development, family support, health services for young children and pregnant women, and home visits to families with newborns. This would include child care services that respond to the needs of families. When services are provided through referral, it requires that the Early Head Start program assures the services to which families are referred are of highest quality, available and accessible, and that needed follow-up occurs. And although service delivery mechanisms may vary, a common characteristic will be that each Early Head Start program will establish a place which is recognized as a source of support for very young children, families, and caregiving staff. Programs will be encouraged to give this Early Head Start place visibility and identity.

With this design, the Early Head Start program will be suited to last well into the next century, always reshaping itself to provide high quality, responsive, and respectful services to America's youngest children and their families.

Background, Vision, and Goals

The reauthorization of the Head Start Act in 1994 made it possible to formally open a new chapter of Federal support for families with infants and toddlers by establishing a special initiative within the context of the Head Start program. Beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants to Early Head Start programs which will provide early, continuous, intensive, and comprehensive child development and family support services to low-income families with children under age three. This initiative will bring together under one umbrella Head Start's existing programs for families with infants and toddlers, the Comprehensive Child Development Program and the Parent and Child Centers; strengthen the Migrant Head Start Program; and add new resources to model high quality child development and family development services for very young children and their families.

To help with the design of the new initiative, the Secretary formed the Advisory Committee on Services for Families with Infants and Toddlers. The Committee was charged with advising the Secretary and Assistant Secretary for Children and Families on the development of program approaches for the initiative that would address the parenting and child development need of low-income parents and their infants and toddlers. We were to pay particular attention to the key principles and array of models of effective culturally and developmentally appropriate service delivery. To fulfill this commitment, we met three times during the summer of 1994 to engage in discussions about our vision for a national approach to high quality, responsive services for very young children and their families. We outlined the Federal role for carrying forth this vision, ensuring such programs can flourish.

We are excited about the fruits of these deliberative efforts and confident that the resulting initiative will advance Head Start leadership in realizing a national vision of communities where:

- *Children,* from birth, receive support through their family and their community to achieve optimal growth and development and build a foundation of security, self-confidence and character strength which will in turn enable them to build successful social relationships for learning and continued development through later childhood and adulthood;
- *Families* receive support to meet their personal goals, and resources and guidance to prepare for their child's birth and provide a warm, caring, responsive environment for their very young child;
- *Communities* embrace and support all families, celebrating the birth of their children and creating an environment where support and resources are mobilized to ensure a comprehensive, integrated array of services are available and accessible for all very young children and their families; and
- *Staff* receive the professional education and personal support they need to provide high quality environments and experiences and engage in responsive relationships that promote the healthy development of infants, toddlers, and their families.

In keeping with this vision, the goals set forth by the Advisory Committee for Early Head Start will be:

- To provide safe and developmentally enriching caregiving and environments which promote the physical, cognitive, social and emotional growth of *infants and toddlers* and prepare them for future growth and development;
- To support *parents,* both mothers and fathers, in their role as primary caregivers and educators of their children, and *families* in meeting personal goals and achieving self-sufficiency across a wide variety of domains;
- To mobilize *communities* to provide the resources and environment necessary to ensure a comprehensive, integrated array of services and support for families, and to foster the systems change necessary to summon forth the guiding vision of this initiative; and
- To ensure the provision of high quality responsive services to families with infants and toddlers through the development of highly-trained, caring and adequately compensated program *staff.*

The Advisory Committee recognizes that the vision and goals outlined above have also been shaped by the lessons learned from the Comprehensive Child Development Program, Parent and Child Centers, Migrant Head Start Programs, locally designed Head Start programs, and other early child development and family support efforts serving families with very young children. As part of the overall consultation for the development of this initiative, Federal staff conducted over 30 focus groups with parents, practitioners, researchers, advocates, and representatives of professional organizations. Focus groups were designed to address topical areas such as child care, family services, health care, support and services for children with disabilities and their families, community mobilization, parent involvement and parent advocacy. In addition, Federal staff met with or received materials and recommendations from a number of other experts and practitioners in the field. The suggestions, guidance, and information received through this process have been invaluable to both the Advisory Committee and the Administration on Children, Youth and Families.

Research Rationale

Findings from more than three decades of research in child and family development support the vision and goals set forth for support to families with infants and toddlers. We know that the time from conception to age three is a critical period of human development, as change occurs more rapidly than in any other period of the life span. Growth in these early years establishes the basic foundation for future development. For infants and toddlers to develop optimally, they must have health beginnings and the continuity of responsive and caring relationships. Together, these supports help promote optimal cognitive, social, emotional, physical, and language development. When these supports are missing, the immediate and future development of the child may be comprised. Fortunately, recent research identifies characteristics of effective programs that enhance both child and family development. This growing body of knowledge provides a solid base upon which the Early Head Start program can be founded.

Maternal and Infant Health

Maternal and infant health are essential for ensuring normal pre- and post-natal development of very young children. Late or inadequate prenatal care, malnutrition, stress

and exposure to harmful substances are associated with shortened gestation, reduced birthweight, birth defects and underdeveloped brain growth (Osofsky, 1975; U.S. Department of Health and Human Services, 1989; Carnegie Corporation, 1994). These, in turn, have been associated with higher probabilities for infant mortality, illness, disabilities, child abuse, difficulty in relationships (Glasgow and Overall, 1979) and subsequent learning disorders (Drillien, Thomson and Bargoyne, 1980). During the early years of life, proper nutrition, routine well-child health care, timely immunizations, safe environments and health-promoting behaviors are necessary to support physical growth and development.

Given the paramount importance of health for very young children, a major focus of the Early Head Start program must be to ensure women receive the health services needed to promote a healthy pregnancy and birth, and very young children receive early and ongoing well-baby care, immunizations, and other essential health services to support their development.

Child-Caregiver Relationships

The child-caregiver relationships with the mother, father, grandparent and other caregivers are critical for providing infants and toddlers support, engagement, continuity and emotional nourishment necessary for healthy development, and the development of healthy attachments (Ainsworth, Blehar, Waters and Wall, 1978). Within the context of caregiving relationships, the infant builds a sense of what is expected, what feels right in the world, as well as skills and incentives for social turn-taking, reciprocity and cooperation (Emde, Biringen, Clyman and Oppenheim, 1991; Isabella and Belsky, 1991). The infant's activities are nourished and channeled in appropriate ways so as to encourage a sense of initiative and self-directedness. During the toddler period, the child, through repeated interactions with emotionally-available caregivers, also begins to learn basic skills of self-control, emotional regulation and negotiation (Kochanska, 1991; Kopp, 1989; Suess, Grossman and Sroufe, 1992). Empathy for others and prosocial tendencies for caring and helping also develop during toddlerhood as well as the emotions of pride and shame; experiencing and learning about these capacities require responsive caregiving relationships in the midst of life's inevitable stresses and challenges (Zahn-Waxler and Radke-Yarrow, 1990).

A sense of pleasure, interest in exploration, early imaginative capacities, and the sharing of positive emotions also begin in infancy—all of which require repeated and consistent caregiver relationship experiences and form a basis for social competence that carries through toddlerhood and the preschool period (Emde, 1989; Dix, 1991). The opportunities for play for both infant and caregiver, as well as the skills that develop from play, are often under-appreciated aspects of healthy development (Bruner, 1986; Elicker, Englund and Sroufe, 1992).

Finally, the importance of promoting a network of healthy caregiving relationships for the very young child cannot be overstated (Crockenberg, 1981; Egeland, Jacobvitz and Sroufe, 1988; Sameroff and Emde, 1989; Tronick, Winn and Morelli, 1985). The network of caring relationships provides an ever-expanding circle of support for both child and family. Factors that undermine optimal child-caregiver relationships include isolation, lack of support and maternal depression (Crnic, Greenberg, Robinson and Ragozin, 1984), the latter reported to be a high as 56% in some samples of low-income new mothers (Hall, Gurley, Sachs and Kryscio, 1991). In child care settings, high staff turnover, low staff wages, low quality programming and lack of adequate staff training for substitute caregivers negatively affects the quality of child-caregiver relationships (Zigler and Lang, 1991; Whitebook, Howes and Phillips, 1989). This in turn further compromises the nature and quality of the child's overall development.

Thus, it follows that a major focus for Early Head State services should be the development of healthy and skillful relationship building between very young children and their parents and caregivers that encourages interactions and promotes attention and activity in infants. Hence, opportunities for sustained relationship-building over extended periods of times will be an explicit goal throughout the program.

Characteristics of Successful Programs Serving Families With Infants and Toddlers

The goal of many early child development programs is to enable the child, with the support of the parents as primary caregivers and other caregivers, to establish a developmental path that will prepare him or her for long-term success. Hundreds of programs with a variety of specific emphases have sought to achieve this goal. From these many interventions, a picture of the critical ingredients for successful programs has emerged. In short, we know effective programs often are characterized by: early prenatal services to the expectant woman (Olds, Henderson, Tatelbaum and Chamberlin, 1986); a two-generational focus (Zuckerman and Braxelton, 1994; Administration on Children, Youth and Families, 1994; Ramey and Campbell, 1984; Brooks-Gunn, Klebanov, Liaw, Spiker, 1993); family-centered services that address self-sufficiency through the provision of social services and parent education (Booth, Barnard, Mitchell and Speiker, 1987; Olds, Henderson, Tatebaum and Chamberlin, 1986; Olds, Henderson, Tatebaum and Chamberlin, 1988); quality child development services that are coupled with family services (Lally, Mangione and Honig, 1987; Brooks-Gunn, Klebanov, Liaw and Spiker, 1993); continuity of service delivery for the child and family that ensures the availability of support over a number of years with smooth transitions to other service delivery systems (Campbell and Ramey, 1994); continutity of caregivers (Howes and Hamilton, 1992); intensity of service delivery in terms of availability, accessibility, and usage of services (Booth, Barnard, Mitchell and Spieker, 1987; Ramey, Bryant, Wasik, Sparling, Fendt and LaVange, 1992); and consolidation or integration of service delivery systems. Further, research tells us that communities have been found to become more responsive to the needs of low-income families as a result of program activities (Kirschner, 1970).

Clearly, research over the past three decades has shown that when programs focus on both child development and family development through early, high quality, comprehensive, continuous, intensive services, opportunities of optimal child and family development can be realized, even for the most vulnerable families and very young children. The challenge for the Administration on Children, Youth and Families and the programs which will receive funds through this initiative is to translate these research findings into the design and operation of high quality programs so all families with young children served by Early Head Start will be able to grow and prosper. The following principles and cornerstones establish the framework for this to occur.

Program Principles

In recognition that each child is an individual who is supported by a family and that families are supported by neighborhoods and communities, the Advisory Committee recommends that programs funded under the new initiative be encouraged to develop a range of strategies for supporting the growth of the very young child within the family and the growth of the family within the community. Thus, each Early Head Start program should be family-centered and community-based. We recommend that the following principles serve as the conceptual foundation for Early Head Start:

- High Quality: Commitment to excellence will enable the new programs to be models for services to families with infants and toddlers from all socioeconomic strata of society. High quality will be assured in the direct services provided, and in the services provided through referral. To this end, each program will acknowledge and utilize the bodies of knowledge, skills and professional ethics surrounding the fields of child development, family development and community building. In particular, programs will recognize that the conception-to-three age period is unique in both the rate of development and in the way young children's physical and mental growth reflects and absorbs experiences with caregivers and the surroundings. Thus, high quality caregiving practices will spring from the healthy awareness that the unique nature of infant and toddler development not only carries with it major opportunities for intervention, but also leaves children especially vulnerable to negative inputs. The Federal government will share in the commitment to high quality by providing thorough and ongoing monitoring to assure program adherence to performance standards; technical assistance that addresses each program's individual needs and amplifies innovation and development across all programs; evaluation which measures program success against meaningful outcomes for young children and families; and research which contributes to the state of the art on child development, family development and community building.
- Prevention and Promotion: Recognizing that windows of opportunity open and close

quickly for families and young children, programs will seek and pursue opportunities to play a positive role in promoting the physical, social, emotional, cognitive and language development of young children and families before conception, prenatally, upon birth, and during the early years. By supporting the promotion of their health and well-being, program staff will be able to prevent and detect problems at their earliest stages, rallying the services needed to help the child and family anticipate and overcome problems before they interfere with healthy development. While early and proactive promotion of healthy development and healthy behaviors will be emphasized, programs will also need to be able to understand and respond to family crises that may occur while the family is enrolled in the program.

• Positive Relationships and Continuity: The success of each program will rest on its ability to support and enhance strong, caring, continuous relationships which nurture the child, parents, family, and caregiving staff. Programs will support the mother-child, father-child bond by recognizing each parent as his or her child's first and primary source of love, nurturance and guidance. Caregiving will be provided to families who need it in ways that support infant and toddler attachment to a limited number of skilled and caring individuals, thus maintaining relationships with caregivers over time and avoiding the trauma of loss experienced with frequent turnover of key people in the child's life. These relationships will aim to respectfully enhance child interest, curiosity, play and imagination, which, in turn, will develop a shared sense of trust, confidence and esteem for both caregiver and child. In addition, programs will model strong, mutually respectful relationships between staff and families, among staff, and with other community organizations and service providers. To do so, programs will be receptive to individual strengths, perspectives and contributions; affirm the value of the child and family's home culture; and support an environment where very young children, parents and staff can teach and learn from each other.

• Parent Involvement: As in all Head Start efforts, a hallmark of the new initiative will be the creation and sustenance of an environment that supports the highest level of partnership with parents, both mothers and fathers. As such programs, will support parents as primary nurturers, educators, and advocates for their children; assure that each parent has an opportunity for an experience that supports his or her own growth and goals, including that of parenting; and provide a policy- and decision-making role for parents. Furthermore, opportunities for parent involvement will encourage independence and self-sufficiency for parents. Special efforts will be made to welcome and support fathers as parenting partners.

• Inclusion: Programs will seek to build communities that respect each child and adult as an individual while at the same time reinforcing a sense of belonging to the group. Programs will support participation in community life by young children with disabilities and their families; families of very young children with significant disabilities will be fully included in all program services.

• Culture: Children and their families will come to the new programs rooted in a culture which gives them meaning and direction. Programs will demonstrate an understanding of, respect for, and responsiveness to the home culture and home language of every child, thus affirming the values of each family's culture and providing the context for healthy identity development in the early years of life. Program staff will become aware of their own core beliefs and values and be attuned to the role culture and language play in child development, family development and the surrounding community values and attitudes. Programs will pursue opportunities to support home culture and language, while also recognizing the significance of a common culture shared by all. In building a more harmonious and peaceful community for children to grow in and for families to share, programs will encourage and provide opportunities for families and community members to engage in dialogue about culture, language, cultural diversity and multiculturalism.

• Comprehensiveness, Flexibility, Responsiveness, and Intensity: Programs will honor and build upon the unique strengths and abilities of the children, families and communities they serve and continually adapt to meet emerging needs. Developmental opportunities provided to each infant and toddler will address the whole child and be continually adapted to keep pace with his or her developmental growth. And just as programs need to be responsive and attentive to the special needs of very young children with disabilities, they also need to be responsive to parents with disabilities. Family development planning and service provision will be grounded in the belief that families, including those whose problems seem overwhelming, can identify their own goals, strengths and needs, and are capable of growth and change. Once these are identified, program resources of varied intensity will be marshaled to support the whole family in an individualized and responsive manner. Barriers which prevent families from accessing needed supports will be overcome through the location, coordination, and assurance by program staff that services are provided and received. Attention will also be given to ensure programs meet the needs and schedules of working parents. Ultimately, each parent's sense of empowerment and ability to identify and address his or her family's needs will be fostered by responsive and caring relationships with program staff.

• Transition: Programs will be responsible for ensuring the smooth transition of children and their families into Head Start or other preschool programs which are of high quality and provide consistent and responsive caregiving. The Federal government must support both Early Head Start and Head Start programs in carrying out this responsibility. Transition is important for ensuring continued accessibility to enriching early child development experiences and for providing ongoing family support services that promote healthy family development. To facilitate this transition, parents and caregivers should jointly develop a family and child transition plan, identifying services which will continue and new services and programs which will be accessed. Caregivers from both Early Head Start and the new service programs will share responsibility for coordinating and implementing the plan.

• Collaboration: Recognizing that no one program will be able to meet all of a child's and family's needs, programs will initiate or become embedded in an integrated community system of service providers and strength building organizations such as churches and other religious institutions, schools and civic groups. These efforts will foster a caring, comprehensive and integrated community-wide response to families with young children, thus maximizing scarce financial resources and avoiding duplication of agency effort. Likewise, the Federal government will promote systems change and the efficient use of resources through the active pursuit of local, State and Federal partnerships which enhance the capacity of local programs to collaborate and combine financial resources.

Program Cornerstones

The principles outlined above establish the foundation for Early Head Start, a program that meets child development, family development, and health related goals while striving to provide high quality, comprehensive, and individualized support and services. In order to accomplish this, the Advisory Committee recommends that the Secretary of Health and Human Services adopt these key elements as the four cornerstones for Early Head Start: child development, family development, community building, and staff development.

Child Development

Programs will seek to enhance and advance each child's development by providing individualized support that honors the unique characteristics and pace of infant/toddler physical, social, emotional, cognitive and language development, including early education and health care. Critical to this development is the promotion of positive parent-child interactions and the enhancement of each parent's knowledge about the development of their child within healthy, safe environments. An early step for providing this support to parents will be the provision of home visits to families with newborns to offer early encouragement and support and build bridges for families to other resources in the community. Also critical to the child's development is access to and delivery of comprehensive health and mental health services for children, including regular child health care; screening for health problems such as hearing, anemia, lead poisoning, metabolic problems; immunizations; nutritional assessment; developmental surveillance and anticipatory guidance. All children deserve a medical home that provides these and other prevention and treatment services. To help facilitate this, Early Head Start programs will collaborate with a variety of organizations and disciplines to ensure health supervision for children and their families.

It is particularly important that Early Head Start ensure coordination and continuity of services for infants and toddlers with or at risk of a disability, who are eligible for services through Early Head Start and Part H of the Individuals with Disabilities Education Act. These two service systems should be coordinated and integrated so that families and their children experience a seamless system of services, as identified in their family development plan or individualized service plan.

As programs provide child development services, they must ensure that infants and toddlers who need child care receive high quality part- and full-day services. Such child care can be provided directly or in collaboration with other community providers as long as the Early Head Start program assumes responsibility for ensuring that all settings meet the Early Head Start performance standards.

In general, the setting where these services are delivered is left to local option and the preferences of families as identified through their individual family development plan. Settings can represent a range of options including home visiting; family support centers; family child care homes; child care centers; centers where families are engaged in education, training, or employment; community health centers; and others.

Family Development

Programs must recognize that the key to optimal child development and family development is the empowerment of parents in goal setting for themselves and their children. Therefore, families and staff will collaboratively design and update individualized family development plans which ensure that service delivery strategies are rooted in the foundation principles and are responsive to the goals and ideals of the families. When families are served by additional programs which also require an individualized family service plan, such as Part H of the Individuals with Disabilities Education Act and family employability plans, then a single coordinated plan should be developed so families experience a seamless system of services. Based on the plan, programs will ensure the provision of a full range of family services which consider the different support and educational opportunities needed by new parents, pregnant women and expectant fathers, and potential parents, as well as by siblings and extended family members who influence the development of the family and very young child.

It is particularly important that parental health is linked to children's health and development. As such, health services for parents need to be included as part of a two-generational model of health care. Health services must be accessible for parents with a special emphasis on women's health that occurs prior to, during, and after pregnancy.

Services which programs must provide directly or through referral, and which local Early Head Start programs must actively ensure are of high quality and appropriately followed up include: child development information; health services, including services for women prior to, during, and after pregnancy; mental health services; services to improve health behavior such as smoking cessation and substance abuse treatment; services to adults to support self-sufficiency, including adult education and basic literacy skills, job training, assistance in obtaining income support, food, and decent, safe housing, and emergency cash or in-kind assistance; and transportation to program services. Programs must provide directly opportunities for parent involvement in the program so that parents can be involved as decisionmakers, volunteers, and/or employees. Additional services not listed above, but identified by families through community needs assessments and mappings, may be provided either directly or through referral at local option.

Community Building

The commitment of programs to high quality care for very young children and their families services as a catalyst for creating a community environment that shares responsibility for the healthy development of its children. A program approach that exemplifies openness and caring is the start of community building. Programs should function in communities in a way that mirrors the principles that are the foundation of the program itself: parents become a vital resources for each other and the community at large; staff nurture networks of support; and programs develop relationships of trust with other community institutions, businesses, and with community leaders. By becoming a key actor in the life of the community, programs can serve to mobilize community resources and energies on behalf of children and families.

Essential to community building is ensuring a comprehensive network of services and supports for very young children and their families which are culturally responsive. Programs will be expected to establish collaborative relationships with other community providers and strength-building organizations such as churches and other religious institutions, schools and civic groups. The goal of these relationships will be three-fold: increased access to high quality serves for program families; assurance that the program's approach to serving families with infants and toddlers fits into the existing constellation of services in the community so that there is a coherent, integrated approach to supporting families with very young children; and systems change which will spark community caring and responsive service delivery for all the families with young children who live there. Thus, all programs will be required to conduct an in-depth assessment of existing community resources and needs and engage in an ongoing collaborative planning process with a range of stakeholders, including parents and residents of the community.

Staff Development

Programs are only as good as the individuals who staff them. This is particularly true of programs which serve young children, since the potential to do harm during the vulnerable years of infancy and toddlerhood is so great. Thus, staff development has been included as a key element in order to underscore its centrality to the success of the initiative.

Programs will be required to select staff who, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide high quality, comprehensive, culturally appropriate, and family-centered services to young children and families. Equally critical will be each program's ability to recognize individuals capable of entering into one-to-one caregiving relationships with infants and toddlers which support the positive formation of their identities. Likewise, programs will need to identify the capacity of potential staff members to develop caring, respectful and empowering relationships with families and other coworkers. Such individuals will demonstrate characteristics such as high self-esteem, personal strength, and the capacity for being emotionally available. The program directors who make these selections will, themselves, need to possess these characteristics in addition to being highly skilled administraters who exemplify leadership qualities such as integrity, warmth, intuition and holistic thinking.

Ongoing staff training, supervision and mentoring of both line staff and supervisors will be an integral part of staff development. Such training, supervision, and mentoring will reflect an interdisciplinary approach and emphasis on relationship building. Staff training programs will ensure that staff are ''cross-trained'' in the areas of child development, family development and community building. Particular emphasis will be placed on building skills in the areas of home visiting; caregiving relationships; effective communication with parents; family literacy; healthy/safe environments and caregiving practices; early identification of unhealthy behaviors or health problems; service coordination; and the provision of services and support to diverse populations, including families and children with disabilities and developmental delays. In addition, training efforts and supervision will be designed to develop each staff person's capacity to function as a member of a well-integrated, diverse and mutually supportive team comprised of families and other staff. To this end, training and supervision will support opportunities for practice, feedback and reflection. Another strategy for training is the development of multi-disciplinary teams of caregivers who can engage in team teaching, sharing concerns and problems, exploring different approaches, and learning practical skills for working with participants of the program and service providers from other relevant delivery systems. As such, training will model and reinforce the foundation principles of this initiative.

And finally, staff selection, training and supervision will be grounded in the knowledge that high quality performance and development occurs when they are linked to rewards such as salary, compensation, and career advancement; provided in environments that spark curiosity, excitement and openness to new ideas; and grounded in best practices revealed by ongoing research, evaluation and monitoring.

Federal Commitment

Both individual programs and the Federal government must work hand in hand to realize the vision, principles, and program concept outlined above for the Early Head Start program. The Advisory Committee believes that a Federal commitment to training, monitoring, research and evaluation, and partnership building which respects and supports local program responsibility, initiative, and flexibility is paramount for the programs' success. In addition, Federal commitment is also needed to support and learn from existing Federal programs serving families with infants and toddlers so that they will have the opportunity to achieve excellence and meet the standards that will be set forth for this initiative. With this commitment, we feel the initiative for families with infants and toddlers will be able to serve as a national laboratory both testing and exemplifying quality child development and family development programs.

Training

Clearly the quality of programs is contingent upon the ongoing support and development of program staff who are trained in the various disciplines which support the principles of family-centered services. As described earlier, program staff need to be able to facilitate both the development of very young children and the development of families. But in too many communities, staff who can play this dual role are few or nonexistent.

The Advisory Committee urges the Secretary to engage in public-private partnerships aimed at establishing a cadre of highly trained practitioners and trainers who will be able to support the development of very young children and their families. Such an effort should extend beyond the scope of the new initiative for families with infants and toddlers, so that children cared for in a variety of settings will benefit from this commitment to enhancing the quality and quantity of caregivers. An example of such a partnership would be a commitment on the part of the Federal government to work with institutions of higher learning to ensure multi-disciplinary pre-service education and field work experience is available for students who wish to work in family-focused programs serving very young children and their families. Another example would be partnering with the foundation or philanthropic community to develop scholarship programs for low-income students desiring but unable to enter the field. A further example is coordinating with organizations of professional trainers to ensure they have the skills, resources and supports needed to work with programs providing early, continuous, intensive and comprehensive services and support to very young children and their families.

When designing the specific training and technical assistance plan for Early Head Start, the Federal government must focus on the whole spectrum of support and services that are needed for developing and advancing high quality staff, from pre-service and in-service training to supervision and mentoring. These supports and services must be provided in a continuous, holistic, responsive manner with the goal of building and nurturing the highest quality caregiving in all programs.

In addition to the focus on training, the Federal government also needs to take the lead in modeling a commitment to and respect for the importance of the caregiving profession. Given this, the Advisory Committee urges the Secretary to implement the Early Head Start program so that it models appropriate competencies, institutionalization of career ladders for staff working within the programs, and provision of staff salaries that are comparable to the importance of the job.

Monitoring

All programs need support and guidance to engage in continuous improvement. As directed by the legislation, the Secretary of the Department of Health and Human Services must provide this support and guidance through ongoing monitoring of the operation of these programs, evaluating their effectiveness, and providing training and technical assistance tailored to the particular needs of such programs.

The Advisory Committee reminds the Secretary that performance standards must be developed and issued in order to set forth the expectation of high quality services and environments for programs serving families with infants and toddlers. It is recommended that there be consistency in the principles and framework of the Early Head Start and Head Start performance standards, with the goal being a seamless approach to Federal performance standards for children from birth to age five. While the goal should be a seamless approach, clearly the content of the standards will vary to reflect the differences in development of children during the age span. Once these are issued, monitoring should become a tool for both measuring progress toward these high quality standards and for engaging in continuous improvement.

Research and Evaluation

Evaluation of Early Head Start is essential for determining the effectiveness of the initiative and for advancing our understanding about which services work best for different families under different circumstances. Evaluation data and information collected at the local level as part of management information systems and ethnographic research are helpful to provide ongoing feedback to programs and support staff in packaging and delivering a comprehensive array of services which are responsive to and reflective of the individual needs of very young children and their families.

The Advisory Committee believes that the Secretary must approach evaluation not just as a mechanism for producing summary statistics and reports about the changes in child and family development as a result of these new efforts, but as a tool for individual programs so that they can continuously refine their practices based on feedback from their own program evaluation. This feedback is essential to identify the particular conditions and activities that enable parents and other caregivers to most successfully support children's development. It is also essential to test and refine as appropriate the quality of planning, training, staff selection, supervision and program management that is crucial to program success. These lessons learned will benefit local Early Head Start programs, add new knowledge to the fields of child and family development, and will help shape future efforts at the Federal level for very young children and their families.

In keeping with the Head Start national laboratory role, we encourage research that examines variations in Early Head Start experiences on child development to learn more about the effectiveness of different interventions for very young children and their families. Accordingly, we encourage the testing of new models which might focus on linkages between this initiative and welfare reform, special coordination with Part H of the Individuals with Disabilities Education Act, or efforts to support teen parents who are either in school or training. Equally important will be research that identifies features of intervention which optimize relationship building, and research that examines variations in caregiving experiences as they influence child development.

We also recommend that research and evaluation for this initiative be part of an overall research agenda for Head Start which places Head Start in the broader context of research on young children, families, and communities; ensures a commitment to ongoing themes; and has the flexibility to respond to new and emerging developments in the broader early childhood and family development fields.

Partnership Building

Just as local programs will be required to coordinate services in the State and community to ensure a comprehensive array of services, the Federal government must also build partnerships across programs, agencies and departments to facilitate effective integration and coordination of resources and services.

The Advisory Committee points out that it is especially important that the Head Start Bureau work with the U.S. Maternal and Child Health Bureau and the Medicaid program to enhance the availability of and access to comprehensive health services for pregnant women, and very young children and their families. The Advisory Committee particularly recommends Federal leadership in the development of services that are scarce in communities, such as mental health services that meet the needs of families with infants and toddlers. It is equally important that linkages be made with the U.S. Department of Education, Office of Special Education and Rehabilitative Services and the Federal Interagency Coordination Council so that there is a clear message from the Federal government about the importance of partnership around early intervention at the Federal, State and community levels, especially between this initiative and Part H of the Individuals with Disabilities Education Act. The formation of a single Federal Interagency Coordination Council to address services for families with infants and toddlers who are served by Head Start and/

or by Part H is recommended. Further, the Head Start Bureau is advised to develop partnerships with the National Institute of Child Health and Development and the National Institute of Mental Health so that programmatic and research activities can be coordinated and the results benefit and influence the work of all institutions.

Beyond coordination and partnership building among the many programs, agencies, and departments of the Federal government, the Advisory Committee advises the Head Start Bureau to continue consultation with professional organizations from relevant child and family development disciplines. Such consultation will help staff of the Head Start Bureau learn about emerging knowledge and apply this to the planning, implementation, and evaluation of this and other programs.

Finally, it is equally important that the Head Start Bureau reevaluate its own regulations and procedures to support local creativity and responsiveness to the needs of very young children and their families. As a first step, the Advisory Committee recommends that the Secretary explore opportunities for Early Head Start programs to combine these resources with other public and private funding sources in order to serve more very young children and their families who might benefit from Early Head Start services and support. This is especially important as many Advisory Committee members feel that all children within a very low income community should be afforded access to these services. By allowing and encouraging Early Head Start communities to partner with other funding streams, it may be possible in some communities to provide access to most or all families with very young children.

Funding

All of the above issues—from the principles to the program concept and Federal commitments—are moot when there are not adequate resources to develop and sustain high quality in each program. Advisory Committee members see the role of Early Head Start as a national laboratory and catalyst for change. The members point out that a Federal commitment is needed to ensure that resources are available in the short- and long-term to support the provision of high quality, well-integrated services.

Conclusion

Early Head Start represents a new era of support for America's youngest children and their families. It sets forth a vision that honors the unique strengths of very young children, their families and communities, and the staff who work with them. It calls for programs to provide family-centered and community-based services and supports that are individualized, of highest quality, and that promote positive health and development. And it commands significant attention at the Federal level for training, technical assistance, monitoring, and research and evaluation to ensure these programs can flourish.

The members of the Advisory Committee on Services for Families with Infants and Toddlers are proud to set forth this vision and implementation design for Early Head Start. We call on the Secretary and the nation to move ahead rapidly with a series of steps to make this vision a reality. So much is at stake for our youngest children and their families.

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Biographies of Advisory Committee Members

Susan Aronson is a practicing pediatrician at The Children's Hospital of Philadelphia, as well as an active member of the American Academy of Pediatrics. She also serves as the Director of the Pennsylvania AAP Early Childhood Education Linkage System, and was the Liaison Representative of the AAP to the Head Start 25th Anniversary Silver Ribbon Panel, setting national goals for the future of Head Start. Previously, she was a member of the Head Start Health Task Force and the Central Steering Committee of the AAP/APHA setting national standards for health and safety in out-of-home settings for children. She has also published numerous works on health and care of children in group settings.

Kathryn E. Barnard is a professor of nursing and adjunct professor of psychology at the University of Washington, where she has also served as associate dean of the School of Nursing. For the past 30 years, she has been a scholar, researcher, and educator with interests in children and parenting. She coordinated the risk and prevention group for the John D. and Catherine T. MacArthur Foundation's health network on the transition to early childhood. Her research has focused on the interaction of children with their environment, particularly infants at biological and environmental risk. She is Past President on the Board of Zero to Three—the National Center for Clinical Infant Programs. She is a member of the American Academy of Nursing and the Institute of Medicine and has received many awards in nursing and public health.

Mary Jane Bevins is the Director of a multifaceted Head Start program that includes Parent and Child Centers, center-based and home-based services for three- and four-year-olds, and a Head Start Transition project. In addition to her experience as a practitioner, she has also provided training and technical assistance to Head Start programs in all component areas. Ms. Bevins has been a member of several task forces including the National Task Force for Parent and Child Centers, and the PCC Training Advisory Council for the National Center for Clinical Infant Programs.

Helen Blank is Director of Child Care and Development at the Children's Defense Fund, where she led a large-scale, successful effort to pass the first comprehensive federal child care legislation since World War II. She has focused a great deal of her efforts on strengthening both federal child care and Head Start policies. In addition, she provides technical assistance to states and policy leaders on early childhood development issues. Prior to joining the Children's Defense Fund, Ms. Blank worked at Child Welfare League of America, and helped to improve and expand participation in federal food programs serving low-income children with the National Child Nutrition project and the Community Nutrition Institute.

Sue Bredekamp is Director of Professional Development, National Association for the Education of Young Children. Among some of her roles as director are managing the NAEYC accreditation system, directing the National Institute for Early Childhood Professional Development, and developing association position statements relevant to defining professional standards and practices. Dr. Bredekamp specializes in developmentally appropriate practices for preschoolers and has authored a book on developmentally appropriate practices for children birth through age eight. She has served on numerous panels and as a consultant on the issues of professional development and accreditation. She developed the Early Childhood Classroom Observation Scale, used by NAEYC's accreditation system, and served as a study advisor to the Observational Study of Early Childhood Programs, sponsored by the Department of Education.

Urie Bronfenbrenner, the Jacob Gould Schurman Professor Emeritus of Human Development and Family Studies and of psychology at Cornell University, is an expert on developmental psychology, child-rearing, and the ecology of human development. A founder of the national Head Start Program, Dr. Bronfenbrenner is internationally renowned for his cross-cultural studies and is a recipient of honorary degrees both in this country and abroad. His theoretical contributions and his ability to translate them into rigorous operational research models and effective social policies spurred the creation of Head Start and furthered the goals of Cornell's Life Course Institute, which has been renamed in his honor. Dr. Bronfenbrenner is the author, co-author, or editor of 13 books and more than 300 articles, most notably Two Worlds of Childhood: U.S. and U.S.S.R. and The Ecology of Human Development.

Bettye Caldwell is Professor of Pediatrics in Child Development and Education at the University of Arkansas for Medical Sciences. Known for her research of the home environment and its relationship to growth and development, she has served in many research and practitioner positions. Throughout her career, she has published numerous articles and books on infant and child development and child care, and contributed early work around the establishment of Head Start. One of Dr. Caldwell's most recent projects was ''An Ecological Study of Infant Care,'' designed to study the long term effects of infant day care. In addition, she has been a leader in the early childhood field, serving as President of the NAEYC and a member of the Governing Board of the Society for Research in Child Development, and participating in international consulting and speaking engagements.

Jane Campbell is a State Representative serving her fifth term in the Ohio House of Representatives. She chairs the Oversight Committee on Abused, Neglected, and Dependent Children and is a member of the Children and Youth Committee. She has also been involved with a number of committees that have looked at Ohio's school system, domestic relations, and adolescent sexuality and pregnancy. She has sponsored a number of important bills for children and their families including legislation to expand subsidized child care so 20,000 additional children can get quality care which will enable their parents to work; extending medicaid to working pregnant women; correcting discrimination against pregnant teenagers; and simplifying voluntary paternity procedures so unmarried fathers can take responsibility for their children.

Gayle Cunningham is the Executive Director of the Jefferson County Committee for Economic Opportunity, the Community Action Agency based in Birmingham, Alabama. She directs that agency's Child Development Services Division, which includes Head Start and Parent and Child Center programs, and a Head Start-Public School Transition Demonstration Project. The agency also operates a wide variety of other programs for low-income families and individuals. She was formerly an Assistant Professor responsible for coordination of the early childhood AA degree program at Delgado College in New Orleans, and a Senior Research Associate for Bank Street College responsible for the expansion of the

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Sharon Darling is the Founder and President of the National Center for Family Literacy. In 1989, with a grant from the Kenan Trust, the National Center for Family Literacy was created to promote family literacy programming nationwide. While State Director of Adult Education in Kentucky, she directed the development of the Parent and Child Education program, forerunner of the family literacy movement. Ms. Darling is Vice Chair of the Board of Directors for the National Institute for Literacy, a board member of both The Barbara Bush Foundation for Family Literacy, and the National Coalition for Literacy. She has received numerous awards for her contributions to education, including the prestigious Harold W. McGraw Award for Outstanding Educator in 1993.

Amy L. Dombo is an Infant/Toddler Specialist. Formerly Director of the Infant and Family Center at Bank Street College of Education, she is an expert in infant/toddler programs. Ms. Dombro has extensive experience training Head Start and child care staff. She has also authored three books and numerous articles for parents and caregivers. Currently, consulting with Families and Work Institute, she is directing the evaluation of Dayton Hudson's Child Care Aware/ Family-to-Family Project, a national initiative to improve the quality of family child care.

Anne Cohn Donnelly is the Executive Director of the National Committee to Prevent Child Abuse. As Executive Director, she oversees a 50-state network of chapters, a national center on child abuse prevention research, and extensive training in educational programs and advocacy efforts. The National Committee has provided leadership for the replication of the Hawaii Healthy Start home visiting model through its Health Families America initiative. Prior to joining NCPCA, she served as a White House Fellow and Special Assistant to the Secretary of the Department of Healthy and Human Services, handling a broad range of issues for the Secretary including children's health and social services. She has also lectured and published widely, and has designed the first national evaluation study of child abuse treatment programs.

Robert Emde is professor in the Department of Psychiatry at the University of Colorado Health Sciences Center and Adjunct Professor of Psychology at the University of Denver. Dr. Emde is highly respected for his work on infant emotional development, and is the author or co-author of over 200 scholarly articles and chapters. Dr. Emde has held leadership positions in numerous national organizations and has served as an editor of developmental and clinical journals. He is the Past President of the Society for Research in Child Development, Senior Scientific Advisor for the World Association for Infant Mental Health, and a Board Member of Zero to Three. Additionally, Dr. Emde has been the invited plenary speaker for many national and international conferences.

Lily Wong Fillmore is a professor at the School of Education, Language and Literacy Division, at the University of California, Berkeley. She is recognized as a leading expert on issues of cultural diversity in child development and educational progress. Dr. Fillmore is also known for her work on language acquisition. She is currently on the National Advisory Committee of The Literacies Institute, funded by the Andrew Mellon Foundation, and the National Advisory Committee of the Linguistic Minorities Resource center on Educational Equity of the Council of Chief State School Officers.

Susan Fowler is the Head of the Department of Special Education at the University of Illinois in Champaign. She is a well respected researcher in the field of early childhood special education, and has authored numerous articles and chapters. Dr. Fowler has served in a national leadership role as the President of the Division for Early Childhood (DEC) in the Council for Exceptional Children. She is currently a member of the National Advisory Board of the National Early Childhood Technical Assistance System. Dr. Fowler has both State and Federal experience.

Olivia Golden is the Commissioner for the Administration on Children, Youth and Families at the Department of Health and Human Services. Prior to coming to HHS, Dr. Golden served as the Director of Programs and Policy for the Children's Defense Fund in Washington, DC, where she was responsible for policy development, advocacy, research, data analysis, and writing about a variety of children and family issues. Prior to that, she served as Lecturer in Public Policy at the John F. Kennedy School of Government, where she focused her research on child and family policy and public management. From 1983–1985, Dr. Golden served as the Budget Director for the Executive Office of Human Services in the Commonwealth of Massachusetts. She is the author of a recently published book, Poor Children and Welfare Reform (Auburn House Press, 1992), and several papers and articles. Her research has focused on the way services work for real people, including issues of innovation, collaboration and effective service delivery for children and families.

Sarah Greene is the Chief Executive Officer of the National Head Start Association. Mrs. Greene has held a host of positions in the Head Start community including President of the National Head Start Association, a classroom teacher, Education Director, Head Start Director and Executive Director of Manatee Opportunity Council, Inc. (a Community Action Agency). She serves as an ambassador for Head Start, speaking across the country, testifying before Congress, and participating with many other national organizations.

Judith Jerald is the Director of a Comprehensive Child Development Program (CCDP) in Vermont. She coordinates an early childhood family support system for Brattleboro Town School District which serves families with children prebirth through age eight, and includes a CCDP, Even Start, a Parent and Child Center, a Teen Parent Infant-Toddler Center at the high school, and transition to school programs. Ms. Jerald has extensive experience in program design, providing a wide array of direct social services, training, community organization, and administration. She is a member of the National Association of Social Workers and National Education Association.

Linda Kills Crow is the Director of Early Childhood Services (Head Start and the Child Care Development Block Grant Programs) for the Osage Tribe of Oklahoma and has been the President of the National Indian Head Start Directors Association since 1990. Prior to her current position, Ms. Kills Crow was the Director of the Native American Education Program at the University of Colorado, Denver. Ms. Kills Crow was a Head Start/Johnson and Johnson Management Fellow in 1991 and has served on numerous state and national boards, committees, and task forces.

J. Ronald Lally is the Director of the Center for Child and Family Studies of the Far West Laboratory for Educational Research and Development in California. He is also the Director of the Program for Infant/Toddler Caregivers. Prior to joining Far West Laboratory, Dr. Lally was a professor at Syracuse University, where he directed the Family Development Research Program. He is highly respected for his work in the emotional and social development of infants and toddlers. Additionally, Dr. Lally has expertise in developing both programs and training materials for young children and their caregivers. He is Founding Member and serves on the Board of Directors of Zero to Three (National Center for Clinical Infant Programs).

Joan Lombardi serves as a Senior Advisor to the Assistant Secretary for Children and Families on child care and Head Start issues. As an early childhood specialist, she has advocated for improved and expanded services to very young children and their families through her work with a wide variety of national, state, and community-based organizations. She is the author of numerous publications, including Creating a 21st Century Head Start, the landmark report of the Head Start Advisory Committee on Quality and Expansion.

Harriet Meyer is the Executive Director of the Ounce of Prevention in Chicago, Illinois. The Ounce of Prevention supports programs focusing on teen parents and their children from 0–3, directly operates and administers the Beethoven Project, and is one of two Head Start grantees in Chicago as well as three school based adolescent health clinics. The Ounce also directs Kids Pepp, the Public Education and Policy Analysis Division at the Ounce. Previously, Ms. Meyer was the Director of the Wells Community Initiative in which she directed the Ounce of Prevention's involvement in the revitalization of the Ida B. Wells public housing complex in Chicago.

Evelyn K. Moore is the Executive Director and founder of the National Black Child Development Institute, a national network of 40 affiliates in 23 states which work to improve the quality of life for African American children and their families. Before founding the Institute, Ms. Moore worked as a Special Assistant to Wilbur Cohen, former Secretary of Health, Education and Welfare, at the University of Michigan at Ann Arbor. Ms. Moore currently serves on the Boards of the National Council of Jewish Women

Center for the Child, Child Trends, and Child Care Action Council. She works as a consultant to the Office of Education in addition to numerous philanthropic organizations.

Genoveva P. Morales has been President of the National Migrant Head Start Director's Association for the past two years and presently serves as the Migrant Head Start Director for the Washington State Migrant Council. Ms. Morales has served the migrant community in many roles including Special Services Director and Migrant Education Chapter I Program Director. In addition to her work with migrant and seasonal farmworkers, Ms. Morales has held various positions in the academic setting serving as a Research Assistant at the University of Texas at San Antonio, a financial aid counselor at the University of Washington, and an academic counselor at Eastern Washington University and at the Yakima Valley Community College. Her personal commitment to an improved transition effort of Head Start children into public school has led her to obtain her state certification for counseling in the public school setting.

Dolores Norton is a professor in the School of Social Service Administration, University of Chicago. She writes and teaches in the area of early human development within a sociocultural, ecological context, and directs the ''Building Partnerships for Family Support Education and Training'' project, a collaborative education program between community based agencies, universities, and educational training organizations. She received her M.S.S. and her Ph.D. degrees from Bryn Mawr College. Dr. Norton's major research is an ongoing longitudinal study of parent-child interaction developmental outcomes of inner city African American children form birth through age eleven, growing up in poverty stricken, dangerous neighborhoods. The research focuses on the children's socio-cognitive development with an emphasis on temporal and linguistic development and early academic achievement. She was a member of the founding board of Family Focus, Inc., and currently serves on boards such as Zero to Three: the National Center for Clinical Infant Programs and the Ounce of Prevention and Education for Parenting Advisory Boards.

Maria Elena V. Orrego is currently consulting and providing technical assistance to the Commission on Social Services, Department of Human Services, Government of the District of Columbia, to develop a five year strategic plan for the Federal Family Preservation and Support Services Program. Ms. Orrego was the former Executive Director of The Family Place, Inc., a comprehensive family support program in Washington, D.C. providing services to Latino and African-American families. Ms. Orrego was responsible for the planning, management, and evaluation of programs in two family support centers. Ms. Orrego has 10 years of experience as a direct social services provider in inner city communities, and twelve years of experience in development, implementation, and evaluation of community based programs for children and families. In addition to her work with families in inner city communities, Ms. Orrego serves as a member of the Board of Directors of the Family Resource Coalition and the D.C. Act for Children.

Carol Brunson Phillips is the Executive Director of the Council for Early Childhood Professional Recognition, which administers the Child Development Associate National Credentialing Program. Throughout her career in early childhood education, she has been involved in both teaching young children and training teachers, first as a Head Start teacher. For 13 years she was a member of the Human Development Faculty at Pacific Oaks College in Pasadena specializing in early childhood education and cultural influences on development. Dr. Phillips is currently a member of the Technical Advisory Panel of the Head Start Bilingual and Multicultural Program Services Study and the National Head Start Training Panel of Experts.

Deborah Phillips is Director of the Board on Children and Families on the National Research Council's Commission on Behavioral and Social Sciences and Education and the Institute of Medicine. She is on leave as associate professor of psychology at the University of Virginia. Dr. Phillips received her Ph.D. in developmental psychology at Yale University. She was the first director of the Child Care Information Services of the National Association for the Education of Young Children and is a member of many task forces and advisory groups that address child and family policy issues, including the research task force of the Secretary's Advisory Committee on Head Start Quality and Expansion of the U.S. Department of Health and Human Services. Dr. Phillips has testified frequently before Congress on issues of child care quality.

Ed Pitt is Associate Director of the Fatherhood Project at the Families and Work Institute. The project is a national research and education initiative examining the future of fatherhood and ways to support men's involvement in childrearing. Mr. Pitt has been involved in many significant initiatives such as the White House Conference on Families, President's Commission on Mental Health, Secretary's Task Panel on Teen Pregnancy Prevention, and the National Health Council.

Gloria Johnson Powell is a child psychiatrist, formerly a professor of child psychiatry at Neuropsychiatric Institute at UCLA, and is currently a tenured Professor at Harvard Medical School. She is best known for her research on the psychosocial development of minority group children. She wrote the first textbook in child psychiatry on ethnically and racially diverse children, The Psychosocial Development of Minority Group Children. Currently, she is director of the Ambulatory Care Center at the Judge Baker Children's Center in Boston and has developed a home-based services program for inner-city children and families in Boston called ''Partnerships in Prevention: Building Rainbows'' which uses a mobile service center to bring primary mental health care services ''to the doorsteps'' of children and families in need. This program has provided services to twelve housing projects and six Head Start programs whose children and families are trapped in their communities and homes because of drug-related crime, violence, and poverty.

Linda Randolph is a graduate of the Howard University College of Medicine and the School of Public Health, the University of California at Berkeley. For seven years, Dr. Randolph was National Director of Health Services, Project Head Start. She continued her work in government by joining the New York State Department of Health serving first as an Associate Commissioner in New York City and subsequently as Deputy Commissioner, Office of Public Health in Albany. Concurrently Dr. Randolph was appointed Professor of Health Policy and Management, Graduate School of Public Health, State University of New York at Albany. In 1991, Dr. Randolph was appointed Clinical Professor, Department of Community Medicine, Mount Sinai School of Medicine. She served on assignment from the medical school as Executive Director of the Carnegie Corporation Task Force on Meeting the Needs of Young Children which released its report—Starting Points—earlier this year.

Julius B. Richmond is the John D. MacArthur Professor of Health Policy, Emeritus at Harvard University Medical School. Dr. Richmond, trained in psychiatry and pediatrics, was the first person to hold the positions of Assistant Secretary for Health and Surgeon General. Dr. Richmond, together with his colleague Dr. Bettye Caldwell, designed one of the early programs for low-income preschoolers that integrated health and school readiness programs, which later became the model for Head Start, of which Dr. Richmond was the first Director in 1965 and 1966. Dr. Richmond has been awarded numerous honors, including the National Academy of Sciences Institute of Medicine's Gustav O. Lienhard award, which recognizes ''outstanding achievement in improving personal health care services in the United States.''

Ann Rosewater is the Deputy Assistant Secretary for Policy and External Affairs in the Administration for Children and Families, Department of Health and Human Services. As Deputy Assistant Secretary, she has major management and policy-making responsibilities. Prior to coming to ACF, she was senior associate at the Chapin Hall Center for Children at the University of Chicago and senior consultant to both the Pew Charitable Trusts' Children's initiative and the Annie E. Casey, Ford and Rockefeller Foundation's Urban Change initiatives. Ms. Rosewater assisted in the creation of the US House of Representatives Select Committee on Children, Youth, and Families, and served as its staff director and deputy staff director from 1983–1990. From 1979-1983, she served as a senior legislative assistant to Congressman George Miller. During the 1970s, she was national education staff for the Children's Defense Fund and assistant to the vice president of the National Urban Coalition. Ms. Rosewater was the first non-elected official to receive the Leadership in Human Services Award of the American Public Welfare Association, received the President's Certificate for Outstanding Service from the American Academy of Pediatrics and is the author of numerous publications on child policy.

Shirley Senegal is a Head Start parent at the Opelousas Head Start Academy in Louisiana. She is the president of the Parent Policy Council and member and Chaplain of the Louisiana Head Start Association. Ms. Senegal is a NHSA Board Member and President of the Louisiana Head Start Parent Affiliate Group. Ms. Senegal is an active participant in both the Louisiana Head Start Association as well as the Region VI Head Start Association.

Lisbeth B. Schorr is Lecturer in Social Medicine at Harvard University, a member of the Harvard University Working Group on Early Life, and Director of the Harvard University Project of Effective Services. Ms. Schorr's 1988 book, Within Our Reach: Breaking the Cycle of Disadvantage, analyzed social programs that have succeeded in improving the life prospects of disadvantaged children. Ms. Schorr is currently pursuing the implications of her findings for the large-scale implementation of effective programs. Previously, Ms. Schorr helped establish the health division of the Children's Defense Fund and directed the health activities of the O.E.O.'s Community Action Program.

Helen H. Taylor is the Associate Commissioner of the Head Start Bureau at the Department of Health and Human Services. Prior to coming to HHS, Ms. Taylor was Executive Director of the National Child Day Care Association, Inc., which operated 16 preschool and 5 before and after school centers in Washington, DC. Ms. Taylor is a former member of the Governing Board of the National Association for the Education of Young Children and was Chairperson of the Mayor's Advisory Committee on Early Childhood Education. Ms. Taylor has 27 years of experience in designing and administering large, comprehensive child development projects, including Head Start, Model Cities, and locally funded child care programs.

Sally Vogler has served on the staff of Colorado Governor Roy Romer since 1988. In this capacity, she advises the Governor on policy and programs related to early childhood and directs First Impressions, the Governor's early childhood initiative. Over the past eight years, First Impressions has successfully put in place a number of key educational and community supports that promote the healthy development of young children and their families. These include the establishment of a statewide child care resource and referral system; the creation of family development centers and expansion of family literacy programs in the state through the ''Read To Me, Colorado'' program.

Bernice Weissbourd is Founder and President of Family Focus, an agency providing comprehensive family support services in four diverse Chicago communities. She is also Founder and President of the Family Resource Coalition, the national organization representing the family support movement. Ms. Weissbourd is a contributing editor to Parents magazine, and has authored books and articles on family support programs and policies, and on child development issues. Ms. Weissbourd was President of the American Orthopsychiatric Association, Vice-President of the National Association for the Education of Young Children and a member of the National Commission on Children. She is a lecturer at the School of Social Service Administration, University of Chicago.

Edward Zigler is the Sterling Professor of Psychology, head of the psychology sections of the Child Study Center and the Bush Center in Child Development and Social Policy at Yale University. He is the author and co-author or editor of numerous scholarly publications and has conducted extensive investigations on topics related to normal child development, as well as psychotherapy, mental retardation, intervention programs for economically disadvantaged children, and the effects of out-of-home care on the children of working parents. Dr. Zigler served as the Chief of the U.S. Children's Bureau and first Director of the Office of Child Development, now the Administration on Children, Youth and Families. He was one of the original planners of Project Head Start.

Appendix D—Category One—New Early Head Start Awards: List of Geographic Areas Not Open for Competition Under Category One

Under Category one, applicants may apply for Early Start funds to serve communities throughout the country, except for those listed below. The areas listed below are either already served by an existing Early Head Start program or are separate competitive areas with current Parent and Child Center programs. (In communities with an Early Head Start project, the grantee's name is shown in parenthesis.)

(Under Category Two, applicants may apply to serve the communities currently served by Parent and Child Centers. In addition to being included in the list below, these communities are also listed in Appendix E.)

Alabama

—Jefferson County

Alaska

—The Yukon-Kuskokwim Delta Area in Southwest Alaska (Rural Alaska Community Action Program, Inc., Anchorage)
—City of Fairbanks (Fairbanks Native Association, Fairbanks)

Arizona

—El Mirage, Peoria, Williams Air Force Base, Mesa (Maricopa County Board of Supervisors, Phoenix)
—Enterprise Zone of Phoenix (Southwest Human Development, Phoenix)
—City of Tucson

Arkansas

—Counties of Conway, Yell and Johnson (Child Development, Inc., Russellville)

California

—Cities of Chico and Oroville (Butte County Office of Education, Oroville)
—Cities of Haywood, San Leandro, San Lorenzo, Castro Valley, Union City, Fremont, Newark (Child, Family and Community Services, Fremont)
—Monterey County, Cities of Marina and Salinas (Children's Services International, Salinas)
—Cities of Placerville (western slope of El Dorado County), S. Lake Tahoe, Lake Tahoe Basin (El Dorado County Superintendent of Schools, Placerville)
—City of Fresno (Fresno County EOC, Fresno)
—Cities of McKinleyville, Arcata, Eureka, Fortuna, Rio Dell (North Coast Children's Services, Arcata)
—Cities of N. San Juan, Kings Beach, Foresthill, Lincoln (Placer Community Action Council, Inc., Auburn)
—Cities of Daly City, South San Francisco, Half Moon Bay, San Mateo, Redwood City, E. Palo Alto and E. Menlo Park (The Institute of Human and Social Development, South San Francisco)
—San Juan Unified School District, Sacramento City Unified School District, and North Sacramento (Sacramento Employment and Training Agency, Sacramento)
—Cities of Santa Monica, Venice, Mar Vista, Culver City, North Inglewood and West of Fairfax Avenue (West Los Angeles) (Venice Family Clinic, Venice)
—Cities of Berkeley, Albany, Emeryville
—City of Los Angeles
—City of San Diego
—City of Oakland
—Counties of Shasta, Siskiyou and Trinity

Colorado

—Sunnyside, Jefferson Park, Upper Highland, Lower Highland areas of Northwest Denver (Friends of Maria Mitchell [dba Family Star], Denver)
—Freemont County (Upper Arkansas Area Council of Governments, Canon City)
—Central and Southeast Colorado Springs (Community Partnership for Child Development, Colorado Springs)
—City and County of Denver (Clayton-Mile High Family Futures, Denver)
—Counties of Bent, Crowley, Otero, and Prowers

Connecticut

—Windham County

Delaware

—Sussex County

District of Columbia

—Wards 1 and 2 of Washington, DC (Edward C. Mazique Parent Child Center, Inc., Washington, D.C.)
—Wards 1, 2, and 4 of Washington, DC (Rosemont Child Development Center, Washington, D.C.)
—Wards 1, 2, and 5 of Washington, DC (United Planning Organization, Office of Preschool and Day Care, Washington, D.C.)

Florida

—Leon and Gadsden Counties (Florida State University, Tallahassee)
—Tampa and Plant City (Hillsborough County Board of Commissioners, Tampa)
—North Central Dade County and City of Miami (Dade County Board of Commissioners, Miami)

—Highlands, Hardee and Henry Counties (Redlands Christian Migrant Association, Immokalee)
—Alachua County (School Board of Alachua County, Gainesville)
—Belle Glade, West Palm Beach, Rural South Eastern Florida (East Coast Migrant, Arlington, VA)
—Broward County
—Duval County

Georgia

—Fulton County (Clark Atlanta University, Atlanta)
—Counties of Dekalb, Scottsdale and Decatur (Save the Children Federation, Atlanta)
—Chattooga County (Berry College, Summerville)
—Counties of Murray and Whitfield

Hawaii

—Loolauloa Area, Island of Oahu (State of Hawaii, Dept. of Health, Honolulu)
—Kalihi-Palma, Honolulu (Parents and Children Together, Honolulu)

Idaho

—Nez Perce, Lapwai (Nez Perce Tribe, Lapwai)
—Nez Perce County, Idaho and Asotin County, Washington

Illinois

—Garfield School area in the City of Chicago (City of Chicago, Chicago)
—Robert Taylor Homes area in the City of Chicago (Ounce of Prevention, Chicago)
—Counties of Wabash, Edwards, Wayne, White, Hamilton, Saline, and Gallatin (Wabash Area Development, Inc., Enfield)
—Springfield and Sangamon Counties (Springfield Urban League, Inc., Springfield)
—Proviso, Cicero and Berwyn Townships in Cook County (Community and Economic Development Association, Chicago)
—North Lawndale Community in City of Chicago (Better Boys Foundation, Chicago)
—Madison County (Family Service and Visiting Nurse Association, Alton)
—Peoria County (Peoria Citizens Committee for Economic Opportunity, Peoria)
—City of Chicago

Indiana

—Vigo County (Hamilton Center, Terre Haute)
—Clay, Owen, and Putnam Counties (Child—Adult Resource Service, Inc., Rockville)
—Madison County (Hopewell Center, Inc., Anderson)
—Clark County

Iowa

—Counties of Hardin, Marshall, Poweshiek, Tama and Story (Mid-Iowa Community Action, Marshalltown)
—Clay County and Cities of Spencer, Royal, Langdon, Dickens, Fostoria, Everly and Moneta (Upper Des Moines Opportunity, Inc., Graettinger)
—City of Des Moines (Drake University, Des Moines)

Kansas

—Counties of Wichita and Sedgwick (Child Care Association of Wichita-Sedgwick, Wichita)
—Kansas City, Kansas and Wyandotte County (University of Kansas Medical Center, Kansas City)
—Saline County (Unified School District #305, Salina)

Kentucky

—Christian and Daviess Counties (Audubon Area Community Services, Owensboro)
—Harlan County (Kentucky Communities Economic Opportunity Council, Barbourville)
—Grayson and Breckinridge Counties (Breckinridge-Grayson Programs, Leitchfield)
—Fulton, Graves, Calloway, Marshall, and Warren Counties (Murray Board of Education, Murray)
—Whitley County (Whitley County Communities for Children, Williamsburg)
—Jefferson County

Louisiana

—City of New Orleans
—Jefferson Parish

Maine

—Oxford County (Community Concepts, Inc., South Paris)
—Franklin County (Western Maine Community Action, East Wilton)

Maryland

—Cities of Rockville, Langley Park, Takoma Park and Hyattsville (University of Maryland University, Head Start Resource and Training Center, College Park)
—Hightown in Baltimore City and Caroline County (Friends of the Family, Inc., Baltimore)
—Cities of Gaithersburg and Germantown (Family Services Agency, Inc., Gaithersburg)
—City of Baltimore

Massachusetts

—City of Lowell (Community Teamwork, Inc., Lowell)
—City of Boston

Michigan

—Jackson County (Region II CAA, Jackson)
—Genesee County (Carmen-Aimesworth Community Schools, Flint)
—East and West City of Detroit (City of Detroit Neighborhood Services Department, Detroit)
—Grand Haven Area of Ottawa County (Child Development Service of Ottawa County, Inc., Holland)
—Menominee, Delta, and Schoolcraft Counties (Menominee, Delta, and Schoolcraft Action Agency, Escanaba)
—Clare, Gladwin and Mecosta Counties (Mid-Michigan Community Action Agency, Clare)
—Grand Traverse, Artrim, Benzie, Emmet, Kaldaska, Leelanau, Missaukee, Roscommon and Wexford Counties (Northwest Michigan Human Services, Traverse)
—Counties of Gratiot, Ionia, Isabella, and Montcalm
—-Indian Reservations of: Bay Mills, Hannahville, Keweenaw Bay, Isabella, and Lac Viewux Desert

Minnesota

—American Indian population of North and Northeast Minneapolis and Phillips community of So. Minneapolis (Upper Midwest American Indian Center, Minneapolis)
—Midway Section of St. Paul (Model Cities Family Development Center, St. Paul)
—Hennepin County

Mississippi

—Laurel and Jones County (Friends of Children of Mississippi, Jackson)
—Jackson County
—Leflore County

Missouri

—City of St. Louis (Human Development Corporation of St. Louis, St. Louis)
—Jackson County (KCMC Child Development Corporation, Kansas City)

Montana

—Yellowstone County
—Blackfeet Indian Reservation

Nebraska

—Counties of Columbus and Platte (Central Nebraska Community Services, Loup City)
—Cities of Scotts Bluff and Gering (Panhandle Community Services, Gering)
—City of Omaha (The Salvation Army, Western Division, Omaha)
—Douglas County

Nevada

—Counties of Clark, Elko and White Pine

New Hampshire

—Counties of Belknap, Strafford, Laconia and Rochester (Community Action Program Belknap-Merrimack, Inc., Concord)

New Jersey

—Communities of Rosedale, Duddlye, Stockton and City of Marlton (Group Homes of Camden County, Camden)
—Communities of Montclair, Glen Ridge, and South Essex (East Orange Child Development Corporation, East Orange)
—West Ward and Central Ward of Newark (Babyland Nursery, Inc., Newark)
—Sussex and Warren Counties (Northwest New Jersey Community Action Program, Phillipsburg)
—Upper Passaic County

New Mexico

—County of Bernalillo

New York

—The School district of Saratoga County (Ballston Spa Central School District, Ballston Spa)
—Allegany County (ACCORD, Belmont)
—Chautauqua County (Chautauqua Opportunities, Inc., Dunkir)
—South and west quadrants of Syracuse (P.E.A.C.E., Inc., Syracuse)
—City of Utica (Utica Head Start Children and Families, Utica)
—Lower Eastside Manhattan. This area covers three Census tracks bounded on the east by the East River, on the west by Allen Street, on the north by Houston Street and

on the south by Delancey Street (Grand Street Settlement, New York)
—Kingsbridge Heights, Marble Hill, Fordham and Tremont (Kingsbridge Heights Community Center, Bronx)
—Washington Heights and Inwood in Manhattan (Children's Aid Society, New York)
—Village of New Square (New Square Community Improvement Council, Spring Valley)
—Mott Haven Section in the Bronx (University Settlement Society of New York, New York)
—Fort Green Park Community of Brooklyn (Project Teen Aid/Project Chance, Brooklyn)
—Dutches County (Astor Home for Children, Rhinebeck)
—Teen Aid High School in China Town, and Bellveue Hospital in Lower Manhattan (The Educational Alliance, New York)
—Far Rockaway in New York City (Visiting Nurse Service of New York, New York)
—City of Buffalo
—Bronx County

North Carolina

—Emma, Johnston, Woodfin districts in Duncombe County (Asheville City Schools, Asheville)
—Craven County
—Macon County
—McDowell County
—Rowan County
—-Wayne County

North Dakota

—Spirit Lake Reservation (Little Hoop Community College, Fort Totten)
—Standing Rock Sioux Reservation (Standing Rock Sioux Tribe, Fort Yates)
—Ward County

Ohio

—Clermont County (Child Focus of Clermont County, Cincinnati)
—Hamilton County (Cincinnati/Hamilton County CAA, Cincinnati)
—Glenville, Hough, and St. Clair Areas of Cuhahoga County (Council for Economic Opportunity in Greater Cleveland, Cleveland)
—Miami and Darke Counties (Council on Rural Services Programs, Inc., Greenville)
—Lorain County

Oklahoma

—-Cherokee Nation Reservation (Cherokee Nation, Tatequah)
—Creek County

Oregon

—Jackson County and Illinois Valley area of Josephine County (Southern Oregon Child and Family Council, Inc., Central Point)
—City of Portland
—Umatilla County

Pennsylvania

—City of Allentown (Community Services for Children, Inc., Bethlehem)
—Cities of Aliquippa and Beaver Falls (Civic Senior Citizens, Inc., Aliquippa)
—Westmoreland County (Seton Hill Child Services, Greensburg)
—Terrace Village Public Housing, McKees Rocks, Stowe township, Clairton, Camden Hills (University of Pittsburgh, Pittsburgh)
—William Penn High School District in Philadelphia (Allegheny University of the Health Sciences, Division of Community Health, Philadelphia)
—North-Eastern Philadelphia (The Philadelphia Parent Child Center, Inc., Philadelphia)
—Counties of Lackawanna, Pike, Susquehanna, and Wayne
—Counties of Mifflin, Snyder, and Union

Puerto Rico

—Cano Vanas, Rio Grande (Aspira, Inc. of Puerto Rico, Rio Piedras)
—Vega Alta, San Juan, Puerto Rico (New York Foundling Hospital, New York)
—Municipality of Carolina

Rhode Island

—Kent County (CHILD Inc., Warwick)
—City of Cranston and Providence County (Comprehensive Community Action, Cranston)
—Newport County

South Carolina

—Sumter County (Sumter School District 17, Sumter)
—Greenville County (Sunbelt Human Advancement Resources, Inc., Greenville)

South Dakota

—Counties of Minnehaha, Lake, Moody, Codington, Hamlin and Brookings (Inter Lakes Community Action, Madison)
—Rapid City, Ellsworth AFB, and counties of Box Elder, Black Hawk, Pennington and Meade (Youth and Family Services, Rapid City)
—Crow Creek Sioux Reservation and parts of Pennington County
—Oglala Sioux Reservation

Tennessee

—Hamilton County (City of Chattanooga Human Resources Dept., Chattanooga)
—Henry, Gibson, Obion, Weakley Counties (Tennessee State University, Nashville)
—Union City; Counties of Fayette, Lauderdale, Tippon, Carroll and Jackson-Madison (Northwest Tennessee Economic Development)
—Counties of Giles, Bedford and Lawrence

Texas

—Alice, Jim Wells County, and Kingsville and Fulfurias in Kleberg Counties (CAC of South Texas, Alice)
—City of Austin (Child Inc., Austin)
—North-East Dallas (Head Start of Greater Dallas, Inc., Dallas)
—City of San Antonio and Bexar County (City of San Antonio Parent and Child, Inc., San Antonio)
—West Side of San Antonio (Avance, Inc., San Antonio)
—San Marcos and Kyle in Hays County (C.A. Inc. of Hays, Caldwell and Blanco Counties, San Marcos)
—Hildalgo County (Texas Migrant Council, Laredo)
—Cherokee County
—City of Houston

Utah

—Box Elder and Cache Counties in Utah; Franklin County in Idaho (Bear River Head Start, Logan)
—Davis County

Vermont

—Lamoille, Orange, Washington Counties (Central Vermont Community Action Council, Inc., Barre)
—Windham County (Brattleboro Town School District Early Education Services, Brattleboro)
—Communities of Newport, Irasburg/Albany, Barton, Island Pond, Gilman, St. Johnsbury, Hartwick, Lyndonville and Burke (North East Kingdom Community Action, Inc., Newport)

Virginia

—Cities of Bristol, Abingdon, Glade Spring, Meadowview, Lebanon, Clintwood and Grundy (People, Inc., Abingdon)
—Route 1 corridor in Fairfax County, Virginia (United Cerebral Palsy of Washington DC and Northern Virginia, Washington, DC)
—Fairfax County, Cities of Fairfax and Falls Church

Washington

—Communities of Kent, Auburn, Renton (Children's Home Society of Washington, Auburn)
—Port Gamble Reservation; Kitsap County (Port Gamble S'Klallam Tribe, Kingston)
—Spokane County and City of Spokane (Washington State Community College District 17, Spokane)
—Yakima County (Washington State Migrant Council, Grandview)
—City of Seattle

West Virginia

—Communities of Wadestown and Sabraton (Monongolia County Board of Education, Morgantown)
—Counties of Cabell, Lincoln, Mason, and Wayne

Wisconsin

—Counties of Adams, Columbia, Dodge, Juneau, and Sauk (Renewal Unlimited, Baraboo)
—Counties of Barron, Chippewa, Dunn, Pepin, Pierce, Polk, and St. Croix) (CESA #11, Turtle Lake)
—I–94 to Capitol Drive; 10th Street to Sherman Blvd. in the City of Milwaukee; and Milwaukee County (Next Door Foundation, Milwaukee)

Wyoming

—Counties of Converse, Goshen, Natrona, Niobrara, Platte

Appendix E—Category Two—New Awards to Communities Served by PCCS: List of Geographic Areas Open to Competition Under Category Two

Under Category Two, applicants from communities served by current Parent and Child Center programs may apply to operate an Early Head Start program within their community. Applicants from each community will compete for funds against

other applicants from the same community. The competitive areas are listed below.

Alabama

1. Competitive Area: Jefferson County

Arizona

2. Competitive Area: City of Tucson

California

3. Competitive Area: Cities of Berkeley, Albany, Emeryville
4. Competitive Area: City of Los Angeles (excluding the Cities of Santa Monica, Venice, Mar Vista, Culver City, North Inglewood and west of Fairfax Avenue (west LA))
5. Competitive Area: City of San Diego
6. Competitive Area: City of Oakland
7. Competitive Area: Counties of Shasta, Siskiyou and Trinity

Colorado

8. Competitive Area: Counties of Bent, Crowley, Otero, and Prowers

Connecticut

9. Competitive Area: Windham County

Delaware

10. Competitive Area: Sussex County

Florida

11. Competitive Area: Broward County
12. Competitive Area: Duval County

Georgia

13. Competitive Area: Counties of Murray and Whitfield

Idaho

14. Competitive Area: Nez Perce County, Idaho and Asotin County, Washington

Illinois

15. Competitive Area: City of Chicago (excluding the Garfield School area, the Robert Taylor Homes area, and the North Lawndale Community)

Indiana

16. Competitive Area: Clark County

Kentucky

17. Competitive Area: Jefferson County

Louisiana

18. Competitive Area: City of New Orleans
19. Competitive Area: Jefferson Parish

Maryland

20. Competitive Area: City of Baltimore (excluding the Hightown area)

Massachusetts

21. Competitive Area: City of Boston

Michigan

22. Competitive Area: Counties of Gratiot, Ionia, Isabella, and Montcalm
23. Competitive Area: Indian Reservations of: Bay Mills, Hannahville, Keweenaw Bay, Isabella, and Lac Viewux Desert

Minnesota

24. Competitive Area: Hennepin Count (excluding the Midway Section)

Mississippi

25. Competitive Area: Jackson County
26. Competitive Area: Leflore County

Montana

27. Competitive Area: Yellowstone County
28. Competitive Area: Blackfeet Indian Reservation

Nebraska

29. Competitive Area: Douglas County

Nevada

30. Competitive Area: Counties of Clark, Elko and White Pine

New Jersey

31. Competitive Area: Upper Passaic County

New Mexico

32. Competitive Area: County of Bernalillo

New York

33. Competitive Area: City of Buffalo
34. Competitive Area: Bronx County (excluding the areas of Kingsbridge Heights, Marble Hill, Fordham and Tremont)

North Carolina

35. Competitive Area: Craven County
36. Competitive Area: Macon County
37. Competitive Area: McDowell County
38. Competitive Area: Rowan County
39. Competitive Area: Wayne County

North Dakota

40. Competitive Area: Ward County

Ohio

41. Competitive Area: Lorain County

Oklahoma

42. Competitive Area: Creek County

Oregon

43. Competitive Area: City of Portland
44. Competitive Area: Umatilla County

Pennsylvania

45. Competitive Area: Counties of Lackawanna, Pike, Susquehanna, and Wayne
46. Competitive Area: Counties of Mifflin, Snyder, and Union

Puerto Rico

47. Competitive Area: Municipality of Carolina

Rhode Island

48. Competitive Area: Newport County

South Dakota

49. Competitive Area: Crow Creek Sioux Reservation and parts of Pennington County
50. Competitive Area: Oglala Sioux Reservation

Tennessee

51. Competitive Area: Counties of Giles, Bedford and Lawrence

Texas

52. Competitive Area: Cherokee County
53. Competitive Area: City of Houston

Utah

54. Competitive Area: Davis County

Virginia

55. Competitive Area: Fairfax County, Cities of Fairfax and Falls Church

Washington

56. Competitive Area: City of Seattle

West Virginia

57. Competitive Area: Counties of Cabell, Lincoln, Mason, and Wayne

Wyoming

58. Competitive Area: Counties of Converse, Goshen, Natrona, Niobrara, Platte

[FR Doc. 97–9910 Filed 4–16–97; 8:45 am]

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federal register

Thursday
April 17, 1997

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 198

Aviation Insurance; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 198

[Docket No. 28893; Notice No. 97–5]

RIN 2120–AF23

Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to revise Title 14 Code of Federal Regulations (CFR) part 198 to provide for the issuance of insurance for certain types of flight operations and for the issuance of insurance for certain ground support activities essential to flights insured under the Aviation Insurance Program. Also, the amendments would redefine the activation of insurance coverage, revise the process for amending insurance policies, increase the binders for non-premium insurance coverage, and reflect new statutory authority. the proposed amendments would allow the FAA to be more responsive to the aviation industry when commercial insurance coverage cannot be obtained on reasonable terms, and the insurance coverage can be provided by the Aviation Insurance Program.

DATES: Comments must be received on or before June 2, 1997.

ADDRESSES: Comments on the proposed rule should be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28893, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@faa.dot.gov. Comments may be examined in the Rules Docket, Room 915G, weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eleanor Eilenberg, Office of Aviation Policy and Plans, APO–330, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3090.

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, federalism, 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 closing date for comments specified 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 rulemaking, 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. 28893.'' The postcard will be date and time stamped and mailed to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at__http://www.faa.gov or the **Federal Register**'s webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Person 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 procedures.

Background

In 1951, the Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the Federal Government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue to the event of war. This was needed because of several factors: commercial war risk insurance policies contained automatic cancellation clauses in the event of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; and rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The Aviation Insurance Program was incorporated in Title XIII of the Federal Aviation Act of 1958. Statutory responsibility for the program was subsequently transferred to the Department of Transportation at the time of its creation in 1967. The Secretary of Transportation later delegated this authority to the Federal Aviation Administrator (39 CFR 1.47(b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters and, as a matter of policy, the FAA had always conservatively interpreted the definition. In the early 1970's, this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijackings, and terrorist acts. Because of a combination of the progressive exclusion of these new risk from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred with the possibility of abrupt termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad insurance authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1977. These amendments, included in Public Law (Pub. L.) 95–

163, removed from Title XIII all references to risk categories. They authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. However, such insurance could only be issued if commercial insurance for those operations was not available on reasonable terms and conditions. The January 15, 1986, amendment to part 198 reflected the 1977 amendments to Title XIII.

Between 1975 and 1990, there was little use of the insurance authority. The FAA, insured without premium, about 50 military charter flights from the United States to Central America in 1983 and 1984. Otherwise, commercial insurance for flights to most areas of the world was available. Since 1990, the Aviation Insurance Program has been used much more than in the 1975–1990 period, but air carriers can usually still obtain commercial insurance.

Since 1990, the Aviation Insurance Program has been mostly used to provide insurance for civil aircraft chartered by the military. The Department of Defense (DoD) under the National Airlift Policy relies on civil air carriers to meet its airlift requirements. Under the Civil Reserve Airfleet (CRAF) program, DoD contractually obligates airlines to provide aircraft and flight crews to meet mobilization transport requirements in exchange for shares of peacetime DoD transport business. This saves the DoD the expense of purchasing, operating, and maintaining a large standby transport aircraft fleet. Although the CRAF program is available, DoD usually can meet its transport requirements with aircraft and crews volunteered by the CRAF airlines without formal activation of the program. In fact, the CRAF has been activated only once in its history—during Operation Desert Shield/Storm.

Gaps between the FAA and commercial insurance coverage appeared during Operation Desert Shield/Storm as a result of the CRAF activation and the long post-Vietnam hiatus in program activity. Two such gaps could not be closed without new legislation. The more significant was the inability to cover domestic CRAF flight segments. Most of the airlines' commercial hull or liability war risk insurance policies excluded coverage for all CRAF flights while, by law, FAA-issued non-premium insurance could cover by only international flight segments. Thus, the airlines had to rely on direct indemnification from the DoD for coverage of CRAF domestic flight segments (e.g., usually ferry flights to a military base to pick up troops and supplies destined for the theater of operations). In addition, flights transporting armed forces and military materiel on behalf of and pursuant to an agreement between the U.S. government and a foreign government, but not operated under a U.S. government contract, could not be covered by non-premium insurance. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave FAA the authority to provide non-premium insurance coverage for these two previously uncoverable categories of flights. The FAA has been able to fill other coverage gaps administratively with successive revisions to its insurance policies, such as the costs of search and rescue attempts, runway foaming, and damage while the aircraft is outside the insured's control.

In 1994, Congress codified the Federal Aviation Act including the Aviation Insurance Program and related statutes into the main body of Title 49, United States Code (USC) at Chapter 443.

Aviation Insurance Program

Currently, Chapter 443 authorizes the Secretary of Transportation, subject to approval by the President, to provide aviation insurance coverage for American aircraft or foreign-flag aircraft operations deemed necessary to carry out the foreign policy of the United States and for which commercial insurance is unavailable on reasonable terms. This is a discretionary program. This insurance can be issued in two forms:

- *Non-Premium Insurance* is issued for American aircraft under contract to any Federal department or agency which has an indemnity agreement with the Department of Transportation (DOT). Applicants currently pay a one-time binder fee of $200 per aircraft for non-premium insurance. This fee has not been adjusted since 1975. The Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the indemnification agreements with the other Government agencies. In order to minimize the time needed to provide non-premium insurance coverage, upon receipt of the application from the carrier, the FAA will issue the carrier a standby non-premium insurance coverage, upon receipt of the application from the carrier, the FAA will issue the carrier a standby non-premium policy which lists the registered aircraft of that carrier. Actual coverage for operations of these aircraft commences upon formal activation notice from the FAA which will detail the conditions and limits of the activated policy.
- *Premium Insurance* is provided for American aircraft or foreign-flag aircraft for regular commercial scheduled or charter service. The U.S. Government assumes the financial liability for claims in exchange for a premium. The Presidential approval required for premium insurance must be separately obtained for a period of not more than 60 days. The Presidential approval may be renewed for additional 60 day periods if so approved before each additional period. Under certain circumstances, this renewal authority has been and may be delegated to the Secretary of Transportation. As a general policy, premium insurance will not be made available for a U.S. government agency, whereas such agencies may request non-premium insurance.

Non-premium and premium insurance do not necessarily differ in risks covered for any given flight. The differences are in the categories of flights which may be covered and in the approval process. As noted above, wholly domestic flights may be covered by non-premium insurance whereas premium insurance may cover only flights between a U.S. point and a foreign point or between two foreign points. Presidential approval is specific to flights within the scope of each request for premium insurance, while Presidential approval is generic to all non-premium flights for agencies which have completed an indemnification agreement with the FAA.

Two basic types of coverage are offered under the FAA's Aviation Insurance Program, with limits of liability provided as follows:

- Hull insurance covers the loss of or damage to an aircraft hull. Coverage may not exceed the reasonable value of the aircraft as determined by the Secretary.
- Liability insurance covers bodily injury, personal injury, or death, and damage to or loss of property, including cargo, baggage, and personal effects. Coverage may not exceed the registered limits of liability on file with the FAA or the corresponding commercial coverage in effect on the date of loss.

Recent Experience

The FAA issued non-premium war risk insurance for over 5,000 flights in support of Operation Desert Shield/Storm. These flights were utilized to carry both troops and supplies into the

Middle East and evacuate American citizens from the area. Premium war risk insurance also was provided during Operation Desert Shield/Storm for 36 flights.

The FAA also has issued non-premium insurance for flights supporting recent humanitarian and peacekeeping operations. The FAA insured 155 flights by 11 different air carriers carrying troops and supplies to and from Somalia during Operation Restore Hope from December 1992 until early 1994. In 1993, the FAA insured troop and cargo flights to Kuwait City in support of Operation Desert Caravan. In 1994, the FAA insured flights in support of Operation Provide Hope providing humanitarian relief supplies to the Republic of Georgia. Commonwealth of Independent States. In September and October 1994, the FAA insured flights into Haiti in support of Operation Uphold Democracy. In April 1996, the FAA began insuring troop rotation flights between Tuzla, Bosnia, and Germany.

Prior to 1990, the last extensive use of FAA-issued insurance to cover commercial flight operations was in 1975. Since that time, commercial insurance industry practices evolved well beyond those prevailing in 1975 and earlier. The differences between coverage available from the commercial insurance industry and the coverage permitted under the Aviation Insurance Program's statutory authority has created insurance coverage gaps.

The coverage gaps were highlighted by the partial activation of the Civil Reserve Air Fleet (CRAF) during Operations Desert Shield/Storm, the first activation since the program's inception. A majority of the civil air carriers providing the airlift for Operation Desert Shield/Storm had their commercial war risk insurance automatically canceled upon CRAF activation. As a result, the air carriers depended on FAA-issued insurance.

The coverage gaps and the carriers' dependence on FAA-issued insurance caused Congress, the air carrier industry, and the FAA to review the aviation insurance program's statutory authority. Section 401(a) of Public Law 102–581 (October 31, 1992), expanded the FAA's authority to issue non-premium insurance coverage for domestic flight segments; for goods and services (i.e., spares support, refueling, etc.) in direct support of operations conducted under contract to the indemnifying agency; and for transport of military forces or materiel on behalf of the United States under an agreement between the Government and the government of a foreign country and for goods and services in direct support thereof. The FAA further addressed coverage gaps by adopting new procedures and policies: e.g., the revision of the FAA's standard non-premium hull and liability policies and the development of endorsements to those policies to meet the specific insurance needs of DOD contract carriers. Additionally, the FAA is proposing, in this document, to provide insurance for all insurable interests consistent with current commercial aviation insurance practice.

The Aviation Insurance Program has been used repeatedly over the last five years as the U.S. continues its involvement in international peacekeeping and humanitarian endeavors, and as DOD continues its reliance on civil aircraft. This continuing frequent use has significantly increased the administrative cost of maintaining the Aviation Insurance Program. In order to conform insurance program practices to changes in implementation authority, to improve program efficiency, and to offset incurred administration cost due to increased frequency of utilization of the Aviation Insurance Program, the FAA proposes the following amendments.

Explanation of Proposed Changes

In general, the FAA has broad discretion and judgment in determining the acceptable level of risk to be insured against under a given set of circumstances, and the policies and procedures to be followed in the administration of the insurance program. The proposals contained herein would not compromise this basic premise.

Section 198.1

Section 198.1 would be published with editorial changes reflecting language used in the codification of the Federal Aviation Act.

Section 198.1(b) would be revised to expand the operations covered under the Aviation Insurance Program. This proposed amendment would include, as eligible operations, those in domestic or foreign air commerce if non-premium insurance is sought.

Section 198.3

Section 198.3(b) would be revised to expand the authority to cover flights operated pursuant to an agreement between the United States and a foreign government. A requirement for the airline to have a current copy of its commercial insurance policy on file would be added. In addition, this section would be changed to explain when insurance policies are actually in force and when they are in standby status. The section would be divided into paragraphs that clarify and correct the intent of the section.

Section 198.5

Section 198.5 would be published with editorial changes reflecting language used in the codification of the Federal Aviation Act, and would clarify that any other insurable item may be insured if eligible for insurance under § 198.1.

Section 198.7

Section 198.7 would be published with editorial changes reflecting language used in the codification of the Federal Aviation Act, and with the deletion of prior language requiring the approval of the agency on whose behalf contract air services are to be performed.

Section 198.9

Section 198.9 would be revised to add flexibility for applicants applying for insurance. The FAA office administering the Aviation Insurance Program would provide guidance and necessary forms to apply for insurance. Appendix A would be removed. Also, a requirement that the applicant provide evidence of the unavailability of commercial insurance would be added. A provision that the standby non-premium policy only provides actual coverage when formally activated by the FAA has been included.

Section 198.11

Section 198.11 would be revised to reflect editorial changes, and to include language relating to other insurable items.

Section 198.13

Section 198.13 would be changed to reflect administrative payment procedures. The proposed language would provide generic instructions for greater flexibility of this section.

Section 198.15

Section 198.15 would revise the current $200 binder for non-premium insurance, established in 1975, updating it for the inflation by the annual cumulative Consumer Price Index (CPI) rounded to the nearest $25. For example, using the latest annual cumulative CPI available, (2.760 for 1995), the binder would be $550 (calculation: $200 × 2.2760, rounded to the nearest $25) per aircraft or other insurable item. In the future, the binder amount would be adjusted annually for newly registered aircraft and other insurable items to reflect future

increases in the CPI, rounded to the nearest $25. The binder would continue to be a one-time charge, so that, once an aircraft operator registers an aircraft or other insurable item, no additional binder charge would be due while the operator continues to operate that aircraft or other insurable item.

After publication of the final rule, the binder that is set forth in the final rule would be adjusted not more frequently than annually based on changes in the Consumer Price Index of All Urban Consumers (CPI) published by the Secretary of Labor. The adjusted binders would also be published in the ''Notice'' section in the **Federal Register**. This procedure would permit binder adjustments in a timely manner. However, in no event would an adjusted binder exceed the FAA's cost for providing a service. The adjusted binders would become effective in accordance with the notice which sets forth the adjusted binders. The increased binder would apply only to each insured carrier's aircraft and other insurable items registered after the effective date of the final rule.

Section 198.15(d) would be added to state FAA's long standing policy that when an operator acquires an aircraft previously covered under another operator's policy, the new operator must register it in the same manner as an aircraft not previously covered. The insurance registrations are not transferable.

Section 198.17

Section 198.17 would be revised to reflect the coverage of goods and services provided in direct support of aircraft operations as allowed now by law.

Appendix A to Part 198—Form of Application to Section 198.9

Appendix A would be removed to simplify administration of the Aviation Insurance Program. The FAA office administering the program would provide forms upon request.

Paperwork Reduction Act

Information collection requirements in the proposed rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0514.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that a review of the ICAO Standards and Recommended Practices and JAR's is not warranted because there are no existing comparable rules.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the expected benefits to society outweigh the expected costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits exceeding costs; (2) is not ''significant'' as defined in the Executive Order and DOT's Regulatory 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.

Through the proposed changes, the FAA would attempt to recover some of the costs of providing current services from the beneficiaries of these services. The proposed rule would not impose additional costs on society. The cost of administering the insurance program in 1995 amounted to about $475,000. If the current $200 binder is updated, as proposed, by the latest annual Consumer Price Index (CPI), 1995, and adjusted to the nearest $25, the binder would be $550. This figure, multiplied by the number of aircraft newly registered each year, which is estimated at 80, yields $44,000. The increase is far less than the cost of administrating the program; it amounts to 9.3% of 1995 administrative costs. The FAA has determined that the proposed change in the binder for non-premium insurance, if implemented, is equitable.

Regulatory Flexibility Determination

The Regulatory 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 rule is expected to have a significant (positive or negative) economic impact on a substantial number of small entities. Based on the standards and thresholds specified in FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This proposed rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 does not apply.

International Trade Impact

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. The proposed rule would not have any impact on international trade as the registration fee would be the same for all carriers, foreign as well as domestic.

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 12866, October 4, 1993, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, including the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation would not be significant under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. In addition, the FAA certifies that this proposal, if adopted, would 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 would not be considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, of May 22, 1980. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 198

Aircraft, Freight, Reporting and recordkeeping requirements, War risk insurance.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to revise 14 CFR part 198 as set forth below:

PART 198—AVIATION INSURANCE

Sec.
198.1 Eligibility of aircraft operation for insurance.
198.3 Basis of insurance.
198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premium insurance—payment of premiums.
198.15 Non-premium insurance—payment of registration binders.
198.17 Ground support and other coverage.

Authority: 49 U.S.C. 106(g), 40113, 44301–44310; 49 CFR 1.47(b).

§ 198.1 Eligibility of aircraft operation for insurance.

An aircraft operation is eligible for insurance if—

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States;

(b) The aircraft operation is—

(1) In foreign air commerce or between two or more places all of which are outside the United States if insurance with premium is sought; or

(2) In domestic or foreign air commerce, or between two or more places all of which are outside the United States if insurance without premium is sought; and

(c) The Administrator finds that commercial insurance against loss or damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms from an insurance carrier.

§ 198.3 Basis of insurance.

(a) Premium insurance may be made available if the requirements of § 198.1 are met.

(b) Subject to § 198.9(c), standby insurance without premium may be made available if all of the following conditions are met:

(1) A department, agency, or instrumentality of the U.S. Government seeks performance of air services operations, pursuant to a contract of the department, agency, or instrumentality; or transportation of military forces or materiel on behalf of the United States, pursuant to an agreement between the United States and a foreign government.

(2) Such department, agency, or instrumentality of the U.S. Government has agreed in writing to indemnify the Secretary of Transportation against all losses covered by such insurance. Such an agreement, when countersigned by the President constitutes a determination that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States.

(3) A current copy of the aircraft operator's applicable commercial insurance policy or policies is on file with the FAA, including every endorsement making a material change to the policy. Updated copies of these policies must be provided upon each renewal of the commercial policy. Every subsequent material change by endorsement must be promptly provided to the FAA.

(c) Insurance is activated, placing the insurance in full force, as specified by the FAA's written notification to the operator and remains in force until such time as either of the following occurs:

(1) The requirements in § 198.1 are no longer met; or

(2) In the case of non-premium insurance, an aircraft operation is no longer performed under contract to a department, agency, or instrumentality of the U.S. Government; or pursuant to an agreement between the United States and a foreign government.

(d) Insurance policies revert to standby status upon written notification by the FAA to the aircraft operator. A policy will remain in standby status until either—

(1) The insurance is activated by written notice; or

(2) The policy is canceled.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage to the following persons, property, or interests:

(a) Aircraft, or insurable items of an aircraft, engaged in eligible operations under § 198.1.

(b) Any individual employed or transported on the aircraft referred to in paragraph (a) of this section.

(c) The baggage of persons referred to in paragraph (b) of this section.

(d) Property transported, or to be transported, on the aircraft referred to in paragraph (a) of this section.

(e) Statutory or contractual obligations, or any other liability, of the aircraft referred to in paragraph (a) of this section or of its owner or operator, of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft or insurable item, the amount insured may not exceed the amount for which the applicant has otherwise insured or self-insured the aircraft or insurable item against damage or liability arising from any risk. In the case of hull insurance, the amount insured may not exceed the reasonable value of the aircraft as determined by the FAA or its designated agent.

(b) Policies issued without premium may be revised from time to time by the FAA with notice to the insured, to add aircraft or insurable items or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Application for insurance.

(a) Application for premium or non-premium insurance must be made in accordance with the applicable form supplied by the FAA.

(b) Each applicant for insurance with premium under this part must submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought. The applicant must also submit any other information deemed pertinent by the FAA.

(c) Each applicant for premium or non-premium insurance must submit to the FAA evidence that commercial insurance is not available on reasonable terms for each flight or ground operation for which insurance is sought. Each aircraft operator who has a standby non-premium insurance policy must submit evidence to the FAA that commercial insurance is not available on reasonable terms before the FAA activates that policy. The adequacy of the evidence submitted is determined solely by the FAA.

(d) The standby non-premium policy issued to the aircraft operator does not provide actual coverage until formally activated by the FAA.

§ 198.11 Change in status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or other change in the status of an aircraft or insurable items covered by insurance under this part, the insured party must notify the office administering the Aviation Insurance Program within 10 working days after the change in status.

§ 198.13 Premium insurance—payment of premiums.

The insured must pay the premium for insurance issued under this part

within the stated period after receipt of notice that premium payment is due and in accordance with the provisions of the applicable FAA insurance policy. Premiums must be sent to the FAA, and made payable to the FAA.

§ 198.15 Non-premium insurance—payment of registration binders.

(a) The binder for initial registration is $550 for each aircraft or insurable item. This binder is adjusted not more frequently than annually based on changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(b) An application for non-premium insurance must be accompanied by the proper binder, payable to the FAA. A binder is not returnable unless the application is rejected.

(c) Requests made after issuance of a non-premium policy for the addition of an aircraft or insurable item must be accompanied by the binder for each aircraft and insurable item.

(d) When an operator acquires an aircraft or insurable item that was previously covered under an active or standby policy, the new operator must register the aircraft or item on its policy and pay the binder for each aircraft and insurable item.

§ 198.17 Ground support and other coverage.

An aircraft operator may apply for insurance to cover any risks arising from the provision of goods or services directly supporting the operation of an aircraft that meets the requirements of § 198.3(b).

Issued in Washington, DC, on April 14, 1997.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 97–9957 Filed 4–14–97; 4:05 pm]

BILLING CODE 4910–13–M

federal register

Thursday
April 17, 1997

Part VI

The President

Proclamation 6988—To Modify Application of Duty-Free Treatment Under the Generalized System of Preferences

Proclamation 6989—National Crime Victims' Rights Week, 1997

Federal Register
Vol. 62, No. 74
Thursday, April 17, 1997

Presidential Documents

Title 3—

The President

Proclamation 6988 of April 11, 1997

To Modify Application of Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Sections 502(d)(1) and 503(c)(1) of the Trade Act of 1974, as amended by Public Law 104-188; 110 Stat. 1755, 1920, 1922 (''the 1974 Act'') (19 U.S.C. 2462(d)(1) and 2463(c)(1)), provide that the President may withdraw, suspend, or limit the application of the duty-free treatment accorded under the Generalized System of Preferences (GSP) with respect to any country and any article upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)). Pursuant to sections 502(d)(1) and 503(c)(1) of the 1974 Act and having considered the factors set forth in sections 501 and 502(c) of such Act, including, in particular, section 502(c)(5) (19 U.S.C. 2464(c)(5)) on the extent to which a designated beneficiary developing country is providing adequate and effective protection of intellectual property rights, I have determined that it is appropriate to suspend the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Argentina, as provided in the Annex to this proclamation.

2. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 502(d)(1), 503(c)(1), and 604 of the 1974 Act, do proclaim that:

(1) In order to provide that Argentina should no longer be treated as a beneficiary developing country with respect to certain eligible articles for purposes of the GSP, the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions and provisions of this proclamation are superseded to the extent of such inconsistency.

(3) The modifications made by this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 30 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

Billing code 3195–01–P

ANNEX

MODIFICATIONS OF TARIFF TREATMENT UNDER
THE GENERALIZED SYSTEM OF PREFERENCES FOR
CERTAIN GOODS THE PRODUCT OF ARGENTINA

Effective with respect to articles both (1) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after the date which is 30 days after the date of publication of this proclamation in the Federal Register, the Harmonized Tariff Schedule of the United States ("HTS") is modified as set forth below:

(1) General note 4(d) to the HTS is modified by:

(a) inserting in numerical sequence the following HTS subheadings and the country set out opposite such subheadings:

0303.77.00	Argentina	7901.12.50	Argentina
0404.90.10	Argentina	8207.20.00	Argentina
0703.20.00	Argentina	8409.91.99	Argentina
3901.90.90	Argentina	8413.91.90	Argentina
3902.10.00	Argentina	8422.30.90	Argentina
3902.20.50	Argentina	8431.49.10	Argentina
3902.90.00	Argentina	8471.49.37	Argentina
3903.90.50	Argentina	8471.60.57	Argentina
3904.40.00	Argentina	8477.51.00	Argentina
3906.10.00	Argentina	8479.20.00	Argentina
3906.90.50	Argentina	8480.30.00	Argentina
3907.30.00	Argentina	8481.30.20	Argentina
3907.60.00	Argentina	8481.80.30	Argentina
3907.99.00	Argentina	8481.80.90	Argentina
3909.10.00	Argentina	8481.90.30	Argentina
3909.50.50	Argentina	8503.00.65	Argentina
3913.90.20	Argentina	8524.31.00	Argentina
3921.90.50	Argentina	8524.32.00	Argentina
3923.90.00	Argentina	8524.52.10	Argentina
4201.00.60	Argentina	8524.60.00	Argentina
4303.10.00	Argentina	8524.91.00	Argentina
4303.90.00	Argentina	8524.99.40	Argentina
4410.11.00	Argentina	8536.90.00	Argentina
4410.19.00	Argentina	8538.90.80	Argentina
4802.52.10	Argentina	8708.60.80	Argentina
7007.11.00	Argentina	8708.70.60	Argentina
7114.11.60	Argentina	8708.99.80	Argentina
7308.90.95	Argentina	8716.90.50	Argentina
7315.90.00	Argentina	9003.90.00	Argentina
7409.11.50	Argentina	9018.90.10	Argentina
7409.21.00	Argentina	9113.10.00	Argentina
7419.99.50	Argentina	9113.20.60	Argentina
7901.11.00	Argentina	9403.20.00	Argentina
		9403.50.90	Argentina

(b) inserting in alphabetical sequence the country set out opposite the following HTS subheadings:

1604.16.10	Argentina	2849.10.00	Argentina
1701.11.10	Argentina	2850.00.50	Argentina
2805.40.00	Argentina	2902.11.00	Argentina
2813.90.50	Argentina	2905.12.00	Argentina
2832.30.10	Argentina	2905.13.00	Argentina
2839.90.00	Argentina	2905.22.50	Argentina
2841.30.00	Argentina	2906.14.00	Argentina
2841.50.00	Argentina	2914.12.00	Argentina
2843.30.00	Argentina	2914.13.00	Argentina

ANNEX (cont.)

(1)(b) (cont.)

2915.70.00	Argentina
2917.14.50	Argentina
2918.21.50	Argentina
2918.22.10	Argentina
2918.22.50	Argentina
2929.10.15	Argentina
2932.99.90	Argentina
2933.40.30	Argentina
2933.90.55	Argentina
3209.90.00	Argentina
3301.19.10	Argentina
3301.90.10	Argentina
3302.10.10	Argentina
3302.10.20	Argentina
3302.90.10	Argentina
3303.00.30	Argentina
3304.20.00	Argentina
3304.99.50	Argentina
3305.10.00	Argentina
3305.90.00	Argentina
3307.20.00	Argentina
3307.49.00	Argentina
3401.11.10	Argentina
3504.00.50	Argentina
3506.99.00	Argentina
3701.10.00	Argentina
3702.10.00	Argentina
3706.10.30	Argentina
3707.90.32	Argentina
3822.00.50	Argentina
4011.10.10	Argentina
4411.11.00	Argentina
6910.90.00	Argentina
7202.21.50	Argentina
7202.30.00	Argentina
8409.91.50	Argentina
8409.99.91	Argentina
9403.60.80	Argentina

(2) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0303.77.00	4410.19.00	8481.80.90
0404.90.10	4802.52.10	8481.90.30
0703.20.00	7007.11.00	8503.00.65
3901.90.90	7114.11.60	8524.31.00
3902.10.00	7308.90.95	8524.32.00
3902.20.50	7315.90.00	8524.52.10
3902.90.00	7409.11.50	8524.60.00
3903.90.50	7409.21.00	8524.91.00
3904.40.00	7419.99.50	8524.99.40
3906.10.00	7901.11.00	8536.90.00
3906.90.50	7901.12.50	8538.90.80
3907.30.00	8207.20.00	8708.60.80
3907.60.00	8409.91.99	8708.70.60
3907.99.00	8413.91.90	8708.99.80
3909.10.00	8422.30.90	8716.90.50
3909.50.50	8431.49.10	9003.90.00
3913.90.20	8471.49.37	9018.90.10
3921.90.50	8471.60.57	9113.10.00
3923.90.00	8477.51.00	9113.20.60
4201.00.60	8479.20.00	9403.20.00
4303.10.00	8480.30.00	9403.50.90
4303.90.00	8481.30.20	
4410.11.00	8481.80.30	

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Presidential Documents

Proclamation 6989 of April 15, 1997

National Crime Victims' Rights Week, 1997

By the President of the United States of America

A Proclamation

During National Crime Victims' Rights Week, Americans in communities across the country join together to honor victims and survivors, to remember their pain, and to recognize their many contributions to improving our criminal justice system and helping others affected by crime. It is also an occasion for us to acknowledge our significant progress in securing crucial rights and services for crime victims.

As we reflect on the events of this past year, we think of all our fellow citizens who became victims of crime on our streets, at home, in our neighborhoods, in our schools, in our workplaces, and even in our sacred places of worship. We remember the images of dozens of mostly African American churches being consumed in flames, and we recall church leaders and their congregations, representing all denominations and races, reaching out to invite healing and rebuilding—not in isolation, but in an extraordinary spirit of community and unity. We also remember the many contributions of crime victims in pioneering crime prevention programs in our schools and working to strengthen our laws and to enlighten all of us about the needs of all crime victims.

Through the dedicated efforts of crime victims and their advocates, criminal justice workers, and responsive legislators, we have made important strides in the struggle against violence. The Violent Crime Control and Law Enforcement Act of 1994 allocated an increase in resources for criminal justice programs, deploying thousands of new police officers on our streets. The Brady Bill has prevented over 225,000 felons, fugitives, and stalkers from buying handguns since it was enacted. And the Community Notification Act, known as ''Megan's Law,'' is helping us protect our most vulnerable citizens by informing communities of the presence of convicted pedophiles. With community notification, we are working to prevent cases like that of the Act's namesake, Megan Kanka, a 7 year-old who died at the hands of a repeat sex offender released into an unsuspecting community. With these and other preventive measures, we've managed to reduce the rate of violent crime for 5 straight years and to restore hope of reaching our goal of a peaceful America.

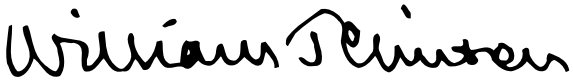
We can also take heart in our efforts to assist victims in need of justice and healing in the aftermath of violent crimes. The Violence Against Women Act, a historic and comprehensive plan targeted at ending crimes against women, has provided much-needed services to countless domestic violence victims and their children. Likewise, the National Domestic Violence Hotline, established last year, has responded to more than 73,000 calls for assistance from around the country. As a result of over $500 million in deposits to the Federal Crime Victims Fund in fiscal 1996, the States will receive more than three times as much in Federal funds as they have received in any previous year to support local victim assistance programs. And the Antiterrorism Act has guaranteed restitution to victims of Federal crimes and mass violence; it has already provided substantial assistance to victims of the Oklahoma City bombing.

This year, we can take one more historic step to ensure that victims throughout our country are guaranteed the fundamental rights to be present at proceedings, to be informed of significant developments in their cases and of their rights, and to be heard at sentencing and other appropriate times throughout the criminal justice process. The Congress should pass a Victims' Rights Amendment to the United States Constitution that will, when ratified by the States, ensure that crime victims are at the center of the criminal justice process, not on the outside looking in.

We must stand united in caring for and assisting crime victims throughout our country.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 13 through April 19, 1997, as National Crime Victims' Rights Week. I urge all Americans to follow in the example of victim advocates and reaffirm our common purpose to protect and comfort one another in times of hardship—not only during this special week but also throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



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