that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 140

Bonds, Claims, Grant programs—transportation, Highways and roads, Railroads.

23 CFR Part 646

Grant programs—transportation, Highways and roads, Insurance, Railroads.

Issued on: August 20, 1997.

Gloria J. Jeff,

Acting Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by revising part 140, subpart I, and part 646, subpart B, to read as set forth below.

PART 140—REIMBURSEMENT

1. The authority citation for part 140 continues to read as follows:

Authority: 23 U.S.C. 101(e), 106(c), 109(e), 114(a), 120(g), 121(d), 122, 130, and 315; and 49 CFR 1.48(b).

Subpart I—Reimbursement for Railroad Work

2. In § 140.904, paragraph (b)(1) is revised to read as follows:

§ 140.904 Reimbursement basis.

* * * * *

(b) * * *

(1) For work which is included in an approved statewide transportation improvement program.

* * * * *

3. In § 140.922, paragraph (b) is revised to read as follows:

§ 140.922 Billings.

* * * * *

(b) The company shall provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, within one year following completion of the reimbursable railroad work. Otherwise, previous payments to the company may be considered final, except as agreed to between the SHA and the railroad.

* * * * *

PART 646—RAILROADS

4. The authority citation for part 646 is revised to read as follows:

Authority: 23 U.S.C. 109(e), 120(c), 130, 133(d)(1), and 315; 49 CFR 1.48(b).

Subpart B—Railroad-Highway Projects

5. In § 646.200, paragraph (f) is removed and paragraph (c) is revised to read as follows:

§ 646.200 Purpose and applicability.

* * * * *

(c) Additional instructions for projects involving the elimination of hazards of railroad/highway grade crossings pursuant to 23 U.S.C. 130 are set forth in 23 CFR part 924.

* * * * *

§ 646.202 [Removed and Reserved]

6. Section 646.202 is removed and reserved.

7. Section 646.204 is amended by removing paragraph (d); by removing the paragraph designations; and by placing the definitions in alphabetical order.

8. Section 646.208 is revised to read as follows:

§ 646.208 Funding.

(a) Railroad/highway crossing projects may be funded through the Federal-aid funding source appropriate for the involved project.

(b) Projects for the elimination of hazards at railroad/highway crossings may, at the option of the State, be funded with the funds provided by 23 U.S.C. 133(d)(1).

9. In § 646.212, paragraph (b) is revised to read as follows:

§ 646.212 Federal share.

* * * * *

(b) The Federal share of railroad/highway crossing projects may be:

(1) Regular pro rata sharing as provided by 23 U.S.C. 120(a) and 120(b).

(2) One hundred percent Federal share, as provided by 23 U.S.C. 120(c).

(3) Ninety percent Federal share for funds made available through 23 U.S.C. 133(d)(1).

10. In § 646.214, paragraph (a)(2) is revised to read as follows:

§ 646.214 Design.

(a) * * *

(2) Facilities that are the responsibility of the highway agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice for Federal-aid projects.

* * * * *

11. Section 646.216 is amended in paragraph (d)(3)(ii) by replacing the figure ''$25,000'' with the figure ''$100,000''; and by revising paragraph (e)(1) to read as follows:

§ 646.216 General procedures.

* * * * *

(e) *Authorizations.* (1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred after the date each phase of the work is included in an approved statewide transportation improvement program and authorized by the FHWA are eligible for Federal-aid participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by a railroad prior to authorization by the FHWA, although not reimbursable, may be included as part of the railroad share of project cost where such a share is required.

* * * * *

Appendix to Subpart B—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures—[Amended]

12. The appendix to subpart B is amended as follows:

A. By replacing the words ''20 feet'' with ''6.1 meters'' wherever they appear;

B. By replacing the words ''20-foot'' with ''6.1-meters'' wherever they appear;

C. By replacing the words ''8 feet'' with ''2.5 meters'' wherever they appear;

D. By replacing the words ''9 feet'' with ''2.8 meters'' wherever they appear;

E. By replacing the words ''23 feet'' with ''7.1 meters'' wherever they appear;

F. By replacing the words ''24 feet 3 inches'' with ''7.4 meters'' wherever they appear; and

G. By replacing the words ''26 feet'' with ''8.0 meters'' wherever they appear.

F. By replacing the words ''Nine feet'' with ''Two and eight tenths meters'' wherever they appear.

[FR Doc. 97–22797 Filed 8–26–97; 8:45 am]

BILLING CODE 4910–22–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC58

Disaster Assistance; Snow Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule describes Federal assistance that is available to eligible applicants as a result of an Emergency or Major Disaster declaration based on snowstorms.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Melissa H. Howard, Ph.D, Infrastructure Support Division, room 713, 500 C Street SW., Washington DC 20472, (202) 646–3243.

SUPPLEMENTARY INFORMATION: On October 24, 1996, FEMA published in the **Federal Register** at 61 FR 55122 a proposed rule, ''Disaster Assistance; Snow Removal Assistance,'' and invited comments for 30 days ending on November 25, 1996. Comments were received from 11 sources representing a congressional office, State and local governments and a national association.

Three comments were made that the proposed change clarifies and clearly defines FEMA's eligibility criteria for snow assistance. A general comment was that the proposed rule would reduce false expectations and encourage proper planning and self-sufficiency on the parts of State and local governments.

Three comments were made that the proposed rule did not address the declaration criteria for which a presidential disaster for a snow event would be declared or did not take into account the effects of a ''slow emergency'' that may be created by the continual accumulation of severe weather over an extensive period of time. While the original intent was to describe only work and costs that would be eligible after a presidentially-declared emergency or major disaster, language was added to clarify situations that may warrant a presidential declaration. The basic principle guiding presidential declarations will be that the snowstorm must be record or near record, as established by official government records.

Four comments were made that costs associated with labor, equipment and materials for sand and salt operations to enable safe passage over icy surfaces should be an eligible expense. FEMA has simplified the rule by broadening eligible costs to include work eligible under 44 CFR 206.225, Emergency Work.

There were several comments about the limited nature of the eligibility for Federal assistance. Three comments were made that the proposed rule precludes snow removal from tracks and rights-of-way of urban mass transit systems, marine terminals and from airport runways and connecting taxiways and ramp areas, and four comments were made that the list of critical facilities should include other types of facilities besides those mentioned in the proposed rule. The rule now permits all emergency work costs eligible under 44 CFR 206.225 for the period of time that will be specified in the declaration.

Three comments were made that the snow removal policy continues to separate snowstorms from other disasters as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* The President has the authority under the Stafford Act to declare a major disaster or emergency or to deny a governor's request for a declaration. In the event that a declaration is made, the President has the authority to limit the extent to which Federal disaster assistance may be delivered. Winter storms that cause extensive power outages, serious safety hazards and significant physical damage to public infrastructure may require a declaration authorizing several categories of recovery assistance. The extent of damage and needed assistance will continue to be the basis for the extent of the declaration.

A frequent general comment was whether eligible costs (National Guard snow removal assistance, selective hauling of snow, overtime, equipment rates, etc.) under FEMA's past snow removal policy would be eligible and under what category of work, absent any mention in the proposed rule. As noted above, 44 CFR 206.225 governs costs eligible for Federal assistance. Damage survey reports will be written as Category B, Emergency Protective Measures.

Three comments were made that the one lane/emergency route policy should be expanded to provide assistance for all roads for which the State or local jurisdiction have responsibility. FEMA has expanded the eligibility.

National Environmental Policy Act

This rule is categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental assessment or environmental impact statement has been prepared.

Regulatory Flexibility Act

The Director certifies that this rule would not be a major rule under Executive Order 12291, and would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities. Hence, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the Executive Order 12612, Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is not a ''major rule'' within the meaning of that Act. It does not result in nor it is likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4. It does not meet the $100,000,000 threshold of that

Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, 44 CFR part 206 is amended as follows:

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.227 is revised to read as follows:

§ 206.227 Snow assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

Dated: August 18, 1997.

James L. Witt,

Director.

[FR Doc. 97–22679 Filed 8–26–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 94–124; FCC 97–267]

Use of Radio Frequencies Above 40 GHz for New Radio Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order* the Commission grants the petition for reconsideration of Cutler-Hammer by amending the regulations to permit operation of lower power fixed radar systems in the 59–64 GHz band, permits interim equipment approval and operation of unlicensed services in the 59–64 GHz band provided that the equipment complies with the proposed spectrum etiquette contained in the Fourth Notice or Proposed Rule Making, denies Vorad Safety Systems, Inc.'s petition for reconsideration requesting relaxation of the spurious emission limits for vehicle radar systems operating in the 46.7–46.9 GHz band, and corrects two typographical errors contained in the First Report and Order (''Order'') in this proceeding.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Reed (202) 418–2455 or Rodney P. Conway (202) 418–2904. Via electronic mail: jreed@fcc.gov or rconway@fcc.gov, Office of Engineering and Technology, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket 94–124, FCC 97–267 adopted July 28, 1997, and released August 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of the Memorandum Opinion and Order

1. Cutler-Hammer, a manufacturer of sensors used in industrial applications, filed a petition for reconsideration requesting the Commission amend its rules to permit the operation of lower power, fixed field disturbance sensors (radar) in the 59–64 GHz frequency band. Cutler-Hammer states that lower frequency sensors of the type currently being manufactured have performance limitations that millimeter wave sensors can overcome and improve on sensor performance with the 5 GHz of frequency bandwidth.

2. Cutler-Hammer recognizes that a number of parties participating in this proceeding expressed concern about suggestions that vehicle radar systems be permitted to operate in the 60–61 GHz band. It agrees that the potential for interference from mobile field disturbance sensors to fixed operations is hard to predict and to avoid. Fixed field disturbance sensors operating characteristics are much more predictable and the potential for causing and receiving interference is more easily determined, while the operating characteristics of mobile field disturbance sensors are very difficult to predict due to the inherently variable nature of the system, which results in unpredictable radiation patterns and potentials for causing and receiving interference. Cutler-Hammer indicates that, in contrast, the low power fixed field disturbance sensors it desires to employ would operate with very little power and would create a predictable radiation pattern, permitting them to be designed and installed in such a way that they would neither be susceptible to, nor likely to cause, interference. Accordingly, Cutler-Hammer believes that the prohibition against the use of fixed field disturbance sensors is unnecessarily broad and is not supported by the record.

3. The Commission agrees with Cutler-Hammer that fixed field disturbance sensors at the proposed output level of 9 nW/cm² as measured at 3 meters from the transmit antenna would not be likely to be a source of interference to other communications systems operating with an output level of up to 9 μW/cm² as measured at 3 meters from the transmit antenna in the 59–64 GHz band. This is the only unlicensed frequency band under the Commission's regulations that provides a bandwidth this wide and at a power level that makes operation practical. Accordingly, the Commission is granting the request from Cutler-Hammer to remove the prohibition against fixed field disturbance sensors. The Commission also recognizes that, in many cases, the manufacturing process may require that the sensor be capable of movement, even though the equipment in which the sensor is installed is fixed. Thus, the Commission will clarify in its rules that the permission to operate fixed field disturbance sensors applies to sensors installed in fixed equipment, even if the sensor itself moves within the equipment. However, this action does not affect the Commission's existing prohibition on mobile field disturbance sensors in the 59–64 GHz frequency band.

4. Although the Commission stated previously in this proceeding that operation in the 59–64 GHz band would be permitted only after adoption of a spectrum etiquette, we now believe that this prohibition no longer is necessary and would be detrimental to the introduction of new products and services. Therefore, the Commission will permit operation in the 59–64 GHz band, of any authorized, unlicensed communications devices, including fixed field disturbance sensors, on an interim basis pending consideration of the Spectrum Etiquette proposed in the Fourth Notice of Proposed Rule Making. The Commission believes that permitting interim operation will serve the public interest by permitting early rollout of new and innovative technologies and services. The Commission will require, however, that